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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

G.D. Morgan, Jr. Circuit Court Judge

Appellate Case No. 2023-000033

Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, …….. Appellant,

v.

Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC …… Respondents.

RECORD ON APPEAL (VOLUME 1)

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3901127

Deonda Weldon et al
PLAINTIFF(S)

Dominion Clemson, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

See page two below.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/26/2022 .

Personal Representative Of The Estate Of Earline Cooley
Earline Cooley

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendants' Motion to Compel Arbitration. Based on a review of the file, the submissions of the parties and the extensive and thorough oral arguments of both parties, the Defendants' Motion is GRANTED.

The Court finds as follows:

(1) The arbitration provision is not unconscionable. The Court may only analyze the arbitration provision itself when conducting an unconscionability inquiry. See Damico v. Lennar Carolinas, LLC, No. 2020-001048, 2022 WL 4231032 (S.C. Sept. 14, 2022). The Court may not go beyond the arbitration provision and look at the entirety of the contract. See id.;
(2) the Defendants have not waived their right to compel arbitration;
(3) that all Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement;
(4) that the arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action; and
(5) that Debra Galloway did possess the appropriate authority to execute the Arbitration Agreement on behalf on Earline Cooley.

Defendants' counsel is to prepare a proposed order and submit it to the Court via e-mail.

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Pickens Common Pleas

Case Caption: Deonda Weldon , plaintiff, et al VS Dominion Clemson, Llc , defendant, et al

Case Number: 2021CP3901127

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

ELECTRONICALLY FILED - 2023 Jan 03 2:55 PM - PICKENS - COMMON PLEAS - CASE#2021CP3901127

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	)	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ARBITRATION AND DISMISSING CASES**

This matter was before the Court on October 20, 2021, upon Defendants' Motion to Compel Arbitration and Protective Order from Discovery. Counsel of record for all parties were present, including Matthew W. Christian for Plaintiff and Joshua T. Thompson for Defendants. Having reviewed the submissions by counsel and hearing all arguments advanced, the Court hereby GRANTS Defendants' Motion to Compel Arbitration and ORDERS that this matter be dismissed and compelled to binding arbitration in accordance with the below findings.

FINDINGS OF FACT

The Court has extensively reviewed the submissions of the parties, including exhibits. Of particular note, the Court has reviewed the Affidavit of Deonda Weldon, the Affidavit of Debra Galloway, Earline Cooley's Durable Power of Attorney attached to Defendants' Memorandum in Opposition as Exhibit 1, Ms. Cooley's Healthcare Power of Attorney (the "Healthcare POA") attached to Defendants Memorandum in Opposition as Exhibit 2, Ms. Cooley's Resident Admission Agreement attached to Defendants' Memorandum in Opposition as Exhibit 3, information on Ms. Cooley's

Emergency Contacts attached to Defendants' Memorandum in Opposition as Exhibit 4, and the various exhibits submitted by the parties which chronical the timeline for Defendants providing notice of investigating the arbitration issue through filing the present motion. Based upon said the arguments presented and said exhibits, the Court makes the following findings of fact:

On January 10, 2006, Earline Cooley ("Ms. Cooley") executed both a Durable Power of Attorney (the "POA") and Healthcare Power of Attorney (the "Healthcare POA"). The POA was filed in Greenville County, SC on August 1, 2014. The POA named Ms. Cooley's daughter, Deonda Weldon ("Ms. Weldon"), as Ms. Cooley's agent. Additionally, Ms. Cooley named her daughters, Phyllis Robin Cooley Elliott ("Ms. Elliott") and Debra Galloway ("Ms. Galloway"), in that order, as substitute or successor agents if Ms. Weldon was unable, unwilling, or unavailable. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA. Ms. Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission. The powers expressly included the power to arbitrate; the power to abandon and/or compromise claims; the power to sign and execute contracts, agreements, releases, and waivers; and the power to pay medical expenses. The POA also stated that Ms. Cooley expressly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative."

In the Healthcare POA, Ms. Cooley named Ms. Elliott as her agent. Ms. Cooley named Ms. Galloway and Ms. Weldon, in that order, as substitute or successor agents if Ms. Elliott was unable, unwilling, or unavailable. The Healthcare POA granted the power to provide a place of residence and to make arrangements at any nursing home or similar establishment. Like the POA, Ms. Cooley stated within the Healthcare POA that all actions taken by the available agent shall "bind me and my estate and my personal representative."

On February 14, 2019, Ms. Galloway, as the available durable power of attorney, executed the

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Admission Agreement on behalf of Ms. Cooley as part of the process for admitting Ms. Cooley to Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") for assisted living care. The Admission Agreement provided that Ms. Cooley was to be admitted to Dominion Clemson on March 8, 2019, for assisted living care that included accommodations, basic daily services such as meals, activities, and maintenance, and medication administration. The Admission Agreement also contained an arbitration clause within the same document, not as a separate document or exhibit. Based on the Admission Agreement, Ms. Cooley was admitted to Dominion Clemson for assisted living in March 2019. Ms. Cooley remained at Dominion Clemson until her discharge in March 2020.

In Paragraph 13 of the Admission Agreement, bolded and titled "**AGREEMENT TO ARBITRATE**," Ms. Galloway agreed that any claim or dispute "amongst the Parties, involving an amount in excess of $15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator." Ms. Galloway likewise agreed that the Federal Arbitration Act "shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement." Further, Ms. Galloway agreed that the parties would waive the right to be awarded punitive damages.

Likewise, Ms. Galloway agreed that the rights and obligations of the parties under the Admission Agreement "shall bind…the Parties hereto, their legal representatives, heirs, estates, successors and assigns. Ms. Galloway also agreed that should any provision of the Admission Agreement be found unenforceable, such unenforceable provisions would be severed and the remainder of the Admission Agreement would continue in full force and effect. Ms. Galloway agreed that "she was given the opportunity to read this Agreement before signing it." Ms. Galloway agreed in the Admission Agreement that all information provided to Dominion Clemson as part of the admission process, including Ms. Cooley's "application forms, health history and medical report, personal interview and emergency

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information records, as applicable, is true and correct."

On October 13, 2021, Plaintiff commenced actions 2021-CP-39-01127 and 2021-CP-39-01128, both alleging claims of negligence against all Defendants related to the care that Ms. Cooley received while she was a resident at Dominion Clemson. Defendants timely filed their Answer on December 21, 2021, expressly raising the arbitration provision within the Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day with Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff. These discovery requests specifically sought all powers of attorney executed by Ms. Cooley.

Plaintiff responded to Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff on April 25, 2022, and included document production that contained the POA. On June 9, 2022, Defense counsel emailed Plaintiff's counsel apologizing for a delayed response due to having Covid and informed Plaintiff's counsel that Defendants searched Plaintiff's county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. Defense counsel then stated that after reviewing Plaintiff's Responses to Defendants' First Set of Requests for Production Defendants, Defense counsel became aware of the Plaintiff's POA and planned to move to compel arbitration pursuant to the admission agreement. Defendants filed their Motion to Compel Arbitration and Protective Order from Discovery on June 9, 2022, which is now present before the Court.

Since these claims expressly fall within the scope of the Admission Agreement that contain an arbitration provision, the Court finds this matter should be dismissed and compelled to arbitration.

CONCLUSIONS OF LAW

As an initial matter, the Court recognizes that both Federal and South Carolina law favor arbitrating disputes. See O'Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997) ("The FAA embodies a strong federal policy in favor of arbitration, and, accordingly, there is a strong presumption

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in favor of the validity of arbitration agreements."); Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) ("Furthermore, it is the policy of this state to favor arbitration of disputes.").

For this reason, both Federal and South Carolina courts have held that any doubts over arbitrability should be resolved in favor of compelling arbitration. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 – 25 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability."); Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

Viewed through the lens of presumed enforceability outlined above, the Admission Agreement that contains an arbitration provision, by its terms and by law, are governed by the FAA, 9 U.S.C. §§ 1-16; Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

Pursuant to the FAA, any written provision in "a contract evidencing a transaction involving commerce" providing that disputes be settled by arbitration is "valid, irrevocable, and enforceable." 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. The FAA provides, in pertinent part, as follows:

> The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement*.

9 U.S.C. § 4 (emphasis added). "By its terms, the act leaves no place for the exercise of discretion by

a… court, but instead mandates that… courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). As discussed herein, the Admission Agreements satisfies these requirements, and the Court concludes that this matter should be dismissed and compelled to arbitration.

I. The arbitration provision in the Admission Agreement is not unconscionable.

As set forth above, the following facts are undisputed. Ms. Galloway was a competent adult on February 14, 2019. She reviewed a legal document based upon authority vested by Ms. Cooley's Power of Attorney. The legal document, an Admission Agreement, concerned Ms. Cooley's admission to an assisted living facility twenty-two (22) days later on March 8, 2019. The arbitration provision at issue was its own provision of the agreement, conspicuously bolded, and set forth in all capital letters. Ms. Galloway agreed she had time to review the document. Plaintiff, Ms. Cooley, and Ms. Galloway all benefited from the document for the year that Ms. Cooley was admitted to Dominion Clemson. Plaintiff and Ms. Galloway both presented Affidavits to this Court. Neither have claimed that Ms. Galloway did not sign the Admission Agreement. Neither have claimed that Ms. Galloway was suffering from mental infirmity at the time she signed the Admission Agreement. As detailed below, Ms. Galloway as Ms. Cooley's agent is held to her contract in such a circumstance.

Plaintiff argues that the arbitration provision contained in the Admission Agreement is unconscionable because there was an absence of meaningful choice on the part of Ms. Galloway and that the terms of the Admission Agreement are so oppressive that no fair or honest person would accept them. Plaintiff further argued that despite the Admission Agreement containing a severability provision that severability is not proper for an unconscionable provision and the arbitration "agreement" should be invalidated.

The South Carolina Supreme Court recently issued an opinion regarding the severability of unconscionable provisions. Similar to this matter, in Damico, the Purchase and Sale Agreement

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("Agreement") between the parties contained an arbitration provision that was governed by the FAA. Damico v. Lennar Carolinas, LLC, No. 2020-001048, 2022 WL 4231032, at *3 (S.C. Sept. 14, 2022). The South Carolina Supreme Court clearly stated that "[t]he validity of the arbitration clause is a matter for the courts, whereas the validity of the contract as a whole is a matter for the arbitrator" and that when "conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." Damico, 2022 WL 4231032, at *4 (internal citations omitted). Thus, this Court's analysis is limited to the arbitration provision contained within the Admission Agreement.

As to the arbitration provision, the party arguing unconscionability bears the burden of proving "(1) she lacked a meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them." Doe v. TCSC, LLC, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020). "[C]ourts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." Id.

Plaintiff attached the Affidavit of Ms. Galloway to her memorandum as an exhibit. In her Affidavit, Ms. Galloway testified that at the time of the execution of the Admission Agreement she was unaware that it contained an arbitration clause, that the admissions process was hurried, that this timeframe was extremely emotional for her family, and finally that had she been aware of the arbitration provision she would not have signed the Admission Agreement. Ms. Galloway fails to explain how she, as a competent adult, was unaware of the arbitration provision given that it was conspicuously set forth as a separate provision of the Admission Agreement under a bolded and capitalized heading that said, "**AGREEMENT TO ARBITRATE**."

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South Carolina law is clear that anyone who enters into a written contract has a duty to read the contract which she signs. Maw, 252 S.C. at 284-285, 166 S.E.2d at 204. Likewise, anyone who is capable of reading and understanding, but fails to read a contract before signing is bound by the terms thereof. Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). Furthermore, arbitration clauses are not unconscionable and will be enforced if a person who can read fails to read the contract, regardless of whether he was advised of the arbitration terms by the contracting party. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (holding the plaintiff's failure to read an arbitration provision did not render it unconscionable even though the plaintiffs claimed they were not advised of those terms).

While Ms. Galloway claims that the admissions processed was hurried and an emotional time, Plaintiff fails to address the twenty-two (22) day time period between the execution of Ms. Cooley's Admission Agreement paperwork on February 14, 2019, and her admission on March 8, 2018. Plaintiff has not provided evidence showing that Ms. Galloway did not have the appropriate time to review the entire Admission Agreement that contained an arbitration provision during the twenty-two (22) day time period between the execution of the documentation and Ms. Cooley presenting to the facility for assisted living care.

The Court, therefore, finds and concludes the Plaintiff has failed to establish that the arbitration provision within the Admission Agreement is unconscionable. Pursuant to Damico, the Court declines to review the liability and damages limiting provisions of the Admission Agreement. Damico indicates that the arbitrator assigned to this matter will determine enforceability of those provisions.

II. The Defendants have not waived their right to compel arbitration.

The Plaintiff filed the Complaints against Defendants on October 13, 2021. After the Complaint was received, the parties corresponded via e-mail to discuss a 30-day extension for the responsive pleading. Defense counsel informed Plaintiff's counsel through e-mail that Defendants were aware of an

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arbitration provision in the admission agreement but were only familiar with a healthcare power of attorney at that time and asked for an extension for filing a responsive pleading, including a motion to dismiss or compel arbitration. Defense counsel also stated that he was continuing to investigate the enforceability of the arbitration agreement. Plaintiff's counsel agreed to the request and said that he did not believe the arbitration agreement was "enforceable for several reasons." Plaintiff's counsel did not address whether a durable power of attorney existed.

Defendants timely filed their Answers to Plaintiff's Complaint on December 21, 2021, expressly raising the arbitration provision within the Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff. In Defendants' First Set of Requests for Production to Plaintiff, Defendants specifically requested "[a]ll powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time" in Request for Production No. 21. Over four (4) months later, Plaintiff responded to Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff on April 25, 2022. Plaintiff's response to Defendants' Request for Production No. 21 stated, "See Healthcare Power of Attorney and Durable Power of Attorney for Earline Cooley."

Defense counsel then emailed Plaintiff's counsel on June 9, 2022, apologizing for a delayed response due to being ill with coronavirus and informed Plaintiff's counsel that the Defendants searched Plaintiff's county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. Defense counsel then stated that after reviewing Plaintiff's Responses to Defendants' First Set of Requests for Production Defendants, he became aware of the Plaintiff's durable power of attorney and planned to move to compel arbitration pursuant to the admission agreement. Defendants filed the Motion to Compel Arbitration and Protective Order from Discovery at the earliest

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possibility on June 9, 2022. Since filing the Motion to Compel Arbitration and Protective Order from Discovery all discovery in this matter ceased pending this Court's ruling on the above-mentioned motions.

Plaintiff argues that Defendants nonetheless waived the right to seek arbitration by serving discovery and subpoenas before learning of the POA. Plaintiff argues that this is true because Plaintiff's counsel attached a copy of the POA to a medical authorization sent to Dominion Clemson before the case was filed. Plaintiff argues that the attachment of the POA put the Defendants on notice of a the POA and that Defendants should not have had to wait for discovery production of the POA to know it existed.

As stated *supra*, both Federal and South Carolina law favor arbitrating disputes and there is no set rule as to what constitutes waiver of arbitration. See O'Neil; Liberty Builders. Even though there is no set rule regarding waiver, generally the factors South Carolina courts consider are:

> whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others. Thus, a party may waive its right to compel arbitration if a substantial length of time transpires between the commencement of the action and the commencement of the motion to compel arbitration. What is a substantial length of time varies from one case to the next, depending on the extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (S.C. Ct. App. 2007).

Plaintiff cited to the recent U.S. Supreme Court decision, Morgan, in her memorandum and argued that the Supreme Court held that the prejudice requirement "was not appropriate in determining waiver…" and that "the prejudice requirement, no longer exists." See Plt's Mem. Opp. Page 6. However, this was not the Supreme Court's holding in Morgan. In Morgan, the Supreme Court granted

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certiorari "to resolve the split over whether federal courts may adopt an arbitration-specific waiver rule demanding a showing of prejudice." Morgan v. Sundance. Inc., 212 L. Ed. 2d 753, 142 S. Ct. 1708, 1709 (2022). The Supreme Court stated that "a court must hold a party to its arbitration contract just as the court would to any other kind." Morgan, 142 S. Ct. 1708 at 1713. The Supreme Court held that prejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration under the FAA. Id. at 1714 (stating that the Supreme Court's "sole holding today is that it may not make up a new procedural rule based on the FAA's policy favoring arbitration.").

In addition to Morgan, Plaintiff cited four (4) South Carolina cases regarding waiver in her memorandum. Plaintiff is correct in her argument that nursing homes can waive arbitration rights. However, South Carolina courts have focused considerably on whether a substantial length of time has commenced in litigation, whether excessive discovery has taken place, and if the Plaintiff was prejudiced in the delay seeking arbitration. See Rhodes. Plaintiff also argued in her memorandum that the South Carolina Court of Appeals held in Liberty "that the party moving to compel arbitration waived their right after filing initial pleadings and responding to discovery." See Plt's Mem. Opp. Page 7. But, in Liberty, the parties filed initial pleadings, conducted discovery, and were on the brink of trial before a motion to stay in favor of arbitration was filed; a timeframe of over 2.5 years. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. Ct. App. 1999). The Court of Appeals stated, "Liberty's decision to file suit, participate in pretrial discovery, and engage in procedural maneuvering for ***two and one-half years*** is sufficient to support the trial court's finding of waiver." Liberty, 521 S.E.2d 749 at 754 (emphasis added).

Plaintiff's memorandum further cites Johnson, stating "the South Carolina Supreme Court held that the defendant nursing home waived its right to compel arbitration after, among other things, answering the Complaint, seeking limited discovery issues, serving discover, and waiting approximately ten (10) months to file the motion to compel arbitration…" See Plt's Mem. Opp. Page 7. Prior to the

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filing of the Complaint, the parties in Johnson spent over a year and a half in litigation regarding a temporary restraining order and appointing a guardian *ad litem* and during that time the nursing home failed to exercise its arbitration provision. See Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 788 S.E.2d 216 (S.C. 2016). The South Carolina Supreme Court specifically stated in its analysis in Johnson that the plaintiff indicted they "intended to purse a defense of waiver" two months after the Complaint was filed and despite this information and acknowledgement from the defense, a motion to compel arbitration was not filed for another eight (8) months, "all while appearing in court and conducting discovery." Johnson, 788 S.E.2d 216 at 219.

Lastly, Plaintiff relied on Flexon in her memorandum in opposition and stated that "the South Carolina Court of Appeals recognized and affirmed the order that the party moving for arbitration waived its right to arbitration by engaging in discovery without reservation or limitation. See Plt's Mem. Opp. Page 7. The Flexon holding is complex since it involved several defendants, including a former and subsequent parent company. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (S.C. Ct. App. 2015). In Flexon, a breach of contract action was filed in May 2009 against numerous defendants. Flexon, 776 S.E.2d 397 at 400. Two (2) months later, one of the defendants, a former subsidiary of one of the co-defendants, filed a motion to compel arbitration and a hearing was held on the matter where a non-moving co-defendant spoke supporting the motion and indicated that he would file his own motion to compel. Id.

In June 2010, the non-moving co-defendant filed his own motion to compel and subsequently the circuit court ruled on the initial motion to compel; denying it not based on time but because of a lack of interstate commerce language and that the parties agreed to litigate the matter in South Carolina. Id. at 401. The initial motion was appealed, upheld, and the second motion to compel was withdrawn without prejudice. Id. The parties then undertook depositions and after the depositions took place, a renewed motion to compel was filed. Id. The South Carolina Court of Appeals focused on the co-defendant

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articulating to the court during the initial hearing that he would file a motion to compel, and that motion to compel was not filed for seven (7) months after it's co-defendant's initial motion to compel, and that the parties continued with discovery and depositions after the second motion to compel withdrawn. The Court of Appeals ultimately held that the co-defendant failed to take "the steps necessary to protect its own interests in a timely manner." Id. at 406.

In this matter, Defendants have moved swiftly to protect its interests in a timely manner. As detailed above, Defendants specifically requested from Plaintiff, during the initial discovery process, information regarding power of attorney documentation in December 2021. Defendants did not receive any documentation from Plaintiff, for over four (4) months, until April 2022 when Plaintiff produced her discovery responses. After receiving Plaintiff's discovery responses, the parties began corresponding regarding the scheduling of depositions. Unlike Flexon, no depositions were ever taken in this matter. Defendants specifically requested a stay in discovery pending the outcome of its Motion to Compel Arbitration.

The defendants in Liberty, waited over 2.5 years to file a motion to compel, all while conducting discovery and appearing before the court regarding other matters. The defendants in Johnson went through a lengthy temporary restraining order and guardian *ad litem* process before the Complaint was filed and then waited an *additional year* after the Complaint was filed to compel arbitration. In stark contrast to those cases, Defendants' counsel put Plaintiff's counsel on notice of the potential arbitration issue and what Defendants' counsel was doing to investigate it within their first communication on the case. Defendants also raised arbitration as an affirmative defense in their Answers filed on December 21, 2021. Further, Plaintiff knew from email correspondence and discovery that Defendants were seeking information on any applicable durable powers of attorney during the discovery process.

Defendants informed Plaintiff less than six (6) weeks after receiving Plaintiff's document production, that produced a tangible durable power of attorney for the first time in litigation, that it would

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be moving to compel arbitration. Additionally, during those six (6) weeks from Plaintiff's document production to Defendant's filing a Motion to Compel, Defense counsel was ill with coronavirus and yet was still able to file Defendants' Motion to Compel Arbitration months faster than any of the defendants did in Liberty, Johnson, and Flexon.

In accordance with Rhodes, the Plaintiff has failed to show that a substantial length of time transpired between the commencement of this action and Defendants' Motion to Compel Arbitration. Six (6) weeks from the discovery of the durable power of attorney to filing the Motion to Compel Arbitration hardly stacks up to the years of delay in the cases discussed *supra* that Plaintiff relied on to show the Defendants waived its right to compel arbitration. Rhodes also requires this Court to consider whether the party requesting arbitration engaged in extensive discovery prior to moving to compel. Unlike Liberty, Johnson, or Flexon, no additional discovery has taken place in this matter since Defendants filed its Motion to Compel Arbitration on June 9, 2022. Only the initial discovery responses have been produced and no witnesses in this matter have been deposed. The Plaintiff has failed to prove that extensive discovery was conducted prior to Defendants filing its motion.

Finally, Plaintiff's rely on Morgan to claim that the prejudice requirement no longer exists. While this is not how the U.S. Supreme Court articulated it's holding, the Plaintiff has still failed to show any procedural preference to arbitration in this matter. Plaintiff has been unable to produce any evidence showing substantial delay, extensive discovery, or procedural prejudice by Defendants and therefore has failed to prove that the Defendants waived its right to compel arbitration.

The Court, therefore, finds and concludes that Plaintiff has failed to prove that the Defendants waived its right to compel arbitration.

III. All Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement.

Plaintiff argues that the arbitration provision contained in the Admissions Agreement does not apply to the remaining Defendants in this matter. The court in Pearson v. Hilton Head Hosp., 400 S.C.

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281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012), relying on International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000), held that "well-established common law principles dictate that in an appropriate case a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." These include principles such as incorporation by reference, assumption, agency, veil piercing/alter ego, and equitable estoppel. International Paper, Id. Further, "[i]t does not follow . . . that under the [FAA] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision." Id. at 416.

Pearson cited and relied upon the South Carolina District Court's opinion in Goer v. Jasco Indus., Inc., 395 F. Supp. 2d 308, 314 n.9 (D.S.C. 2005), which held that "equitable estoppel allows a non-signatory to compel arbitration . . . when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory." The court also held that "application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise, arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration is effectively thwarted." Id. at 295; see also, J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-321 (4th Cir. 1988).

In S.C. Pub. Serv. Authority v. Great Western Coal, et al., the plaintiff contracted with Great Western Coal for the provision of coal. 312 S.C. 559, 437 S.E.2d 22 (Ct. App. 1993). The contract contained an arbitration clause. The plaintiff later brought suit against Great Western Coal, its president, and another employee, alleging that they had increased coal prices while lowering quality. Id. at 561, 437 S.E.2d at 23 – 24. Defendant president, a non-signatory to the contract, filed a motion to dismiss and compel arbitration. Id. at 561, 437 S.E.2d at 24. The trial judge denied defendant president's motion because he did not sign the contract in his individual capacity, and defendant president appealed. Id. at

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563, 437 S.E.2d at 24 – 25.

The South Carolina Court of Appeals reasoned that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration." Id. at 563, 437 S.E.2d at 24 - 25, citing Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990). The Court of Appeals further reasoned that "when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated." Id. The Court of Appeals therefore, concluded, that the defendant president was seeking arbitration and held that the trial judge erred in denying the same simply because the defendant president did not sign the contract. Id.

Looking to (1) the language of the Admission Agreement, (2) the claims Plaintiff has raised against Defendants, and (3) applying this law, it is clear that any claims against Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC are substantially intertwined with Plaintiff's pending claims against Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, the other signatory to the Admission Agreement.

In Plaintiff's Complaint, she has alleged that Ms. Cooley was a resident at Dominion Clemson, and that the actions of the remaining Defendants "directly affected resident care such as that of Earline Cooley," and that the parties were engaged in a "joint enterprise." Plaintiff thereafter refers to all Defendants as simply "Defendants" within the remaining allegations. Plaintiff's own allegations of the substantially interdependent and concerted alleged misconduct of Defendants, through which Plaintiff alleges joint liability for those alleged wrongs, compels the construction of the arbitration provision of the Admission Agreement to be equally enforceable by all Defendants. Further, based upon the Motion to Compel Arbitration, it is clear that all Defendants join in the Motion.

The Court, therefore, finds that all Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement.

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IV. The arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action.

Plaintiff alleged wrongful death claims in case action number 2021-CP-39-01128. Plaintiff argues in her memorandum, citing Bennett, that "South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims." Plaintiff further argues that even if Ms. Galloway had agreed to arbitration, she did not have the legal authority to bind the statutory beneficiaries who are not parties to the Arbitration Agreement."

As discussed in more detail *infra*, Ms. Galloway, as Ms. Cooley's available agent, had the authority under the POA to obligate Ms. Cooley's wrongful death beneficiaries to arbitration based upon the plain language of the POA and Admission Agreement and because South Carolina's Wrongful Death Statute is a derivative action. See S.C. Code Ann. § 15-51-10 (The South Carolina Wrongful Death Act requires, as a condition of any suit, that the decedent herself, had she lived, could have "maintain[ed] an action and recover[ed] damages."); Estate of Stokes v. Pee Dee Family Physicians, LLP, 389 S.C. 343, 347 (2010) ("[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." (cataloguing cases)); Rish v. Seaboard Air Line Ry., 90 S.E. 704, 704-05 (S.C. 1916) ("The [Wrongful Death Act] gives a right of action where none existed before, and limited the right of recovery to those cases in which the party injured would have been entitled to recover if death had not ensued.")

Although the case law in South Carolina has not directly addressed the issue at hand, the court has not been hesitant to prohibit wrongful death actions in which the decedent had in some way barred herself from pursuing the underlying cause of action. In Price v. Richmond & D.R. Co., 33 S.C. 556, 12 S.E. 413 (1889), the court determined that a release executed by the decedent prior to his death prevented a wrongful death action brought by the decedent's wife. The Court's decision was premised upon the

limiting language of the wrongful death statute. The Price court held that if the defendant in some way deprived himself of the right to pursue a cause of action, "his administrator is, likewise, [also] barred of his right of action." Id. at 560, 12 S.E. at 413.

Furthermore, the court in Reed v. Northeastern R. Co., 37 S.C. 42, 16 S.E. 289 (1892) affirmed the Price holding and found that "[a]nything that would have defeated [the decedent's] recovery would defeat that in behalf of his family in case he failed to survive." Reed at 53, 16 S.E. at 291. In Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988), the South Carolina District Court interpreted the Wrongful Death statute, and held that a survivor cannot bring an action under the wrongful death statute to recover for the same wrong sued upon earlier by the decedent, if the personal injury statute of limitations has expired, but the specific wrongful death limitations period has not expired. This clearly establishes that Wrongful Death cause of action is wholly derivative. The District Court, sitting in diversity, examined the issue as the highest court of South Carolina would if confronted with the same situation. It then traced the history of wrongful death claims starting with Lord Campbell's Act. It further held that the same defenses that would have been available to use against the decedent, had he lived, were also available against those asserting the wrongful death claim.

Based on the legal nature of a wrongful death claim, the South Carolina Supreme Court has found that where a decedent or her agent executes an arbitration agreement in connection with the decedent's admission to a nursing home, wrongful death actions brought by the personal representative can be subject to binding arbitration. Dean, 408 S.C. 371, 759 S.E.2d 727 at n. 3. District Courts in South Carolina interpreting Dean have found that statutory beneficiaries are subject to arbitration. See, e.g., THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185, at *3 (D.S.C. Mar. 19, 2015) ("Additionally, the South Carolina Supreme Court made clear in Dean that, under South Carolina law, an arbitral agreement is still indeed binding on a decedent's estate for a claim in wrongful death.")

Ms. Cooley authorized Ms. Galloway as her available agent under the POA to take acts which

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"bind me and my estate and my personal representative." Ms. Galloway as Ms. Cooley's available agent then used that authority to sign an Admission Agreement containing an arbitration provision which bound "the Parties hereto, their legal representatives, heirs, estates, successors and assigns."

Ms. Galloway's execution of the Admission Agreement, as Ms. Cooley's attorney-in-fact, defeated Plaintiff's ability as the personal representative to later disavow her actions. Since the execution of the Admission Agreement, which contains an arbitration provision, lawfully bound Ms. Cooley to arbitrate any action arising from Dominion Clemson's alleged negligence and expressly bound her estate, heirs, successors, and assigns, it also controls the availability of the wrongful death action to her heirs. Because Ms. Galloway signed the Admission Agreement in her legal capacity on behalf of Ms. Cooley with express authority to bind Ms. Cooley's estate, heirs, and assigns—and not in her own capacity—she had every right to exercise her mother's option and authority to bind her heirs to the decision to defer a wrongful death claim to arbitration. Courts across the country hold this premise true. See Diversicare Leasing Corp. v. Hubbard, 189 So.3d 24 (Ala. 2015) (holding that "an arbitration agreement that binds the nursing-home resident also binds the resident's representative"), citing Entrekin v. Internal Medicine Associates of Dothan, P.A., 689 F.3d 1248, 1259 (11th Cir. 2012).

The court in Diversicare further held that personal representatives of estates of deceased nursing home residents who properly signed arbitration agreements on behalf of residents "were bound to arbitrate the wrongful-death claims" of the resident's estates. Id. at 28, 30; see also Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661 (Ala. 2004) (holding that personal representatives of nursing home residents were bound by arbitration provisions contained in admission contracts, arbitration provision was not unconscionable, and not a contract of adhesion); Owens v. Coosa Valley Heath Care, Inc., 890 So.2d 983 (Ala. 2004) (holding that arbitration agreement bound both resident and representative); Estate of Eckstein ex rel. Luckey v. Life Care Centers of America, Inc., 623 F. Supp. 2d 1235 (E.D. Wash. 2009) (holding that claims for neglect, corporate negligence, and wrongful death were

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subject to arbitration based on arbitration agreement signed by resident's attorney-in-fact that was binding on the estate); Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (Fla. 2013) (arbitration agreement covered wrongful death claims, and estate and statutory heirs were bound by the arbitration agreement).

Plaintiff's argument that an Estate and Personal Representative cannot be bound to an arbitration provision in an Admission Agreement ignores the clear language and the practicalities of arbitration provisions in the long term care context. "[T]o hold otherwise would eviscerate a long term care provider's contractual rights when presented with a wrongful death claim of a resident, the very claim anticipated by the Agreement." Estate of Eckstein, 623 F. Supp. at 1239. See also Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 420 (Ind. Ct. App. 2004) (holding the estate's wrongful death claim was subject to arbitration because "regardless of whether [the personal representative], was privy to the contract containing the arbitration clause, the Estate's survival and wrongful death claims arose out of [Defendant's] alleged negligent treatment of [the resident]").

The wrongful death statute is clearly derivative. A claim under it only arises if there is a wrongful act that would have been actionable by the decedent if she had not died. Likewise, if a wrongdoer dies, a wrongful death action survives against the personal representative subject to actions taken by – or not taken by – the decedent during his lifetime. Execution of a nursing home arbitration agreement by a party with the capacity to contract on behalf of the decedent binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement.

Plaintiff further relied on Boyle in her memorandum to argue that "wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants." However, Boyle does not mention the issue of whether a wrongful death claim can be subject to arbitration and the court's holding has no relevance to the issue of whether a decedent

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can submit wrongful death claims to arbitration. Ultimately, a wrongful death claim is derivative and there would be no claim but for an injury to the decedent.

The Court, therefore, finds that the arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action.

V. Debra Galloway did possess the appropriate authority to execute the Arbitration Agreement on behalf of Earline Cooley.

Plaintiff argued that the arbitration provision, which is contained in Paragraph 13 of the Admission Agreement, was unenforceable because Ms. Galloway did not possess the appropriate authority to execute the Admission Agreement on behalf of Ms. Cooley.

On January 10, 2006, Ms. also executed a durable POA, which was filed in Greenville County, SC on August 1, 2014. The POA named Ms. Weldon as Ms. Cooley's agent. Additionally, Ms. Cooley named Ms. Elliott and Ms. Galloway, in that order, as substitute or successor agents if Ms. Weldon was unable, unwilling, or unavailable. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA including the power to arbitrate, the power to abandon and/or compromise claims, the power to sign and execute contracts, agreements, releases, and waivers, and the power to pay medical expenses. Ms. Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission. Like the Healthcare POA, the POA clearly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative."

On February 14, 2019, twenty-two (22) days before Ms. Cooley's admission to Dominion Clemson, Ms. Galloway, as a durable power of attorney, executed the Admission Agreement on behalf of Ms. Cooley as part of the process for admitting Ms. Cooley to Dominion Clemson for assisted living care. Based upon the information provided to Dominion Clemson during the admissions process, the Court finds and concludes that Ms. Galloway was an available agent under the POA and had the appropriate authority to execute the Admission Agreement, which contains an arbitration provision, on

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behalf of Ms. Cooley.

VI. Plaintiff's Motion to Compel and Defendants' Request for a Protective Order from Discovery are denied as moot.

In addition to Defendants' Motion to Compel Arbitration, two (2) other related motions are pending before this Court in this matter, which are Plaintiff's March 22, 2022, Motion to Compel referencing Plaintiff's First Interrogatories and First Requests for Production to Defendants and the remainder of Defendant's June 9, 2022 Motion to Compel Arbitration requesting a Protective Order from Discovery.

At the Court's October 20, 2022, hearing, Defendants argued that they had to abstain from further discovery consultations and production once filing the Motion to Compel Arbitration at the risk of a waiver argument. Plaintiff indeed made this argument in her Memorandum in Opposition. As this Court instructed orally at the hearing on October 20, 2022, the Court only intends to rule on the Motion to Compel Arbitration and granted leave to re-file the Plaintiff's Motion to Compel and Defendants' Motion for a Protective Order pending the Court's ruling on the Motion to Compel Arbitration. Given the Court's ruling granting the Motion to Compel Arbitration and Dismissing these Actions, Plaintiff's Motion to Compel and Defendants' Motion for a Protective Order are now denied as moot.

CONCLUSION

For the reasons set forth herein, Defendants' Motion to Compel Arbitration is hereby **GRANTED** and this matter is **DISMISSED.** Should Plaintiff opt to pursue this claim in arbitration, she is **COMPELLED** to do so by initiating her claim pursuant to the procedures set forth in Paragraph 13 of the Admission Agreement entitled "AGREEMENT TO ARBITRATE".

IT IS SO ORDERED!

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Pickens Common Pleas

Case Caption:	Deonda Weldon , plaintiff, et al VS Dominion Clemson, Llc , defendant, et al
Case Number:	2021CP3901127
Type:	Order/Compel

So Ordered

G.D. Morgan Jr.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-_____
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**SUMMONS**
	)	**(Jury Trial Demanded)**
v.	)	**(Survival Action)**
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Plaintiff upon the subscriber, at his office at 1007 East Washington Street, Greenville, South Carolina, 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE ON NEXT PAGE]

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Greenville, South Carolina 29602
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s/Matthew W. Christian
Matthew W. Christian
Attorney for Plaintiff
S.C. Bar No.: 70516

Greenville, South Carolina
Date: October 13, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-_____
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Jury Trial Demanded)**
v.	)	**(Survival Action)**
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, , Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC,	)	
	)	
Defendant(s).	)	

The Plaintiff would show this Honorable Court the following:

1. The Affidavit of Expert Witness is attached hereto as Exhibit A.

2. At all times relevant herein, Deonda Weldon is and was the daughter of Earline Cooley and is the duly appointed Personal Representative of the Estate of Earline Cooley, who at the time of her death was a resident of Pickens County, South Carolina. The Estate is administered through the Probate Court of Pickens County, South Carolina.

3. That Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square (hereinafter "Dominion Clemson") is a business organized and existing under the laws of a state other than the State of South Carolina. This Defendant owns and/or leases property, advertises, maintains agents, servants, employees, and transacts business, deriving substantial revenue therefrom, in Pickens County, South Carolina. Dominion Clemson is an assisted living facility licensed by the State of South Carolina

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and employs or contracts with related staff to provide assisted living services to patients/residents and represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing such services for persons such as Earline Cooley. At all times relevant herein, agents, employees, servants, and apparent agents of Dominion Clemson acted on behalf of themselves and on behalf of Dominion Clemson. Furthermore, at all times relevant herein, Dominion Clemson acted on behalf of itself and on behalf of Defendants Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

4. Upon information and belief, Defendant Dominion Senior Living, LLC (hereinafter "Dominion Senior Living") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Senior Living participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Senior Living maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Senior Living is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted

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living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Senior Living. Dominion Senior Living acted on behalf of itself and Dominion Clemson, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Senior Living. At all times relevant herein, Defendant Dominion Senior Living used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

5. Upon information and belief, Defendant Dominion Management Group, LLC (hereinafter "Dominion Management") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Management participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Management maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion

Management is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Management. Dominion Management acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Management. At all times relevant herein, Defendant Dominion Management used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

6. Upon information and belief, Defendant Dominion Group, LLC (hereinafter "Dominion Group") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Group participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Group maintained agents, servants, and employees in Pickens County, South

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Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Group is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Group acted on behalf of themselves and on behalf of Dominion Group. Dominion Group acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Management, and Dominion Clemson II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Group. At all times relevant herein, Defendant Dominion Group used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

7. Defendant Dominion Clemson II, LLC (hereinafter "Dominion Clemson II") is a business incorporated in the State of South Carolina. That this Defendant has controlled and managed Dominion Clemson through management agreements, leasing agreements, purchase agreements, subleasing agreements, financing arrangements, and in other ways. That this Defendant works in conjunction with Defendant Dominion Clemson and the Co-Defendants in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees

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of Dominion Clemson, II acted on behalf of themselves and on behalf of Dominion Clemson, II. Dominion Clemson, II acted on behalf of itself and Dominion Clemson. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Clemson, II. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

8. Earline Cooley was admitted to the Defendants' facility on or about March 8, 2019 for assisted living facility services and care

9. That at the time of admission, Earline Cooley had a number of diagnoses including, but not limited to, diabetes, neuropathy, hypertension, dementia, anxiety, hyperlipidemia, and depression.

10. That at or around the time of Earline Cooley's admission, Defendants knew or should have known that Earline Cooley was a high risk for falls.

11. The physician's evaluation form at the time of Earline Cooley's admission reflected that Earline Cooley did not have the ability to enter and exit the facility unassisted. The fall prevention program resident risk assessment form dated March 8, 2019 reflected that Earline Cooley had a history of prior falls and had fallen within the past three months. Furthermore, it was noted that she had a history of incontinence which increased her fall risk.

12. The only individual care plan created by the Defendants was dated November 18, 2019, some eight (8) months after her admission to the facility.

13. This care plan from November 2019 reflected for purposes of ambulation/transfer that Earline Cooley uses a walker/cane but did not reflect any additional assistance that she may need in ambulation/transfer.

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14. That further, the notes of observation of June 27, 2019 noted that Earline Cooley complained of leg pain.

15. The observation notes of August 31, 2019 reflect that Earline Cooley was observed on the floor in an apartment next to the bed as a result of falling out of her bed onto the floor. It was noted that she had bruising to her upper right buttock as a result of her fall.

16. The notes of observation of October 1, 2019 reflect that Earline Cooley was observed on the floor as the result of a fall when her walker rolled out from under her.

17. On October 2, 2019, the notes reflect that Earline Cooley was complaining of pain all over.

18. On October 16, 2019, the notes of observation state that Earline Cooley was found on the floor in the bathroom as the result of a fall when she lost her balance.

19. On October 21, 2019, the notes of observation reflect that the staff found Earline Cooley on the floor due to a fall after she has pressed her pendant due to the fact that she had lost her balance.

20. The notes of October 30, 2019 state that Earline Cooley had several falls during that month.

21. Physical therapy and occupational therapy orders were given by the medical provider for evaluation and potential therapy to address Earline Cooley's fall risk.

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22. On November 15, 2019, the observation notes reflect that Earline Cooley was complaining of pain in her legs. That further, on November 16, 2019, Earline Cooley was complaining of weakness and fatigue.

23. The physical therapy notes of November 20, 2019 reflect that Earline Cooley required "moderate physical assistance" to transfer from sit to stand. That further, the physical therapy notes of this date reflect that Earline Cooley was reporting dizziness upon standing. The physical therapist further noted that Earline Cooley had a slow cadence when walking with a walker and that she needed physical assist for improved walker safety, increased upright positioning, and balance control. The notes further reflect that Earline Cooley needed to be redirected to complete her activities throughout the session. Furthermore, the therapist reflects a diagnosis of "unsteadiness on feet", "weakness", "history of falling", as well as other diagnoses.

24. Despite the physical therapist's findings as well as the many falls which Earline Cooley had already experienced at Defendants' facility, no changes were made to her care plan or level of assistance provided with transfers and ambulation.

25. The notes of observation for November 25, 2019 reflect that Earline Cooley fell again while walking to her room from supper as a result of losing her balance and injured her left knee.

26. On December 14, 2019, Earline Cooley fell again and was found in the floor in her room by staff.

27. On December 12, 2019, the chart reflects a staff member found Earline Cooley on the floor as a result of a fall.

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28. On December 30, 2019, the chart reflects that a staff member found Earline Cooley on the floor in her room as a result of another fall.

29. On January 14, 2020, staff noted that Earline Cooley was requiring more assistance with getting dressed and walking to the dining room.

30. On February 7, 2020, Earline Cooley had another fall at approximately 4:00 a.m. when she lost her balance and injured her right arm.

31. The notes of observation on February 10, 2020 reflect that Earline Cooley seemed weak. However, despite all of the falls and fall risks, no changes were made to Earline Cooley's care plan.

32. On March 9, 2020, Earline Cooley was found in the hallway by staff when she was walking back to her room and tripped and fell. The chart reflects that she hit her head on the floor and that she was complaining of pan in her right hip.

33. As a result of the fall and injuries to Earline Cooley, she was transported by EMS to the emergency room. At the emergency room, it was noted that Earline Cooley "got tripped while walking with walker and 'walker got away'". She was diagnosed with a fracture of the right femoral head/proximal right femoral neck and a urinary tract infection. The records further reflect that the right leg was shorter and externally rotated as a result of the fracture. Further, as a result of the injuries, she suffered with hypoxia and thrombocytopenia after undergoing surgery to repair her fractured hip.

34. The hospital records further reflect that she had multiple falls at the Defendants' facility and that she needed assistance with walking with her walker as

sometimes the walker "moved quicker for her needing also assistance for ambulation with her walker."

35. Furthermore, as a result of the surgery and her injuries, Earline Cooley's dementia was accelerated and significantly deteriorated. She continued to deteriorate from her injuries until she died as a direct and proximate result of her injuries on

36. That the Defendants were aware of the failures to provide adequate care as described above and below and were aware of residents such as Earline Cooley and knew that the failures existed at the facility resulting from the decisions made by the Defendants to purposely understaff and underfund the facility in a way that would maximize corporate profits for the Defendants rather than provide adequate and proper care to the residents such as Earline Cooley. That these duties by the Defendants to the residents such as Earline Cooley were non-delegable duties. Furthermore, the acts, omissions, and decisions of the Defendants directly affected resident care such as that of Earline Cooley, and directly caused her injuries. The acts of the Defendants were negligent, willful, wonton, grossly inadequate, and in a reckless disregard for the safety and wellbeing of patients such as Earline Cooley. That further, the Defendants acted as each other's agent or apparent agents, alter ego, in a joint enterprise, and with an amalgamation of interest. Further, they are directly liable for their corporate and clinical negligence, all of which combined and contributed to cause Earline Cooley's injuries.

37. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered the following injuries and damages:

a. Injuries about her body;

b. Femur and hip fracture;

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c. Urinary tract infection;

d. Hypoxia and low oxygen;

e. Loss of mobility and range of motion;

f. Thrombocytopenia;

g. Head injury;

h. Skin tears and hematomas;

i. Loss of dignity and respect;

j. Worsening dementia and mental status;

k. Humiliation, fear, anxiety, and emotional and psychological distress;

l. Pain and suffering;

m. Loss of enjoyment of life;

n. Suffering;

o. Has incurred medical expenses and underwent hospitalization, surgery, and medical treatment which she would not have otherwise had to undergo; and

o. In such other and further ways as discovery and trial shall prove

38. The Plaintiff will show that this action is brought pursuant to the Statutory Provisions for the Survival Actions, pursuant to South Carolina Code of Laws and pursuant to the Common Laws of the State of South Carolina. Further, this action is brought on behalf of heirs of the Estate of the deceased, Earline Cooley, pursuant to the Laws of the State. The heirs include, but are not limited to, Deonda Weldon, Phyllis Elliott, and Debra Galloway.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

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39. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

40. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

a. In failing to provide adequate staffing, adequate pay for staff and adequate training for staff at their facility to care for residents/patients such as Earline Cooley with the full knowledge that such inadequate staffing practices would place residents such as Earline Cooley at risk;

b. In negligently hiring, retaining, and supervising staff at Defendants' facility;

c. In failing to provide proper, comprehensive, and timely assessments, reassessments, and evaluations outlining all risk factors for Earline Cooley and in failing to properly design, adhere to or modify an appropriate plan of care;

d. In failing to timely and appropriately implement interventions in a resident with obvious risk of falls and history of falls;

e. In recognizing, but then failing to appropriately and timely implement proper preventative measures to counteract Earline Cooley's risk for falls;

f. In failing to advise Earline Cooley and her family that the Defendants could not adequately meet Earline Cooley's needs or provide the level of care and assistance she required;

g. In failing to transfer Earline Cooley to a facility with higher level of care;

h. In failing to adequately assist Earline Cooley with transfers, ambulation, and toileting, and in allowing her to fall and break her right femur;

i. In failing to properly monitor Earline Cooley;

j. In failing to provide the adequate level of assistance to Earline Cooley to meet her needs;

k. In failing to take timely and appropriate measures to prevent urinary tract infections;

l. In failing to timely recognize and treat urinary tract infections once they occurred;

m. In failing to adequately hydrate and prevent dehydration;

n. In admitting and retaining Earline Cooley at the facility when she was not qualified for the facility and when the facility could/would not meet her needs;

o. In failing to have and/or follow appropriate policies, procedures, and guidelines regarding the care and health of residents such as Earline Cooley;

p. In failing to properly have and follow proper policies, procedures, and guidelines regarding funding, staffing, and operation of Defendants' facility;

q. In failing to provide and implement proper care plans that would adequately meet Earline Cooley's needs, including her risk for falls, dehydration, urinary tract infections, and other risks which Earline Cooley encountered while a resident at the Defendants' facility;

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r. In failing to timely and properly correct and repair prior failures at the facility, all of which continued and contributed to Earline Cooley's injuries;

s. In failing to provide services, activities, and care to attain or maintain the highest practical physical, mental, and psychosocial wellbeing of Earline Cooley and in accordance with a written plan of care;

t. In failing to timely consult with a physician;

u. In failing to properly follow the care plans;

v. In failing to properly fund, staff, operate, and manage the facility to the extent that resident care was affected and caused injuries to Earline Cooley;

w. In negligently administering and operating the Defendants' assisted living facility;

x. In failing to hire, fire, supervise, and train the employees, agents, staff, and other caregivers at Defendants' facility which were involved in with Earline Cooley's care and treatment;

y. In failing to comply with the applicable federal and state statutes and regulations designed to protect persons such as Earline Cooley;

z. In failing to act and provide care as a reasonably prudent assisted living facility would do under the same or similar circumstances;

aa. In failing to operate, fund, staff, and manage an assisted living facility as reasonable prudent operating, management, holding and real estate companies would do under the same or similar circumstances;

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bb. In causing Dominion Clemson to be divested of the necessary funds, staff, and financial means required to provide the appropriate level of care to persons such as Earline Cooley; and

cc. In such other and further ways as Discovery and Trial shall prove.

41. As a direct and proximate result of the Defendants' acts and/or omissions, Plaintiff's decedent, Earline Cooley, suffered injuries and damages as set forth herein and above.

FOR A SECOND CAUSE OF ACTION
(Ordinary Negligence as to All Defendants)

42. Plaintiff restates and re-alleges each and every paragraph previously pled herein as if repeated verbatim.

43. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton in failing to provide ordinary and basic care in the following particulars:

a. In failing to provide basic assistance with transfers and ambulation;

b. In failing to provide adequate fluids; and

c. In failing to provide the most basic care which does not require medical training or education but is care that, if not provided, will lead to suffering and decline in health as it did in the case at hand.

44. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered injuries and damages as set forth herein and above.

THIRD CAUSE OF ACTION
(Corporate Negligence As To All Defendants)

45. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

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46. The Defendants were negligent, careless, grossly negligent, reckless, willful, wanton, and intentional in their failure to provide Dominion Clemson with adequate and proper management, funding, staffing, and supplies necessary to provide for the appropriate care for residents such as Earline Cooley and provide care within the standard of care.

47. That these Defendants, especially those other than Dominion Clemson, exercised sufficient financial, management, and operational control over Dominion Clemson and knew or should have known that they unreasonably and improperly divested Dominion Clemson of the necessary monies, finances, staff, and supplies necessary to provide care to the residents within the standard of care and care that met the federal and state regulations and statutes which applied to Dominion Clemson.

48. That Defendants other than Dominion Clemson did this through a complex corporate scheme whereby such funds were divested from Dominion Clemson which were necessary for resident/patient care and were siphoned from the facility to the corporate Defendants, whereby other monies from Dominion Clemson were siphoned from the facility through exorbitant rent, exorbitant management fees, and other exorbitant monies taken by the corporate Defendants from Dominion Clemson. That these monies were divested from the facility with the full knowledge that such money was necessary for resident care.

49. As a direct and proximate result of the corporate Defendants' acts and/or omissions, Plaintiff has suffered injuries and damages as set forth hereinabove.

FOR A FOURTH CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

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50. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

51. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Rights for Residents of Long Term Care Facilities at South Carolina Code §44-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-84, *et seq*.

52. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Earline Cooley was a member at all times relevant to this action and were designed to protect from the types of injuries that Earline Cooley suffered. The Defendants violated these Statutes and Regulations in their failure to properly care for Earline Cooley and other similarly situated patients at their facility.

53. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitutes negligence *per se*, Earline Cooley suffered injuries and damages as set forth above.

54. These representations were careless, negligent, grossly negligent, reckless, willful and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Earline Cooley and in failing to meet these representations for Earline Cooley.

55. As a direct and proximate result of these Defendants' misrepresentations, Earline Cooley suffered injuries and damages as set forth above.

WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

a. For actual, punitive and special damages in an amount to be determined by the trier of fact;

b. For the costs and disbursements of this action;

c. For the attorneys' fees and costs; and

d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

s/Matthew W. Christian
Matthew W. Christian
Attorney for Plaintiff
S.C. Bar No.: 70516

Greenville, South Carolina
Date: October 13, 2021

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EXHIBIT A

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AFFIDAVIT OF EXPERT WITNESS
IN MEDICAL MALPRACTICE CASE
§§ 15-36-100, 15-79-125
1976 SC Code (As Amended)

Personally appeared before me Audrey Holmes, MSN-Ed, BSN, RN, who, having been duly sworn, deposes and states:

1) That I am over the age of 18 years and am qualified and competent to issue this Affidavit.

2) That I qualify as an "expert", as defined in S.C Code §15-36-100(A).

1) That my professional qualifications are accurately set forth in my curriculum vitae, which is attached hereto.

2) This Affidavit is made pursuant to §15-36-100 of the South Carolina Code of Laws, which requires that this Affidavit must specifically name at least one negligent act or omission claimed to exist in the factual basis for each claim based on the available evidence at the time of the filing of the Affidavit.

3) That I have reviewed various records pertaining to Earline Cooley and the care and treatment rendered. The medical records I have reviewed included the following:

   a. Dominion Senior Living of Clemson;
   b. Baptist Easley Hospital;
   c. The Foothills Presbyterian Community;
   d. Pickens County EMS; and
   e. Kindred at Home.

4) Through my professional standing as set forth above, I am familiar with the applicable standard of care for the performance of an assisted living facility and related staff for residents such as Earline Cooley and applicable to the conduct of Defendant Dominion Senior Living of Clemson (and all entities or individuals charged with operating and managing Dominion Senior Living of Clemson which treated Earline Cooley). The standard of care requires the following:

   a. Timely evaluation and assessment of Earline Cooley, outlining all risk factors with which she presented in order to design an appropriate plan of care;
   b. Provision of timely and comprehensive monitoring of Ms. Cooley's condition and any changes thereto;
   c. Implementation of appropriate protocol to prevent injuries;

d. Timely and appropriate intervention, care planning, and care for a resident at risk for falls and in need of assistance in transfers, toileting, bathing, and dressing; and
e. Implementation of appropriate protocol to prevent falls, injuries, and/or drops.

5) I have reviewed the evidence submitted to me, and based on my skill, expertise, and knowledge, it is my opinion that Dominion Senior Living of Clemson (and all entities or individuals charged with managing or operating the facility), committed the following negligent acts and omissions which constitute a failure to comply with the appropriate standards of care:

a. Failing to provide timely and comprehensive care planning, intervention, assistance, and care for a resident at risk of falls and in need of assistance during transfers, toileting, bathing, and dressing;
b. Failing to provide timely and comprehensive monitoring of the resident's condition and any changes thereto;
c. Failing to timely evaluate and assess Earline Cooley's risk factors with which she presented in order to design and appropriate plan of care;
d. Failing to implement and follow an appropriate plan of care and act on changes in condition; and
e. Failing to implement appropriate protocol to prevent falls, injuries, and/or drops.

6) These violations of the standards of care and the negligent treatment provided by the defendants resulted in a progressive decline of Earline Cooley's health, comfort, and well-being which were the cause of her injuries.

7) I specifically reserve the right to add to, amend, or subtract from this Affidavit as new evidence comes into discovery or as new opinions are formulated.

The Affiant further sayeth naught.

Audrey Holmes, MSN Ed BSN RN
Audrey Holmes, MSN-Ed, BSN, RN

Sworn to and subscribed before me this the
17th day of Sept, 2021

Sandra S. Todd
Notary Public for the State of SC
My commission expires: 12-31-22

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Audrey Rabon Holmes, MSN-Ed, BSN, RN
Post Office Box 694
Aynor, SC 29511
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843-254-5887

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Education:

2019 - Western Governors University,
Master of Science Nursing Education

2009-2008- University of South Carolina,
Bachelor of Science in Nursing

2004-2001- Horry Georgetown Technical College,
Associate Degree of Nursing

Certification:

2014-2018 American Heart Association,
Basic Life Support Instructor

2011- Root Cause Analysis

2011- Failure Mode and Effects Analysis

Current Employment:

2019 -Present Francis Marion University, Nursing Instructor
Nursing Fundamentals and Med/Surgical Nursing

2013- Present Horry Georgetown Technical College,
Nursing Professor, ADN program,
Medical-Surgical Nursing and Mental Health Nursing

Past Employment:

2015- 2018 Florence Darlington Technical College,
Professor, ADN Program and PN Program
Medical-Surgical Nursing, Mental Health Nursing, Pharmacology

2013- Horry County Schools
Instructor, Medical Magnet Program

2013-2014 Professional Medical Training Center,
CNA Clinical Instructor PRN Basis

2011-2012 - Department of Health and Environmental Control Region 6,
Home Health Program Nurse Administrator and Manger

2011 - Grand Strand Regional Medical Center,
Risk Management Coordinator

2008-2011 - Amedisys Home Health,
Case Manager

2008 - Conway Medical Center,
Medical/Surgical Nurse

2008-2006 - Total Care Home Health,
Case Manager

2006-2005 - McLeod Home Health,
Case Manager

2005-2001 - Marion Regional Medical Center,
Nurse Tech advancing to RN Pediatric and Medical/Surgical Nurse

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Committee Service:

2017	Florence Darlington Technical College	Curriculum Committee
2016	Florence Darlington Technical College	Curriculum Committee
2014	Horry County Schools	Loris High Medical Magnet Advisory Committee
2013	Horry County Schools	Loris High Medical Magnet Advisory Committee
2012	State of South Carolina Home Health Services Continuous Quality Improvement	Department of Health and Environmental Control for the State of South Carolina
	Continuous Quality Improvement for Health Region	Department of Health and Environmental Control Region 6
	Continuous Quality Improvement Home Health Services, Chair	Department of Health and Environmental Control Region 6
2011	Continuous Quality Improvement for Health Region	Department of Health and Environmental Control Region 6
	State of South Carolina Home Health Services Continuous Quality Improvement	Department of Health and Environmental Control for State of South Carolina
	Inpatient Falls Committee	Grand Strand Regional Medical Center
	Employee Safety Committee	Grand Strand Regional Medical Center
	Hospital Acquired Conditions Committee	Grand Strand Regional Medical Center
	Medication Safety Committee, TUMS	Grand Strand Regional Medical Center
2009	Employee Satisfaction Team	Amedisys Home Health
2008	Employee Satisfaction Team	Amedisys Home Health
	Wound Care Committee	Conway Medical Center

In-services taught:

2012	Holistic Approach to Case Management	Department of Health and Environmental Control Home Health Services Region 6

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2011	Inpatient Falls Prevention	Grand Strand Regional Medical Center
	Sentinel Event	Grand Strand Regional Medical Center
	Root-Cause Analysis	Grand Strand Regional Medical Center
	Proper Use of Bed Alarms	Grand Strand Regional Medical Center
	Management of Psychiatric Patients in ER Setting	Grand Strand Regional Medical Center
	Acute Care Suicide Prevention	Grand Strand Regional Medical Center
2010	In-Home Chemotherapy	Amedisys Home Health
2009	Plurex Vac System	Amedisys Home Health
	Wound Care Skills	Amedisys Home Health
2008	Management of Inpatient Peritoneal Dialysis	Conway Medical Center
	Management of Wound VAC	Conway Medical Center
	Suprapubic Catheter Management	Conway Medical Center

Guest Lectures/Speaker:

Florence Darlington Technical College- "Common Nursing Pitfalls"
March 2016, Student Nurses Association Luncheon

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-_____
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**SUMMONS**
	)	**(Jury Trial Demanded)**
v.	)	**(Wrongful Death Action)**
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	
	)	

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Plaintiff upon the subscriber, at his office at 1007 East Washington Street, Greenville, South Carolina, 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE ON NEXT PAGE]

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CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

s/Matthew W. Christian
Matthew W. Christian
Attorney for Plaintiff
S.C. Bar No.: 70516

Greenville, South Carolina
Date: October 13, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-_____
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Jury Trial Demanded)**
v.	)	**(Wrongful Death Action)**
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, , Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC,	)	
	)	
Defendant(s).	)	

The Plaintiff would show this Honorable Court the following:

1. The Affidavit of Expert Witness is attached hereto as Exhibit A.

2. At all times relevant herein, Deonda Weldon is and was the daughter of Earline Cooley and is the duly appointed Personal Representative of the Estate of Earline Cooley, who at the time of her death was a resident of Pickens County, South Carolina. The Estate is administered through the Probate Court of Pickens County, South Carolina.

3. That Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square (hereinafter "Dominion Clemson") is a business organized and existing under the laws of a state other than the State of South Carolina. This Defendant owns and/or leases property, advertises, maintains agents, servants, employees, and transacts business, deriving substantial revenue therefrom, in Pickens County, South Carolina. Dominion Clemson is an assisted living facility licensed by the State of South Carolina

and employs or contracts with related staff to provide assisted living services to patients/residents and represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing such services for persons such as Earline Cooley. At all times relevant herein, agents, employees, servants, and apparent agents of Dominion Clemson acted on behalf of themselves and on behalf of Dominion Clemson. Furthermore, at all times relevant herein, Dominion Clemson acted on behalf of itself and on behalf of Defendants Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

4. Upon information and belief, Defendant Dominion Senior Living, LLC (hereinafter "Dominion Senior Living") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Senior Living participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Senior Living maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Senior Living is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted

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living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Senior Living. Dominion Senior Living acted on behalf of itself and Dominion Clemson, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Senior Living. At all times relevant herein, Defendant Dominion Senior Living used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

5. Upon information and belief, Defendant Dominion Management Group, LLC (hereinafter "Dominion Management") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Management participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Management maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion

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Management is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Management. Dominion Management acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Management. At all times relevant herein, Defendant Dominion Management used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

6. Upon information and belief, Defendant Dominion Group, LLC (hereinafter "Dominion Group") is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Group participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Group maintained agents, servants, and employees in Pickens County, South

Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Group is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Group acted on behalf of themselves and on behalf of Dominion Group. Dominion Group acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Management, and Dominion Clemson II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Group. At all times relevant herein, Defendant Dominion Group used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

7. Defendant Dominion Clemson II, LLC (hereinafter "Dominion Clemson II") is a business incorporated in the State of South Carolina. That this Defendant has controlled and managed Dominion Clemson through management agreements, leasing agreements, purchase agreements, subleasing agreements, financing arrangements, and in other ways. That this Defendant works in conjunction with Defendant Dominion Clemson and the Co-Defendants in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees

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of Dominion Clemson, II acted on behalf of themselves and on behalf of Dominion Clemson, II. Dominion Clemson, II acted on behalf of itself and Dominion Clemson. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Clemson, II. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

8. Earline Cooley was admitted to the Defendants' facility on or about March 8, 2019 for assisted living facility services and care

9. That at the time of admission, Earline Cooley had a number of diagnoses including, but not limited to, diabetes, neuropathy, hypertension, dementia, anxiety, hyperlipidemia, and depression.

10. That at or around the time of Earline Cooley's admission, Defendants knew or should have known that Earline Cooley was a high risk for falls.

11. The physician's evaluation form at the time of Earline Cooley's admission reflected that Earline Cooley did not have the ability to enter and exit the facility unassisted. The fall prevention program resident risk assessment form dated March 8, 2019 reflected that Earline Cooley had a history of prior falls and had fallen within the past three months. Furthermore, it was noted that she had a history of incontinence which increased her fall risk.

12. The only individual care plan created by the Defendants was dated November 18, 2019, some eight (8) months after her admission to the facility.

13. This care plan from November 2019 reflected for purposes of ambulation/transfer that Earline Cooley uses a walker/cane but did not reflect any additional assistance that she may need in ambulation/transfer.

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14. That further, the notes of observation of June 27, 2019 noted that Earline Cooley complained of leg pain.

15. The observation notes of August 31, 2019 reflect that Earline Cooley was observed on the floor in an apartment next to the bed as a result of falling out of her bed onto the floor. It was noted that she had bruising to her upper right buttock as a result of her fall.

16. The notes of observation of October 1, 2019 reflect that Earline Cooley was observed on the floor as the result of a fall when her walker rolled out from under her.

17. On October 2, 2019, the notes reflect that Earline Cooley was complaining of pain all over.

18. On October 16, 2019, the notes of observation state that Earline Cooley was found on the floor in the bathroom as the result of a fall when she lost her balance.

19. On October 21, 2019, the notes of observation reflect that the staff found Earline Cooley on the floor due to a fall after she has pressed her pendant due to the fact that she had lost her balance.

20. The notes of October 30, 2019 state that Earline Cooley had several falls during that month.

21. Physical therapy and occupational therapy orders were given by the medical provider for evaluation and potential therapy to address Earline Cooley's fall risk.

22. On November 15, 2019, the observation notes reflect that Earline Cooley was complaining of pain in her legs. That further, on November 16, 2019, Earline Cooley was complaining of weakness and fatigue.

23. The physical therapy notes of November 20, 2019 reflect that Earline Cooley required "moderate physical assistance" to transfer from sit to stand. That further, the physical therapy notes of this date reflect that Earline Cooley was reporting dizziness upon standing. The physical therapist further noted that Earline Cooley had a slow cadence when walking with a walker and that she needed physical assist for improved walker safety, increased upright positioning, and balance control. The notes further reflect that Earline Cooley needed to be redirected to complete her activities throughout the session. Furthermore, the therapist reflects a diagnosis of "unsteadiness on feet", "weakness", "history of falling", as well as other diagnoses.

24. Despite the physical therapist's findings as well as the many falls which Earline Cooley had already experienced at Defendants' facility, no changes were made to her care plan or level of assistance provided with transfers and ambulation.

25. The notes of observation for November 25, 2019 reflect that Earline Cooley fell again while walking to her room from supper as a result of losing her balance and injured her left knee.

26. On December 14, 2019, Earline Cooley fell again and was found in the floor in her room by staff.

27. On December 12, 2019, the chart reflects a staff member found Earline Cooley on the floor as a result of a fall.

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28. On December 30, 2019, the chart reflects that a staff member found Earline Cooley on the floor in her room as a result of another fall.

29. On January 14, 2020, staff noted that Earline Cooley was requiring more assistance with getting dressed and walking to the dining room.

30. On February 7, 2020, Earline Cooley had another fall at approximately 4:00 a.m. when she lost her balance and injured her right arm.

31. The notes of observation on February 10, 2020 reflect that Earline Cooley seemed weak. However, despite all of the falls and fall risks, no changes were made to Earline Cooley's care plan.

32. On March 9, 2020, Earline Cooley was found in the hallway by staff when she was walking back to her room and tripped and fell. The chart reflects that she hit her head on the floor and that she was complaining of pan in her right hip.

33. As a result of the fall and injuries to Earline Cooley, she was transported by EMS to the emergency room. At the emergency room, it was noted that Earline Cooley "got tripped while walking with walker and 'walker got away'". She was diagnosed with a fracture of the right femoral head/proximal right femoral neck and a urinary tract infection. The records further reflect that the right leg was shorter and externally rotated as a result of the fracture. Further, as a result of the injuries, she suffered with hypoxia and thrombocytopenia after undergoing surgery to repair her fractured hip.

34. The hospital records further reflect that she had multiple falls at the Defendants' facility and that she needed assistance with walking with her walker as

sometimes the walker "moved quicker for her needing also assistance for ambulation with her walker."

35. Furthermore, as a result of the surgery and her injuries, Earline Cooley's dementia was accelerated and significantly deteriorated. She continued to deteriorate from her injuries until she died as a direct and proximate result of her injuries on

36. That the Defendants were aware of the failures to provide adequate care as described above and below and were aware of residents such as Earline Cooley and knew that the failures existed at the facility resulting from the decisions made by the Defendants to purposely understaff and underfund the facility in a way that would maximize corporate profits for the Defendants rather than provide adequate and proper care to the residents such as Earline Cooley. That these duties by the Defendants to the residents such as Earline Cooley were non-delegable duties. Furthermore, the acts, omissions, and decisions of the Defendants directly affected resident care such as that of Earline Cooley, and directly caused her injuries. The acts of the Defendants were negligent, willful, wonton, grossly inadequate, and in a reckless disregard for the safety and wellbeing of patients such as Earline Cooley. That further, the Defendants acted as each other's agent or apparent agents, alter ego, in a joint enterprise, and with an amalgamation of interest. Further, they are directly liable for their corporate and clinical negligence, all of which combined and contributed to cause Earline Cooley's injuries.

37. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered the following injuries and damages:

a. Injuries about her body;

b. Femur and hip fracture;

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c. Urinary tract infection;

d. Hypoxia and low oxygen;

e. Loss of mobility and range of motion;

f. Thrombocytopenia;

g. Head injury;

h. Skin tears and hematomas;

i. Loss of dignity and respect;

j. Worsening dementia and mental status;

k. Humiliation, fear, anxiety, and emotional and psychological distress;

l. Pain and suffering;

m. Loss of enjoyment of life;

n. Suffering;

o. Has incurred medical expenses and underwent hospitalization, surgery, and medical treatment which she would not have otherwise had to undergo; and

o. In such other and further ways as discovery and trial shall prove

38. The Plaintiff will show that this action is brought pursuant to the wrongful death provision of South Carolina Code of Law 15-79-125, South Carolina Code of Laws pursuant to the Common Laws of the State of South Carolina. Further, this action is brought on behalf of the statutory beneficiaries of the Estate of the deceased, Earline Cooley, pursuant to the Laws of the State. The statutory beneficiaries include, but are not limited to Deonda Weldon, Phyllis Elliott, and Debra Galloway, who have and will continue to suffer the loss of companionship, mental shock and suffering, wounded

feelings, grief, sorrow, and deprivation of society as well as the love and affection of Earline Cooley as a direct and proximate result of Defendants' acts and/or omissions.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

39. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

40. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

a. In failing to provide adequate staffing, adequate pay for staff and adequate training for staff at their facility to care for residents/patients such as Earline Cooley with the full knowledge that such inadequate staffing practices would place residents such as Earline Cooley at risk;

b. In negligently hiring, retaining, and supervising staff at Defendants' facility;

c. In failing to provide proper, comprehensive, and timely assessments, reassessments, and evaluations outlining all risk factors for Earline Cooley and in failing to properly design, adhere to or modify an appropriate plan of care;

d. In failing to timely and appropriately implement interventions in a resident with obvious risk of falls and history of falls;

e. In recognizing, but then failing to appropriately and timely implement proper preventative measures to counteract Earline Cooley's risk for falls;

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f. In failing to advise Earline Cooley and her family that the Defendants could not adequately meet Earline Cooley's needs or provide the level of care and assistance she required;

g. In failing to transfer Earline Cooley to a facility with higher level of care;

h. In failing to adequately assist Earline Cooley with transfers, ambulation, and toileting, and in allowing her to fall and break her right femur;

i. In failing to properly monitor Earline Cooley;

j. In failing to provide the adequate level of assistance to Earline Cooley to meet her needs;

k. In failing to take timely and appropriate measures to prevent urinary tract infections;

l. In failing to timely recognize and treat urinary tract infections once they occurred;

m. In failing to adequately hydrate and prevent dehydration;

n. In admitting and retaining Earline Cooley at the facility when she was not qualified for the facility and when the facility could/would not meet her needs;

o. In failing to have and/or follow appropriate policies, procedures, and guidelines regarding the care and health of residents such as Earline Cooley;

p. In failing to properly have and follow proper policies, procedures, and guidelines regarding funding, staffing, and operation of Defendants' facility;

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q. In failing to provide and implement proper care plans that would adequately meet Earline Cooley's needs, including her risk for falls, dehydration, urinary tract infections, and other risks which Earline Cooley encountered while a resident at the Defendants' facility;

r. In failing to timely and properly correct and repair prior failures at the facility, all of which continued and contributed to Earline Cooley's injuries;

s. In failing to provide services, activities, and care to attain or maintain the highest practical physical, mental, and psychosocial wellbeing of Earline Cooley and in accordance with a written plan of care;

t. In failing to timely consult with a physician;

u. In failing to properly follow the care plans;

v. In failing to properly fund, staff, operate, and manage the facility to the extent that resident care was affected and caused injuries to Earline Cooley;

w. In negligently administering and operating the Defendants' assisted living facility;

x. In failing to hire, fire, supervise, and train the employees, agents, staff, and other caregivers at Defendants' facility which were involved in with Earline Cooley's care and treatment;

y. In failing to comply with the applicable federal and state statutes and regulations designed to protect persons such as Earline Cooley;

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z. In failing to act and provide care as a reasonably prudent assisted living facility would do under the same or similar circumstances;

aa. In failing to operate, fund, staff, and manage an assisted living facility as reasonable prudent operating, management, holding and real estate companies would do under the same or similar circumstances;

bb. In causing Dominion Clemson to be divested of the necessary funds, staff, and financial means required to provide the appropriate level of care to persons such as Earline Cooley; and

cc. In such other and further ways as Discovery and Trial shall prove.

41. As a direct and proximate result of the Defendants' acts and/or omissions, Plaintiff's decedent, Earline Cooley, suffered injuries and damages as set forth herein and above.

FOR A SECOND CAUSE OF ACTION
(Ordinary Negligence as to All Defendants)

42. Plaintiff restates and re-alleges each and every paragraph previously pled herein as if repeated verbatim.

43. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton in failing to provide ordinary and basic care in the following particulars:

a. In failing to provide basic assistance with transfers and ambulation;

b. In failing to provide adequate fluids; and

c. In failing to provide the most basic care which does not require medical training or education but is care that, if not provided, will lead to suffering and decline in health as it did in the case at hand.

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44. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered injuries and damages as set forth herein and above.

THIRD CAUSE OF ACTION
(Corporate Negligence As To All Defendants)

45. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

46. The Defendants were negligent, careless, grossly negligent, reckless, willful, wanton, and intentional in their failure to provide Dominion Clemson with adequate and proper management, funding, staffing, and supplies necessary to provide for the appropriate care for residents such as Earline Cooley and provide care within the standard of care.

47. That these Defendants, especially those other than Dominion Clemson, exercised sufficient financial, management, and operational control over Dominion Clemson and knew or should have known that they unreasonably and improperly divested Dominion Clemson of the necessary monies, finances, staff, and supplies necessary to provide care to the residents within the standard of care and care that met the federal and state regulations and statutes which applied to Dominion Clemson.

48. That Defendants other than Dominion Clemson did this through a complex corporate scheme whereby such funds were divested from Dominion Clemson which were necessary for resident/patient care and were siphoned from the facility to the corporate Defendants, whereby other monies from Dominion Clemson were siphoned from the facility through exorbitant rent, exorbitant management fees, and other exorbitant monies taken by the corporate Defendants from Dominion Clemson. That

these monies were divested from the facility with the full knowledge that such money was necessary for resident care.

49. As a direct and proximate result of the corporate Defendants' acts and/or omissions, Plaintiff has suffered injuries and damages as set forth hereinabove.

FOR A FOURTH CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

50. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

51. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Rights for Residents of Long Term Care Facilities at South Carolina Code §44-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-84, *et seq*.

52. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Earline Cooley was a member at all times relevant to this action and were designed to protect from the types of injuries that Earline Cooley suffered. The Defendants violated these Statutes and Regulations in their failure to properly care for Earline Cooley and other similarly situated patients at their facility.

53. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitutes negligence *per se*, Earline Cooley suffered injuries and damages as set forth above.

54. These representations were careless, negligent, grossly negligent, reckless, willful and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Earline Cooley and in failing to meet these representations for Earline Cooley.

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55. As a direct and proximate result of these Defendants' misrepresentations, Earline Cooley suffered injuries and damages as set forth above.

WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

a. For actual, punitive and special damages in an amount to be determined by the trier of fact;

b. For the costs and disbursements of this action;

c. For the attorneys' fees and costs; and

d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

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s/Matthew W. Christian
Matthew W. Christian
Attorney for Plaintiff
S.C. Bar No.: 70516

Greenville, South Carolina
Date: October 13, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC Defendant.	)	**ANSWER** 2021-CP-39-01127

Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC (collectively, "Defendants"), answering Plaintiff's Complaint, state as follows:

1. All allegations contained in the Complaint which are not admitted, qualified, or otherwise explained are denied.

FOR A FIRST DEFENSE

2. In response to the allegations contained in Paragraph 1 of the Complaint, Defendants admit that the Affidavit of Audrey Holmes is attached to Plaintiff's Complaint. Defendants specifically deny that the Affidavit sets forth any valid criticisms or allegations against Defendants. All remaining allegations contained in Paragraph 1 are denied.

3. Defendants are without sufficient information upon which to form a belief as to the Paragraph 2 of the Complaint and therefore the same are denied and strict proof demanded.

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4. In response to the allegations contained in Paragraph 3 of the Complaint, Defendants admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square does business in Pickens County, South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is an assisted living facility licensed by the State of South Carolina that employs staff to provide assisted living services to residents such as Earline Cooley. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square holds itself out to be competent and qualified to perform the services that it is licensed to perform. All remaining allegations contained in Paragraph 3 are denied.

5. In response to the allegations contained in Paragraph 4 of the Complaint, Defendants admit that Dominion Senior Living, LLC is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Senior Living, LLC provides limited management services to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square. All remaining allegations contained in Paragraph 4 are denied.

6. In response to the allegations contained in Paragraph 5 of the Complaint, Defendants admit that Dominion Management Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 5 are denied.

7. In response to the allegations contained in Paragraph 6 of the Complaint, Defendants admit that Dominion Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 6 are denied.

8. In response to the allegations contained in Paragraph 7 of the Complaint, Defendants admit that Dominion Clemson II, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 7 are denied.

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9. In response to the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of the Complaint, Defendants crave reference to the records in this matter and deny all allegations set forth in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 which are inconsistent with the information set forth in said records. Defendants expressly denies any wrongful conduct on the part of their employees in this matter.

10. Defendants deny Paragraphs 36 and 37 of the Complaint.

11. The first two sentences of Paragraph 38 of the Complaint are statements of law to which no response is required. To the extent a response is required, Defendants deny the same. Defendants are without sufficient information upon which to form a belief as to the remaining allegations contained in Paragraph 38 and therefore the same are denied and strict proof demanded.

12. In response to Paragraph 39 of the Complaint, Defendants reiterate the above paragraphs.

13. Defendants deny Paragraphs 40 and 41 of the Complaint.

14. In response to Paragraph 42 of the Complaint, Defendants reiterate the above paragraphs.

15. Defendants deny Paragraphs 43 and 44 of the Complaint.

16. In response to Paragraph 45 of the Complaint, Defendants reiterate the above paragraphs.

17. Defendants deny Paragraphs 46, 47, 48, and 49 of the Complaint.

18. In response to Paragraph 50 of the Complaint, Defendants reiterate the above paragraphs.

19. Paragraph 51 of the Complaint is a statement of law and sets forth legal conclusions, which require no response. To the extent a response is required, Defendants admit that Dominion

Clemson, LLC d/b/a Dominion Senior Living at Patrick Square operates in compliance with all applicable state and federal regulations. Defendants deny all remaining allegations contained in Paragraph 51.

20. Defendants deny Paragraphs 52, 53, 54 and 55 of the Complaint.

FOR A SECOND DEFENSE

21. Defendants reiterate the above paragraphs.

22. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

FOR A THIRD DEFENSE

23. Defendants reiterate the above paragraphs.

24. Plaintiff's Complaint against Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC must be dismissed pursuant to Rule 12(b)(2), SCRCP based on lack of personal jurisdiction.

FOR A FOURTH DEFENSE

25. Defendants reiterate the above paragraphs.

26. To the extent that Plaintiff is alleging medical malpractice, Plaintiff's recovery against Defendants, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Award Act of 2005, S. C. Code Ann. § 15-32-200, et seq.

FOR A FIFTH DEFENSE

27. Defendants reiterate the above paragraphs.

28. Plaintiff's claim for punitive damages against Defendants and any award of punitive damages against Defendants would violate those clauses of the United States Constitution and the South Carolina Constitution relating to privileges and immunities, due process, and equal protection.

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FOR A SIXTH DEFENSE

29. Defendants reiterate the above paragraphs.

30. Defendants reserve their rights arising under S. C. Code Ann. § 15-32-520 as to all issues described therein.

FOR A SEVENTH DEFENSE

31. Defendants reiterate the above paragraphs.

32. Defendants plead the limitations on punitive damages as set forth in S. C. Code Ann. § 15-32-530 as a defense.

FOR AN EIGHTH DEFENSE

33. Defendants reiterate the above paragraphs.

34. To the extent that Plaintiff is alleging medical malpractice, Plaintiff has commenced an action alleging medical negligence without first complying with the applicable provisions of S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100. Plaintiff's Complaint, therefore, should be dismissed.

FOR A NINTH DEFENSE

35. Defendants reiterate the above paragraphs.

36. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed, expressly indicating agreement to submit any claims or disputes with alleged damages in excess of $15,000.00 to binding arbitration. Therefore, this case should be dismissed or stayed and submitted to binding arbitration pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(6), SCRCP and all other relevant State and Federal law.

FOR A TENTH DEFENSE

37. Defendants reiterate the above paragraphs.

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38. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly waived the right to a jury trial. Therefore, Plaintiff's request for a jury trial is barred by the doctrines of waiver, estoppel, and release.

FOR AN ELEVENTH DEFENSE

39. Defendants reiterate the above paragraphs.

40. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Net economic damages shall be awardable, including, but not limited to, past and future medical expenses, offset by any collateral source payments."

41. Therefore, Plaintiff's claims, or certain portions of them, are barred by the doctrines of waiver, estoppel, and release.

42. Likewise, any economic damages awarded to Plaintiff must be offset by any collateral source payments.

FOR A TWELFTH DEFENSE

43. Defendants reiterate the above paragraphs.

44. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Non-economic damages shall be limited to a maximum of $250,000."

45. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

46. Likewise, any non-economic damages award is capped and must be limited to no more than $250,000.

FOR A THIRTEENTH DEFENSE

47. Defendants reiterate the above paragraphs.

48. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Interest on unpaid fees shall not be awarded."

49. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

FOR A FOURTEENTH DEFENSE

50. Defendants reiterate the above paragraphs.

51. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Punitive damages shall not be awarded."

52. Therefore, Plaintiff's claims for punitive damages are barred and/or limited by the doctrines of waiver, estoppel, and release.

FOR A FIFTEENTH DEFENSE

53. Defendants reiterate the above paragraphs.

54. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated agreements concerning the care provided to Earline Cooley, including the lack of one-on-one care, staff response time, independence, activities done without supervision/assistance, falls, and the role of the resident's physician.

55. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

FOR A SIXTEENTH DEFENSE

56. Defendants reiterate the above paragraphs.

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57. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated:

> **Release and Assumption of Risk.** With the freedom and independence of Assisted Living come certain risks of personal injury, such as falls or broken bones The Resident knowingly and voluntarily agrees to assume all risks related to or arising from living in the Estatement, and not a facility that offers a higher level of care. The Resident agrees to waive, release, indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from their failure to obtain or furnish services beyond the Contractual Services."

58. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

59. Likewise, or in the alternative, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrine of assumption of the risk.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the same be dismissed, that it be granted its costs and disbursements in this action, and for such other and further relief as this Court deems just and proper.

BOULIER THOMPSON & BARNES, LLC

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Attorneys for Defendants

December 21, 2021
Spartanburg, South Carolina

ELECTRONICALLY FILED - 2021 Dec 21 9:16 AM - PICKENS - COMMON PLEAS - CASE#2021CP3901128

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC Defendant.	)	**ANSWER** 2021-CP-39-01128

Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC (collectively, "Defendants"), answering Plaintiff's Complaint, state as follows:

1. All allegations contained in the Complaint which are not admitted, qualified, or otherwise explained are denied.

FOR A FIRST DEFENSE

2. In response to the allegations contained in Paragraph 1 of the Complaint, Defendants admit that the Affidavit of Audrey Holmes is attached to Plaintiff's Complaint. Defendants specifically deny that the Affidavit sets forth any valid criticisms or allegations against Defendants. All remaining allegations contained in Paragraph 1 are denied.

3. Defendants are without sufficient information upon which to form a belief as to the Paragraph 2 of the Complaint and therefore the same are denied and strict proof demanded.

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4. In response to the allegations contained in Paragraph 3 of the Complaint, Defendants admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square does business in Pickens County, South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is an assisted living facility licensed by the State of South Carolina that employs staff to provide assisted living services to residents such as Earline Cooley. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square holds itself out to be competent and qualified to perform the services that it is licensed to perform. All remaining allegations contained in Paragraph 3 are denied.

5. In response to the allegations contained in Paragraph 4 of the Complaint, Defendants admit that Dominion Senior Living, LLC is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Senior Living, LLC provides limited management services to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square. All remaining allegations contained in Paragraph 4 are denied.

6. In response to the allegations contained in Paragraph 5 of the Complaint, Defendants admit that Dominion Management Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 5 are denied.

7. In response to the allegations contained in Paragraph 6 of the Complaint, Defendants admit that Dominion Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 6 are denied.

8. In response to the allegations contained in Paragraph 7 of the Complaint, Defendants admit that Dominion Clemson II, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 7 are denied.

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9. In response to the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of the Complaint, Defendants crave reference to the records in this matter and deny all allegations set forth in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 which are inconsistent with the information set forth in said records. Defendants expressly denies any wrongful conduct on the part of their employees in this matter.

10. Defendants deny Paragraphs 36 and 37 of the Complaint.

11. The first two sentences of Paragraph 38 of the Complaint are statements of law to which no response is required. To the extent a response is required, Defendants deny the same. Defendants deny all remaining allegations contained in Paragraph 38.

12. In response to Paragraph 39 of the Complaint, Defendants reiterate the above paragraphs.

13. Defendants deny Paragraphs 40 and 41 of the Complaint.

14. In response to Paragraph 42 of the Complaint, Defendants reiterate the above paragraphs.

15. Defendants deny Paragraphs 43 and 44 of the Complaint.

16. In response to Paragraph 45 of the Complaint, Defendants reiterate the above paragraphs.

17. Defendants deny Paragraphs 46, 47, 48, and 49 of the Complaint.

18. In response to Paragraph 50 of the Complaint, Defendants reiterate the above paragraphs.

19. Paragraph 51 of the Complaint is a statement of law and sets forth legal conclusions, which require no response. To the extent a response is required, Defendants admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square operates in compliance with all

applicable state and federal regulations. Defendants deny all remaining allegations contained in Paragraph 51.

20. Defendants deny Paragraphs 52, 53, 54 and 55 of the Complaint.

FOR A SECOND DEFENSE

21. Defendants reiterate the above paragraphs.

22. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

FOR A THIRD DEFENSE

23. Defendants reiterate the above paragraphs.

24. Plaintiff's Complaint against Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC must be dismissed pursuant to Rule 12(b)(2), SCRCP based on lack of personal jurisdiction.

FOR A FOURTH DEFENSE

25. Defendants reiterate the above paragraphs.

26. To the extent that Plaintiff is alleging medical malpractice, Plaintiff's recovery against Defendants, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Award Act of 2005, S. C. Code Ann. § 15-32-200, et seq.

FOR A FIFTH DEFENSE

27. Defendants reiterate the above paragraphs.

28. Plaintiff's claim for punitive damages against Defendants and any award of punitive damages against Defendants would violate those clauses of the United States Constitution and the South Carolina Constitution relating to privileges and immunities, due process, and equal protection.

FOR A SIXTH DEFENSE

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29. Defendants reiterate the above paragraphs.

30. Defendants reserve their rights arising under S. C. Code Ann. § 15-32-520 as to all issues described therein.

FOR A SEVENTH DEFENSE

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32. Defendants plead the limitations on punitive damages as set forth in S. C. Code Ann. § 15-32-530 as a defense.

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FOR A NINTH DEFENSE

35. Defendants reiterate the above paragraphs.

36. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed, expressly indicating agreement to submit any claims or disputes with alleged damages in excess of $15,000.00 to binding arbitration. Therefore, this case should be dismissed or stayed and submitted to binding arbitration pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(6), SCRCP and all other relevant State and Federal law.

FOR A TENTH DEFENSE

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38. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a

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Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly waived the right to a jury trial. Therefore, Plaintiff's request for a jury trial is barred by the doctrines of waiver, estoppel, and release.

FOR AN ELEVENTH DEFENSE

39. Defendants reiterate the above paragraphs.

40. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Net economic damages shall be awardable, including, but not limited to, past and future medical expenses, offset by any collateral source payments."

41. Therefore, Plaintiff's claims, or certain portions of them, are barred by the doctrines of waiver, estoppel, and release.

42. Likewise, any economic damages awarded to Plaintiff must be offset by any collateral source payments.

FOR A TWELFTH DEFENSE

43. Defendants reiterate the above paragraphs.

44. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Non-economic damages shall be limited to a maximum of $250,000."

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46. Likewise, any non-economic damages award is capped and must be limited to no more than $250,000.

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47. Defendants reiterate the above paragraphs.

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48. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: "Interest on unpaid fees shall not be awarded."

49. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

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54. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated agreements concerning the care provided to Earline Cooley, including the lack of one-on-one care, staff response time, independence, activities done without supervision/assistance, falls, and the role of the resident's physician.

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Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated:

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58. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

59. Likewise, or in the alternative, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrine of assumption of the risk.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the same be dismissed, that it be granted its costs and disbursements in this action, and for such other and further relief as this Court deems just and proper.

BOULIER THOMPSON & BARNES, LLC

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Attorneys for Defendants

December 21, 2021

Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	2021CP3901127
	)	
	)	ORIGINAL
	)	
DEONDA WELDON, ET AL	)	
PLAINTIFFS	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DOMINION CLEMSON, LLC, ET AL	)	
DEFENDANTS	)	

October 20, 2022
Pickens, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., Judge.

A P P E A R A N C E S:

MATTHEW W. CHRISTIAN, ESQ.
Attorney for the Plaintiffs

JOSHUA T. THOMPSON, ESQ.
Attorney for the Defendants

APRIL HERRON
Official Court Reporter

There were no witnesses.

There were no exhibits.

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Certificate of Reporter 78

THE COURT: All right, I believe, we've got a couple of motions, each one of you have one, I believe; is that correct?

MR. THOMPSON: Yes, sir.

MR. CHRISTIAN: Yes, sir, Your Honor.

THE COURT: All right. All right. So looks like we got, actually, three motions to compel. Two by The Plaintiff, one by The Defendant. Or two by The Defendant. So we have got four, maybe; is that right? Four, is that right?

MR. CHRISTIAN: Yes, sir, they've got a motion to compel arbitration, it's their motion. Ours is for discovery. It was filed prior to theirs.

THE COURT: Okay. All right. I'll hear from you.

MR. CHRISTIAN: I'll let Mr. Thompson go first because I think that his arbitration issue, if The Court were to compel arbitration, that's going to resolve our problem. But if The Court denies their motion then we need to address the discovery issues.

THE COURT: All right.

Yes, sir.

MR. THOMPSON: Yes, sir, Your Honor, if it pleases Court and Mr. Christian, these two -- there are two separate matters as Your Honor pointed out.

There's CP case 01127. Which asserts a survival cause of action, I believe. And then there's CP 01128, which asserts a wrongful death cause of action. The actions in my opinion are companion actions. They've been briefed together. There are some slightly -- whether the wrongful death claim is bound to arbitrating might be a nuance. But I believe, if it suits The Court, Mr. Christian, we can consolidate it on the record in one argument.

MR. CHRISTIAN: Sure, no problem.

THE COURT: Okay, that makes sense.

MR. THOMPSON: Yes, sir, Your Honor.

So as Mr. Christian mentioned, I represent The Defendants in the matter. Along with my law partner, Perry Boulier, Boulier Thompson and Barnes in Spartanburg. We represent The Defendants Clemson -- Dominion Clemson, LLC. Dominion Clemson, LLC is, actually, the assisted living facility that provided care to Ms. Cooley, in this case, Earline Cooley. We also have named Dominion Senior Living. Which is related to the case in that it is the upstream owner of Dominion Clemson, LLC. There also three additional parties that have been named by the Plaintiff, Dominion Clemson II, LLC; Dominion Management Group, LLC and Dominion Group, LLC.

Your Honor, my arguments address all Defendants. But as we have stated in initial discovery responses, the last three Defendants, Dominion Clemson II, Dominion Management Group and Dominion Group, our position is they have absolutely no relation to the care provide here. For example, one, is a separate facility. Separately licensed, separately located facility. One is a construction company. And one is market rate apartments. But they're not related here. I'm sure that will be part of the discovery later in this case.

But at any rate, Your Honor, again, they're two actions pending, 01127 survival action on behalf of Ms. Cooley; 01128 is a wrongful death action on behalf of Ms. Cooley's estate or her beneficiaries. I will reefer to Ms. Cooley, the resident, at Dominion Clemson as Ms. Cooley throughout my argument. The factual matters in this case involved her three daughters, as I understand them to be. Deonda Weldon, who is The Plaintiff, I'll refer to her as Ms. Weldon. There is a daughter--

THE COURT: She's the alternate power of attorney; correct?

MR. THOMPSON: I believe, Your Honor, she was the primary --

THE COURT: Or primary.

MR. THOMPSON: Yes, The Plaintiff, Deonda Weldon was.

THE COURT: That's right, okay.

MR. THOMPSON: Yes, sir, yes, sir. And then there was Robin Elliott, who I'll refer to -- I believe that's a female, Ms. Elliott, I believe it's a daughter. And then there is Ms. Debra Galloway, who is also -- who was a alternate agent and who's the one --

THE COURT: She's the one who, actually, signed it?

MR. THOMPSON: Yes, sir, yes, sir.

THE COURT: Okay.

MR. THOMPSON: You are correct.

THE COURT: Okay.

MR. THOMPSON: So just kind of have our players in a row here. So we've got Ms. Cooley, the resident, we've got three daughters. Ms. Weldon, was the primary agent under the power of -- durable power of attorney. Ms. Elliott was an alternate. Ms. Galloway was an alternate, all three daughters. And then on my side of the case, Dominion Clemson is the actual facility at issue. So those are kind of the key players from my perspective and the ones I'll

refer to.

Your Honor, I know we've thrown a lot of briefing at you. I have hard copies of what we filed yesterday if--

THE COURT: I read it. I read them all.

MR. THOMPSON: Okay. But I'd like to just kind of summarize at the beginning, before we dive in, kind of the key high level points of what our arguments are in terms of compelling arbitration. Your Honor, we think we can summarize those in six key points.

Ms. Cooley, back in 2006, executed a durable power of attorney, which authorized her available agent with all lawful powers. Unless otherwise restricted. Those lawful powers expressly included the right to contract, the right to arbitrate, the right to waive, the right to limit. The power to enter into an admission agreement for convalescent care or however you might describe it, was not expressly limited. That was in 2006. The POA also authorized the available agent to bind Ms. Cooley, her estate and her personal representatives.

Third point, Ms. Cooley's daughter, Debra Galloway was listed as an alternate agent. We're not hiding that, we're not disputing that. She is listed

as an alternate agent in the POA. Ms. Galloway conveyed to Dominion Clemson, based on the information provided, that Ms. Weldon was in Denmark and Ms. Elliott was in Texas. Based on their addresses. Ms. Galloway completed the admission documentation for Dominion Clemson on February 14 of 2019. I believe that date is important, Your Honor, because that was 22 days before Ms. Cooley's admission to the facility on March 18 of 2019.

So in some of these cases that I've had in the past, Your Honor, you have a resident being scurried over by ambulance from the hospital. This is all done on the spot. One might say under duress, on the spot, however, you want to put it. In this case, the admission documents were signed 22 days prior to the date of admission. On February 19, Ms.~Galloway signed the admission agreement; which conspicuously offered binding arbitration. And also conspicuously had headings, which made damages limitation in a jury trial waiver part of the agreement. Now, those limitations were binding on both sides, should the claim meet the threshold of $15,000.

And then, finally, Your Honor, the arbitration provisions of the admission agreement, in our opinion, reach all claims here pending in both

matters. Being that Ms. Cooley, through her power of attorney, authorized her available agent to act on behalf of the PR, her successors, her estate. And so those are kind of our high level points, Your Honor. We've briefed all of those points and I'll cover them quickly as we go through the arguments. And I respond to some of the arguments raised by The Plaintiff. Happy to answer any questions that the court may have along the way as well, Your Honor.

THE COURT: All right.

MR. THOMPSON: For those six core points, we argued that this action should be dismissed and that arbitration should be compelled pursuant to the Federal Arbitration Act, contract law, Rules 12(b)(1); 12(b)(3); 12(b)(6). Common law of this state, as well as federal law surrounding arbitration agreements. First, as I mentioned above, I think the background is very important here. Unlike many of the reported decisions concerning arbitration, Your Honor, this case does not involve a matter where the arbitration agreement and the admission agreement are separate documents. We often see in the appellate decisions that there are discussions about whether that is appropriate, whether the consideration supplied through the form of admission to the

facility, acts as consideration for the arbitration provision. There might be signatures that are wrong or different dates wrong between the two documents.

In this case, Your Honor, the arbitration provision and the provisions limiting damages are contained within the admission agreement itself. It is one contained document, not exhibits, not separate documents, not separate agreements.

Again, Your Honor, that admission agreement was signed on February 14 by Ms.~Galloway of 2019. She claimed in her affidavit that it was a stressful time. And that her options were limited. I don't have the information to dispute that, at this point, because I'm not able to take her deposition based on waiver arguments. But what I will say is I believe it bears reference that this was done 22 days before admission. Again, this is not like some of the other cases where the ambulance rolls up and you have to sign the documents on the spot. Twenty-two days is time to shop around, talk to siblings, talk to family members. Do whatever needs to be done to make an appropriate decision, to vet their facility, to read documents, to do what needs to be done.

Your Honor, we believe that that negates the argument that this was a take it or leave it

proposition. Or on the spot negotiation. Ms.~Galloway's affidavit does not in any way explain how she was forced to sign the admission agreement 22 days before the date of admission. Ms.~Galloway's affidavit also doesn't claim that she was a competent adult, was suffering from any sort of mental infirmity that impacted her ability to contract. She says I may have signed the document. She doesn't deny signing the documents, she doesn't claim that she was under any sort of medical condition which limited her mental capacity.

She said -- you know, we know that she was an adult, at the time. She reviewed the document or she, at least, signed in part of the agreement in Section 22, that she reviewed the document. And that if she wasn't able to read the document, that she was able to ask for an understanding of it. Or an explanation of it. If she did what she signed that she agreed she did, then the claims at issue here were conspicuous under clearly bolded and capitalized titles.

The arbitration provision is in its own section under a bold and capitalized title. Likewise, the limitations on damages provisions and the jury trial waiver provisions, which immediately follow, are

under capitalized and bolded titles. And importantly, Your Honor, the limitation on damages, the four that are contained in that subsection, they are set forth in separate bullet points. Listed out separately. They're not buried into a paragraph, they are spaced away from the other text in that section and are listed in one, two, three, four bullet points set out from the other portions of that section of the document.

In terms of conspicuousness and ability to see what was being done. As set forth in the admission agreement, Ms. Cooley did, in fact, accept the offer for residential community care. And she was admitted to Dominion Clemson and she remained there for nearly a year. She received the services. Either she or her assets or family paid for those services. So she got the benefit of the bargain that Ms. Galloway, as her available agent, contracted for. As an initial legal argument, we note in our brief, Your Honor, that both South Carolina law and federal law favor the enforcement of arbitration provisions.

As we set forth, Moses and Towels case cited in our brief. Both forums note that construction of the contract should be resolved in favor of arbitration. The two questions, Your Honor, in our mind, then

become is there a written agreement to arbitrate and does the agreement invoke the FAA, the Federal Arbitration Act? I'm not aware that there's a question as to indication of the Federal Arbitration Act. Plaintiff's reference that in their brief and reference provisions are the same in their brief. It is also, specifically, referenced in the arbitration provision, in this case.

Your Honor, we then look at what does South Carolina common law says a contract requires? And that is simple. An offer of consideration and acceptance. I went through this and the factual background a few minutes ago, but this document sets forth an offer for Ms. Cooley to be admitted for community residential care. That offer was made 22 days before admission. The agreement laid out all the terms and the services that would be provided, exactly what services would be provided, what would be excluded, what she would need to do on her own. The attachments covered costs. The agreement covered how complaints or disagreements such as matters like this would be resolved. And what the parties would agree their damages would be, flowing both ways. This is not a one-sided agreement.

The consideration of offer, as to the second

point, was they received residential assisted living care. The -- specifically, as to the arbitration and damages limitation provisions, the consideration offer was the mutuality of the agreement. Plaintiff argues in their memorandum in opposition that there's no true mutuality because the $15,000 threshold of dispute, negates any claim that the facility may bring. And, for example, the limitation on damages for allowing collateral source offset. Only would apply to the claim that the resident or her family members are authorized legally--

THE COURT: What they're arguing under the agreement is that there's a limitation for the facility themselves, if they are sued, but if the facility sues the patient or their family, there is no limitation there. For instance, there's a limitation of punitive damages, you can't get punitive damages. You're limited to $15,000, there's no collateral source issue. Whereas, if the facility themselves sues the patient or whomever, then there is no such limitation; correct?

MR. THOMPSON: Judge, I would, respectfully, disagree with you there. For example, the prohibition on interest, that would apply to a claim for rents. If the claim was one for indemnity. If

it was a claim where we had to bring third party claim or a crossclaim based on Ms. Cooley injuring another resident or a guest at the facility and us being sued for that, then that would be a tort styled action where these same limitations would apply. So there are scenarios in which we believe those limitations have mutuality.

And at a rate of $4,000 a month, the $15,000 threshold is easily qualifiable should, for example, Ms. Cooley had not paid for three months of service. We would have gotten there with the extra add ons that come and that are outlined in the admission agreement. So, Your Honor, I understand that that argument is being made. I don't necessarily agree with it, respectfully.

THE COURT: All right.

MR. THOMPSON: So then we talk about the last -- the last part of it being was the offer accepted? The offer was clearly accepted here. The document was signed. Ms. Cooley became a resident on March 8, 2019. And Ms. Cooley remained a resident through March of 2019. The bills were paid, the care was provided. The agreement was commenced. Action under the agreement was commenced. So, we believe, Your Honor, again, the case law at issue goes in favor of

arbitration as these contracts are looked at, the question becomes was a contract formed? We believe we've set forth how and why the contract was formed.

Hitting on some of the arguments against that, I know The Court probably -- Your Honor's already mentioned this and I'll be happy to address these arguments. Number one, The Plaintiff argues the admission agreement should not be enforceable because Ms. Galloway was an alternate agent. I know that's a strong point of contention. Ms. Weldon, as The Plaintiff, presents an affidavit to The Court that she was not asked to sign the admission agreement as the main power of attorney. Or as the main agent under the power of attorney. Ms.~Galloway presents an affidavit in which she states that she did not have authority no sign or had not gotten that authority from her sister, Ms. Weldon. However, Ms. Galloway stated in the admission agreement that all information she provided, as part of the admission process, was truthful.

And, Your Honor, we've attached, I believe, it's Exhibit 3, which is an emergency contact sheet, which purportedly showed that Ms. Weldon was a resident of Denmark. And that Ms. Elliott was a resident of Texas. If that is accurate, as Ms. Galloway

presented it to us, then that would indicate that Ms. Galloway was the available agent under the power of attorney. And interestingly, while Ms. Weldon and Ms. Galloway talk how there was no discussion that Ms. Galloway had authority, their affidavits do not address the fact that either Ms. Weldon or Ms. Elliott were, actually, present and available to conduct this business. That is not addressed. That has not been stated.

So you've got two people, supposedly, one of which was overseas and one was half way across the country. To us, under the power of attorney, that would make Ms. Galloway the available agent to act. Based on the information she supplied at the time of admission. And under the admission agreement agreed was truthful. She was available, willing. And we believe, therefore, given the authority in the POA, that she can--

THE COURT: What's the situation if the other two, necessarily, were not out of the country, they were just -- just weren't there on 22 days before the admission. Is the argument still the same that well, the alternate was here, the other two were not here and so she was available and she answered all the questions. Would that suffice in that situation?

MR. THOMPSON: Yes, sir, Your Honor. And these -- I understand the question. These arbitration agreements and where they are in longterm care and community residential care facility world, we've, essentially, gotten to a place where if you can enforce one of these, it has to be because the valid agent under a durable power of attorney was available or the resident was competent and signed it themselves. And so if I was to have knowledge that Ms. Weldon or Ms. Elliott was sitting there at the table and we let Ms. Galloway sign nonetheless, I don't believe that this would be enforceable. So that's my point.

In the affidavit, Ms. Weldon claims that she was not presented with this but no one has set forth any argument saying that she was, actually, sitting there and available. So in these situations, our admissions folks, in whole, around the state, are taught to ask; who are you? What's your relationship? Why are you here? And I can't say exactly how this process unfolded. Again, we haven't gotten to depositions, we've got a waiver issue with conducting discovery, once I became aware of the durable power of attorney through document production. So I cannot answer those questions

thoroughly but I would agree with you, that would be very problematic to any argument. If either of them were actually, physically available and there to sign it. Or in the same town, a phone call away. I think those -- that could be very problematic under the specific facts of those situations.

THE COURT: So the argument that I'm hearing from The Defendant is that because one is out of the country and one is out of state, that changes the procedure that the facility undergoes when having the admission contract or agreement signed?

MR. THOMPSON: I believe that that's why Ms.~Galloway was the one who signed. And, I believe, that that in turn, my argument is, that in turn under the durable power of attorney, that makes her the available agent at the time. Because of simple geography. At least, based on the information provided to us.

THE COURT: All right.

MR. THOMPSON: So, Your Honor, again, we have the healthcare power of attorney. Generally speaking, our courts have held that statutory healthcare powers of attorney are not good enough to convey authority to enter these types of agreements. However, we've gone to lengths in our brief to

outline the fact that the healthcare power of attorney, in this case, was more like a durable power of attorney and, actually, states that it's a durable healthcare power of attorney. It is not the statutory forum that's written with extensive powers, which include the power to provide for care. And the nursing home, I believe, uses the term, Convalescence setting.

So that is another source of her authority. There she was the alternate agent to Ms. Elliott. And Ms. Weldon was the second alternate. And that's outlined in our procedural history as well. But it would, again, have to be the same issue. By geography, Ms. Galloway was there and that's who we had to -- who signed the documents. I'm not saying that that's been established by depositions because we haven't gotten there. But that's this argument that we're left with based on the information supplied as part of the admission process.

THE COURT: All right.

MR. THOMPSON: And the affidavits don't contradict that.

Next, The Plaintiff's argue in their brief that the contract should be unenforceable due to unconscionability. We've addressed this topic

thoroughly in our brief. As we argue there, the U.S. Supreme Court has held that no contract is unconscionable simply because it contains an arbitration provision. Or because the signatory states that she was not aware of the provision. That's what Ms. Galloway seems to say in her affidavit. That she was not aware this agreement that she signed contained an arbitration provision.

Our courts have time and time again, both on a federal and state level, held that's not sufficient to defeat a contract, nor does that make it unconscionable. Capacitated adults, adults who have capacity, have the duty to read what they're signing, have the duty to understand what they're signing. Again, unconscionability, considerations come in with whether this was made under duress.

Your Honor, I know I've said this but this was not a situation where they were unloading Ms. Cooley from the ambulance and they say, Ms. Galloway, you have to sign this for us to roll the stretcher in. This was done 22 days ahead of time. There are no facts outlined in either affidavit from Ms. Weldon or Ms. Galloway as to why other options could not be considered, as to why attorneys could not be consulted, as to why the documents could not be

reviewed with the other sisters or any family members or anything could have happened in that 22 days. Nothing is there. And this is not a situation of immediate duress, requiring a signature on a document.

Ms. Galloway agreed in the document that she had had time to read it and that she had the opportunity to have it explained to her if she couldn't. I've already mentioned this but the terms at issue were under bold and in capitalized sections. The damages limitations were set off in individual bullet points. Fourth, you know, the fact that an agreement waives otherwise available remedies, is not -- does not in itself make the agreement unconscionable.

For example, Your Honor, as to the right to a jury trial, in Wachovia Bank vs. Blackburn 407, SC 321, the Court there held, A party may waive the right to a jury trial by contract. While the right is a substantial one, we strictly construe such waivers. A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it. Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of

its contents. The law does not impose a duty on the Bank to explain to the individual what he could have learned from simply reading the document.

Again, that goes back to the point that Ms. Galloway doesn't claim that she was under infirmity or any other mental issue which would have limited her ability to do what she agreed she did, which was read the document.

Finally, again, Your Honor, as to unconscionability, 22 days before admission. Time to think about it, time to vet it, time to shop around. Time to talk to siblings, time to talk to family members. Third, Your Honor, The Plaintiff argues that The Defendants waive their right to compel arbitration by participating in discovery in this case.

Your Honor, the procedural history, I think, is important on this point. We have outlined that extensively in our brief beginning on Page 13. When I got the case, we looked at the records in Pickens County through the register of deeds. We looked in the county where I understand Ms. Cooley to have resided. I did not locate the durable power of attorney. My initial email to Mr. Christian, and that's attached as an exhibit, our November 19

through 23 exchange of 2021, ask for a 30 day extension.

I mentioned the issue of the admission agreement, the arbitration provision and said that I was investigating whether a durable power of attorney existed. So from the moment of initial contact seeking an extension to answer, I raise this as a possibility. My answers that are -- The Defendants answers that are on file with the court on December 21, of 2021, each raise arbitration and the admission agreement and the limitations on damages provisions as affirmative defenses.

On the same day I answered, I issued written discovery. As part of that written discovery I've attached, we asked, specifically, for copies of any applicable durable powers of attorney. So that we could do exactly what I said in my November 19 email. Which was investigate whether that existed. We received the discovery responses from those December 21 requests. They were mailed to us on April 25. Got them in early May of 2022. I saw the durable power of attorney included in the document production--

THE COURT: That was the document production from The Plaintiff; is that correct?

MR. THOMPSON: That's right. That's right. Unfortunately, as one of the emails mentioned, it's nobody's fault but mine but I was diagnosed with COVID in the interim. And then filed the motion on June 9. So got the documents at some point in May, had COVID, filed the motion on June 9, on the same day I emailed Mr. Christian. Told him what we were doing, told him that I could not participate in anymore discovery on behalf of The Defendants due to the potential for a waiver argument.

THE COURT: Are the power of attorneys kept in the facilities file?

MR. THOMPSON: Yes, sir. Yes, sir. So that is a question that The Plaintiff has raised. What I can tell you, Your Honor, is that in the file conveyed to my office, there was a copy of the Last Will and Testament and the healthcare power of attorney. Now, Mr. Christian -- Plaintiff's -- Mr. Christian's paralegal points out that the durable power of attorney was provided to the facility in 2020 as part of a medical records request. And that that put us on notice of the document. And that I did not -- that The Defendant did not need to waive discovery production. I understand that argument. I understand that the records clerk -- obviously, I

don't dispute the paralegal's affidavit, I don't have grounds to do so. So if the records custodian received that document as part of a records request in 2020, it's possible that it was floating around the facility at some point. The records set that we have and that record set I produced, what we had in the file was the Last Will and Testament of the healthcare power of attorney.

THE COURT: But it does sound like, let's make sure I'm clear. It does sound like, though, that The Plaintiff requested a -- did a records request, your client provided the records and that included the power of attorney; is that correct?

MR. THOMPSON: No, sir. I believe that--

THE COURT: Just the healthcare and the Will?

MR. THOMPSON: No, sir. I believe that Mr. Christian's law firm attached the durable power of attorney to their records request.

THE COURT: To the records request.

MR. THOMPSON: Yes, sir, I guess, probably.

THE COURT: To show --

MR. THOMPSON: Yes, sir, I guess, probably to show the authority to make the request. And I don't have facts to dispute that. So, you know, the fact that we had our hands on, and at some point our

records custodian, as part of the records request--

THE COURT: The only evidence of power of attorney early on was from The Plaintiff in sending their records request to the facility to get the records, they had the power of attorney on the record request, showing the facility that there was authority to produce those records?

MR. THOMPSON: That's what I'm ware of, Your Honor.

THE COURT: But the facility -- your facility did not have record of power of attorney in its file?

MR. THOMPSON: What was produced to me, we had a copy of the Last Will and Testament and healthcare power of--

THE COURT: But not--

MR. THOMPSON: -- attorney, in her records there.

THE COURT: All right.

MR. THOMPSON: Yes, sir. And that's what I produced in this case.

THE COURT: Okay.

MR. THOMPSON: Good, bad or indifferent, that's the facts I have.

THE COURT: All right.

MR. THOMPSON: So I cannot dispute the fact that

it was in somebody's hand at the facility as part of that medical records request.

But in terms of the litigation, again, Your Honor, I believe that we conveyed what we're doing from the initial moment. Obviously, if I had it and knew about it, I would never represent to another lawyer that I was investigating something. But once I got it, I believe I acted as timely as I could under the circumstances of having intervening COVID. In terms of discovery that was done, yes, we answered initial discovery, we participated in the discovery consultation conference. And we also got discovery from Mr. Christian. The Plaintiffs have said -- or The Plaintiff has said that we issued four subpoenas. I'm sure we probably did for initial records sets.

But unlike, and our brief talks about this, I think, we've got eight, nine pages in our brief on the issue of waiver. The cases in South Carolina where this is discussed, and on a federal level, talk about substantial delay, extensive discovery or procedural prejudice. Mr. Christian -- or The Plaintiff cites a case, a newer Supreme Court for the proposition that prejudice is no longer a prong of this analysis. Our--

THE COURT: That was a U.S. Supreme Court case;

wasn't it?

MR. THOMPSON: Yes, sir. Our reading of that case is that it says, On the facts of the case before it, that prejudice is no longer a consideration in whether the defendant waited too long. But not necessarily a factor that is no longer considered, in general, as to whether The Plaintiff is prejudiced. Or there is some procedural prejudice in the case.

So under those facts and circumstances of the case law in South Carolina, Your Honor, we believe those are distinguishable from the present case. Some of those cases, in one of the cases, for example, there was 14 months of discussions before the lawsuit was even filed. And then there was some discovery.

Here, immediately notified of the issue raised in the answer, got the document production, filed the motion. In other cases, it went to depositions. One case was on the eve of trial. And, Your Honor, you know, baked into that is the fact that we served those on December 21, we got the responses on -- or the responses were mailed out on April 25. So once I got the documents in early May or whenever they came in, after being mailed on April 25, we moved within five, six weeks of that date. With my personal

illness in the middle of that.

So we believe that makes it distinguishable from the other cases on the topic of waiver. We believe that the initial written discovery done would -- is the type of discovery that the arbitrator would likely sanction under the jams [ph] comprehensive rules of arbitration, anyway. Therefore, we don't believe that there's procedural prejudice to the parties in this case. This is the type of baseline information that would be needed to prosecute the claim. Whether it's in arbitration or litigation. Exchanging of medical records and initial written discovery. The other issues can be framed and carried forward in binding arbitration.

Next, Your Honor, just briefly, I know I've taken a lot of time already, there's an argument that the wrongful death claim could not be bound by the arbitration agreement. This is something that's debated but has not yet been settled by our appellate courts. Our argument here would be that the power of attorney convey clear authority to bind Ms. -- to bind the PR and the estate. Furthermore, the admission agreement itself states the same thing. So the POA gives that authority to the available agent. The available agent signs the admission agreement

saying that she is binding the estate airs, etcetera.

As we set forth in our brief, this language causes the wrongful death claim to fall within the clear scope of all claims governed by the arbitration provision. Beyond the clear language of the POA's authority and what the agreement itself says, we've set forth a string of cases, that we believe established the point that under South Carolina law, the wrongful death beneficiaries rights are only as good as those held by the decedent. For this reason, the Dean court, the THI of South Carolina and Magnolia Manor courts have held that arbitration agreements can be -- are binding on the wrongful death beneficiaries.

Finally, Plaintiff argues that the arbitration agreement does not apply to anyone -- any of The Defendants other than Dominion Clemson, the signatory. In response to that argument, Your Honor, we've got a section of our brief there that goes through the applicable case law. There is the Pearson case, which stands for the principle more or less, that the principles of equitable estoppel allow a non-signatory, such as the other four Dominion entities, to compel arbitration when claims made against them are interdependent on the actions of the

signing party. And conversative misconduct is alleged.

We have outlined in our brief the paragraphs that make that part of the complaint that makes that the case here. The liability allegations arises out of alleged interdependent acts. Beyond that, we've cited to South Carolina Public Service Authority case for the proposition that the other four Defendants or the other for Dominions made to enforce arbitration. That case holds that non-signatories whose liability arises out of the relationships between the contractural parties have the right to join in and compel arbitration.

Your Honor, by the nature of the motion made here on behalf of all Defendants, we believe that we've complied with the Public Service Authority.

Plaintiff cites the Wilson case for the proposition that third parties can be bound only in slim scenarios. We've addressed in our brief that we believe that Wilson, actually, only applies in a case where the non-signatory is unwilling to participate. That's not the case here where all defendants have joined in the motion to compel arbitration.

Your Honor, that brings us to our motion to compel arbitration that contained a motion for a Rule

26(c), protective order for discovery. That was premised on the fact that we had been served with the consultation letter from Mr. Christian, the motion to compel. We had began negotiating that, actually, reached an agreement to resolve that, and then became -- I became aware of the durable power of attorney. So, at that point, as I notified Mr. Christian, I knew I had to withdraw from further discovery, and the sake of a waiver argument, that that waiver argument did come to bear. It's made quite prevalent in Plaintiff's memorandum in opposition.

So to continue with -- to continue fulfilling those discovery consultation obligations and the agreement reached, my clients would be put in the pearliest position of lending further credence to the fact that we had waived the right to compel arbitration. Catch-22, I advised Mr. Christian as to why I was having to withdraw from further written discovery based on that motion. That's in my June 9, email, it's attached as an exhibit. Your Honor, nonetheless, even though we reached reasonable agreements on the outstanding issue, Your Honor, we did give initial responses to Dominion Clemson and Dominion Senior Living. The Dominion Clemson

discovery is what was subject to the consult letter. So we have asserted objections. We timely asserted those. We did make an initial document production. What's at issue is consultation as to Plaintiff's claims that our responses were deficient.

Again, we were in the midst of resolving that. And, I believe, that brokered a fair agreement on that. But the issues here prevented me from continuing down that path due to the waiver argument.

THE COURT: Based on the waiver issue?

MR. THOMPSON: Yes, sir.

THE COURT: I understand.

MR. THOMPSON: And I can -- I know that Mr. Christian's motion or The Plaintiff's motion to compel discovery, they've gone through each of the six outstanding items, I've addressed those in my brief and I can address those as part of that motion or whenever The Court would like. And as need be.

THE COURT: All right, take about a two minute break. If that's okay. Or maybe about a five minute break.

MR. CHRISTIAN: Yes, sir, that's good for me as well.

(WHEREUPON, a short break was taken.)

THE COURT: All right, Mr. Christian.

MR. CHRISTIAN: Thank you, Your Honor. Judge, first of all, I want to start off by talking about the waiver issue. I think that the important facts are, if we look at the case in the light of what the standards are, of course, The United States Supreme Court recently in Morgan vs. Sundance, have a different interpretation of what Josh has. But in any event, I believe that that court, specifically, said that the waiver -- excuse me, the prejudice requirement no longer exist. What the United States Supreme Court said was we have to treat arbitration agreements like any other contract. And when courts create another step to that process, such as, requiring a showing of prejudice, that is not in accordance with the law because then it is favoring arbitration over other contracts. And so therefore, states and other federal courts are not allowed to require a showing of prejudice.

THE COURT: So your argument is Morgan says prejudice is no longer a factor?

MR. CHRISTIAN: Yes, sir, that's correct.

THE COURT: Okay.

MR. CHRISTIAN: And Morgan talks about how waiver is a relinquishment of a known right. And my client's affidavit sets forth that in the spring of

2018, when she signed this paperwork, that she provided to the facility, a copy of the durable power of attorney. So they had the durable power of attorney in Spring of 2018. Then in June of 2020, we requested a copy of the records. And on the coversheet sheet it says, This is for a legal claim. Putting them on notice that we were getting this legal claim. And, as we all know, most of the time when facilities or defendants get notices or requests like this, they're required to send it to their insurance carrier because they're concerned about such claim.

When we requested those records, putting them on notice of a legal claim. We provided them, again, with a copy of the general durable power of attorney. And we know that records request not only went to the facility but it went corporate. Because the email that was attached to my paralegal's affidavit came back to us with the records, came from the corporate office. And when they provided to us the records, which they had Bates stamped, they also provided a copy of the Bates stamp healthcare power of attorney. So to the extent that they rely on healthcare power of attorney's authority, then that really cuts against their waiver argument because they had that

they provided us back in June of 2020.

So we know that two different occasions, a long time ago, they had the general durable power of attorney. And then, when we filed this lawsuit and Mr. Thompson appeared, they asked for an extension. And we said we're happy to give that as long as you're not going to file a motion to compel arbitration. Because, generally, my premises, if you're going to file a motion to compel arbitration, I prefer you just go ahead and do that. He said, you know, we looked at it. I don't see a durable power of attorney so I'm going to tell my client not to do that. We said, okay, go ahead file it, go ahead have your extension and that's fine. And we said we don't believe that this arbitration agreement is enforceable for a number of reasons.

So after that, they then in December issue four subpoenas for the production of documents. That is a tool that is not otherwise available to them in arbitration. Only the arbitrator's allowed to issue a subpoena to make individuals appear at the arbitration hearing. Subpoenas for the production of documents to third parties are not allowed in arbitration. So they sent no less than four subpoenas out for that in December.

After that or sometime during that time, they served discovery on us with nearly 60 discovery requests. Not including subparts. All of them but one were directed at non arbitration issues. There was only one out of nearly 60 discovery requests, not including subparts, directed at arbitration. And that's where they asked for a copy of the power of attorney. That their clients already had at the facility and corporate level.

And, of course, we know that in arbitration, frequently discovery is significantly limited. And so it appears that they were also obtaining information that would not have otherwise been available to them through arbitration. Just like they did with the subpoenas. They never asked the court, like many defendants do, can we conduct discovery, just directly limited aimed at arbitration. They didn't send a request just asking for power of attorney. They sent 60 discovery requests aimed at all of the underlining issues and substantive issues in the case. And so, at this point in time, Your Honor, they have gotten months out before they have decided to move towards discovery and used a number of tools that were not otherwise available to them.

In the Morgan case, that was a case where the defendants had participated in discovery and settlement negotiations, much like this case. That was a case where eight months in when they had moved for arbitration. So the issue then was whether or not there was a waiver. Our courts have held waiver in a number of circumstances. They all differ as to how much discovery or how long it had been. And we've attached a number of orders to our briefs, which were other South Carolina circuit courts have found waiver for much less than what has occurred here. But even if we were required to produce or show prejudice, which I don't believe we are, the prejudice would be the fact that we've spent money on filing a lawsuit. We spent time and extensive efforts in answering discovery and requesting discovery. And not only that, but we have now punted and delayed this case much further, if we were to require to be in arbitration instead of litigation.

THE COURT: What about Mr. Thompson's argument that once he found out or found the -- or located the power of attorney, then he immediately took the steps to make -- does that mitigate the waiver argument there? That once he found out he had power of attorney, he then contacted you and then he had

the -- ended all the discovery. Does that have any effect?

MR. CHRISTIAN: No, sir, I don't believe it does. And the courts have said, in fact, I think it was the Morgan court, we mentioned it in our brief, I believe. That the courts focused on the defendant's conduct. And I don't think that that includes Mr. Thompson. I don't think this was his fault, I think it's his clients fault. They had the durable power of attorney all along. And they had it from the time that my client was admitted, they had it from the time we requested the records. Both at the facility level and at the corporate level.

And then, of course, I know I'm not saying this isn't true, but it was publically available because it had been filed and we can see where it was Bate stamped and filed with the court. Or with the Register of Deeds Office. So we know that it was also publically available.

THE COURT: The waiver issue is really directed to the entity itself as opposed to the lawyer?

MR. CHRISTIAN: Yes, sir, I would agree with that, I would. And, of course, they continue to allow their attorney to participate in discovery and use tools that were not otherwise available to them

in arbitration. So for those reasons, we believe that they've waived their right to enforce arbitration, Your Honor.

The second thing is, with regards to authority, I do not believe that the -- that Ms. Weldon's sister possessed the adequate authority to sign this arbitration agreement. As we know, she was the second alternate power of attorney and the general durable power of attorney. There were two ladies that were in front of her. So under The Defendants theory, if Ms. Galloway had gone to a bank to take a loan out on her mother's assets, as long as these other two ladies weren't present, then she had that authority. And if that was, indeed, what Ms. Cooley, her mother, had intended for that to be the case, then the power of attorney would have made them joint powers of attorney, not alternate powers of attorney. She, again, was third in line.

And so we know, also, that the facility knew, at the time that Ms. Galloway signed this paperwork, that she was not the general durable power of attorney. First of all, she signed the admission agreement as healthcare power of attorney, not as general durable power of attorney. And that was, specifically, delineated underneath her signature, in

her own handwriting. Second of all, she says that she gave them the general durable power of attorney at the time of her mother's admission. Third of all, the admission agreement, specifically, identified Deonda Weldon, her sister, who was the primary power of attorney, as the responsible party, as the financially responsible party. And there is no evidence that she was not able to sign this admission agreement.

And The Defendants have talked a lot about what my clients affidavit don't show but quite frankly, it's not our burden of proof, Your Honor. It's The Defendants burden of proof to prove that there's an enforceable arbitration agreement, not ours. Not our burden to prove that it's not enforceable, it's their burden to prove that it is enforceable. And they have produced no evidence that Ms. Weldon was unavailable, unwilling, or unable to serve or sign this paperwork. In fact, I mean, she told me that she had visited the facility multiple times. They had given her paperwork prior to all of this to revive. And there was no evidence that they had not given it to her.

I don't know when this emergency contact information was filled out. I don't know who filled

it out. I don't know who submitted it. There's not really any evidence about that at all. But what we do know is we have an affidavit, a sworn statement from her saying, had they giving it to me, provided it to me in some way, I would have signed it. My sister didn't have the authority to do so. And they knew that. Yet, they acted inconsistent with that. And it's their burden to prove that she was not available or not willing to serve.

And so, in any event, there is -- there's a lot of evidence here, Your Honor, that in my opinion, Ms. Galloway did not have the authority. They also talked a little bit about the healthcare power of attorney. I'm not certain where the healthcare power of attorney would provide any authority to Ms. Galloway to enter into an arbitration agreement. Even if it did, then they've got a real problem with waiver because they had the healthcare power of attorney back in -- we know in June of 2020 when they sent us the records with the healthcare power of attorney. And we know that when they filed the lawsuit, Mr. Thompson indicated he had the healthcare power of attorney. And so if they're going to rely on healthcare power of attorney, they've got a real problem with waiver.

But in any event, the healthcare power of attorney does not provide that authority. It does provide the authority to grant a release to a hospital, staff, physician or nurses and other healthcare providers for liability and damages. And it goes on to talk about refusal to permit treatment and leaving against medical advice. That has nothing to do with an arbitration agreement. And we know that The South Carolina Supreme Court, in the case of Arredondo says that the -- any power of attorney that the defendant's rely upon to enforce an arbitration agreement, must provide specific authority to waive their Constitutional right to a jury trial and agree to arbitrate. And this does not.

THE COURT: Let me ask you this, is there -- Ms. Galloway is the alternate power of attorney, signed it and it did allow Ms. Cooley to go into the home; correct?

MR. CHRISTIAN: Yes, sir.

THE COURT: All right, so there's authority there, at least, to allow her to go in and she's in there for about a year. So what is the difference there as far as authority? Does -- and this is just hypothetically, not necessarily hypothetically, but I'm posing the question is that, you know, what's

good for goose is good for the gander, so to speak. The authority is good enough for her to allow her mother to go in but yet then when something comes up, the authority is not good enough to be bound by the arbitration. Is that somewhat inconsistent? As, okay, it's okay, we were able to get her in. That's where mom -- where we got her. We're good there. We were able to get her in on my signing her admission. So it seems, again, what's good for the goose, may not be good for the gander once they then find out, well, it was good to get her in but she had authority to do that. But no authority on the arbitration part of it.

MR. CHRISTIAN: Yes, sir. And, I believe, that the Thompson and the Hodge and even the Coleman case. We had a Coleman case that went all the way to the United States Supreme Court where the petition was denied. But, I believe, all three of those cases really address that, specifically. And they say that the power to admit someone into a facility or the power to make healthcare decisions for someone, is not encompassing of the power to enter into an arbitration agreement. The Supreme Court and The Court of Appeals has said, multiple times, in those cases, that a healthcare power of attorney is

sufficient to admit somebody to a facility but not to sign an arbitration agreement.

And so, I know Mr. Thompson talked about the fact that this arbitration agreement was contained within the admission agreement. And so to address that for a minute--

THE COURT: Yeah, that was going to be my next question. Because it's not a separate agreement like it is it -- it's one agreement, both of them are -- both are in there. Does that cut The Defendant's way on that argument?

MR. CHRISTIAN: So, first of all, Your Honor, I believe that we can look at the Weaver case. Which was one of -- I can't remember if it was a Supreme Court or Court of Appeals case, dealing with a nursing home issue. Where the arbitration agreement was, actually, contained within the admission agreement. And in the Weaver case, The Court said that that is not acting inconsistently and the plaintiff could not be estopped from denying -- the plaintiff could not be estopped from denying the existence of the arbitration agreement contained within the admission agreement because the plaintiff's claims, as in this case, do not arise under the contract of the admission agreement itself.

The claims arise under a tort duty of a provider/patient relationship.

And so -- and, in fact, Wilson vs. Willis, goes on and talks pretty significantly about that as well, I believe The Defendant cited, also. And in Wilson v. Willis, The Court talks extensively about just because there's a close relationship with that contract, doesn't mean that the right or the claim arises out of that contract. If the right or claim arises independently out of a statutory duty or out of tort or common law, then the plaintiff is not suing under the arbitration agreement, even if it's contained in a bigger agreement that created the relationship between the parties, so to speak.

And so based upon that case, as well as Weaver, then The Plaintiff would not be estopped. Because we haven't alleged a breach of contract claim here. We're suing under a general tort duty for common law and negligence and a statutory duty for their violation of state regs that arises out of the provider/patient relationship. So based on that, that argument really fails for that reason.

Furthermore, you would have to find that these agreements merged. And just because they're contained within the same document, doesn't mean that

they merged. Because what our Supreme Court and Court of Appeals has said in Coleman, Thompson and Hodge is, if there's any evidence to the contrary that these agreements merged, then they didn't merge. And some of the factors that The Court listed, as evidence to the contrary that they merged, included the fact that the admission agreement, and in this case, was revocable at any time. The arbitration agreement could never be revoked.

Also, the arbitration agreement was supposed to be governed by federal law, the FAA. The admission agreement says it's governed by state law. And those are, at least, two of the factors that was cited by Coleman, Thompson and Hodge, as showing there was no merger because there was inconsistencies between the arbitration agreement and the admission agreement. But, I think, more importantly is the fact that we're not suing under the admission agreement or for breach of contract. Our duty arise out of tort. So for all of those reasons, Your Honor, I believe that there was no authority for Ms. Galloway, at that time, to sign this agreement to bind her mother to arbitration.

The next issue, Your Honor, as to why this arbitration agreement is not enforceable is because

it is unconscionable. Our courts have discussed, multiple times, how a waiver of a statutory right or limitations on damages can be unconscionable. This was, at least, a 35 page agreement. And I know Mr. Thompson talked a lot about that the arbitration agreement was in bold. Just within the agreement itself, not within all the attachments and exhibits. There was, at least, 22 bold headings in the agreement itself. So that doesn't really make it conspicuous when it looks like 21 other headings within the agreement.

Second of all, we know it's a contract of adhesion. This is a formed contract. She had no ability to change the terms. And if we look at what constitutes an adhesion agreement, which we went through significantly in our brief, this fits squarely in line with what an adhesion agreement is. And that's one of the factors to look at in unconscionability. The second reason this agreement's unconscionable is there's multiple limitations on liability and damages that are unconscionable. We know that they cap non-economic damages at $250,000. And that any economic damages are to be set off by the collateral source payments. Neither of those exist in state law or common law,

neither --

THE COURT: Punitive damages, I think, was another one of those things.

MR. CHRISTIAN: Yes, sir.

THE COURT: No punitive damages?

MR. CHRISTIAN: Yes, sir, yes, sir. No punitive damages was another one.

There is throughout this agreement, multiple waivers of liability. In fact, we pointed them out in our brief. But there was waivers of liability listed for -- let me see if I can find that. There was a hold harmless provision arising out of the facility's failure to obtain or furnish services beyond what was contractually indicated, even if they didn't do an adequate assessment. That was on Page 35. There was a waiver of liability for all injuries caused by another resident, even if the other resident was known to be a danger to the facility. If that resident harmed another resident, then the facility couldn't be held responsible.

They purport to have a waiver and assumption of risk for falls that could occur. We know that there was a waiver on Page 45 regarding the falls. There was another waiver about falls on Page 44. There was another supposed additional waiver of liability on

Page 44 where it says, The resident chooses to get up without assistance or supervision and they fall or get hurt, then they can't be held accountable despite the fact that most of these residents have dementia and wouldn't know or remember to ask for help. They also have a waiver of liability for medication errors and negligence in one of the exhibits. So throughout this agreement, they're multiple waivers and multiple releases of liability, in addition to these caps on damages. And, of course, none of that applies to the facility, if the facility had a claim against the resident or their family.

As The Court's already pointed out -- first of all, if the facility has a claim for unpaid care that the family didn't pay for, then they would never have to invoke the collateral source rule and the resident's family could never use that as a defense against them. Second of all, they're never going to have non-economic damage claims. So their damages aren't going to be capped. They've also carved out for themselves the ability to collect unpaid rent by saying, Well, if it's less than $15,000, we don't have to go to arbitration. And, of course, a lot of their claims against residents are going to be for unpaid rent.

And so they carved out for themselves, by the way they worded this, all of these limitations on damages. And, of course, all the waivers of liability and all these other claims that they've put throughout the agreement, wouldn't apply to them against claims and claims against residents or their families. So it's really not mutual in the way that it is. And so just adds further to the unconscionability.

THE COURT: Let me ask you this, on the issue of the 22 days, does that cut against the unconscionable argument that, okay, the admission agreement was signed 22 days before. That would have given her the opportunity to go to Ms. Weldon or go to a lawyer or go to other friends and make sure that one, she had the authority to do it. And then two, the ability or time to look over it. To possibly get a lawyer to look at it and make that determination. Does that somehow cut against that argument of unconscionability, that she had 22 days to get something done, take a look at it?

MR. CHRISTIAN: I don't believe so, Your Honor. If we look at these other cases, for example, Huskins vs. Mungo Homes, Smith vs. D.R. Horton, I believe, maybe Simpson as well, those are all Court of Appeals

and Supreme Court cases that our states found that unconscionability. And I can't imagine that admitting a loved one, particularly your mother, to an assisted living facility, would be any less stressful than entering into a contract to buy a home. The folks in those cases, who are contracting to buy a home or for construction or whether they're buying a car or whatever, whenever the courts have found these agreements to be unconscionable. They have a whole lot more opportunity and a whole lot more time to examine the agreements, to seek the advice of counsel and do things like that. And then when somebody's trying to find an assisted living facility to admit their loved one to.

And so, I think, in those situations, those are -- those are reflections of cases where the courts found unconscionability in a much less stressful environment. But really, I mean, the number one factor is that it's a contract of adhesion and then we go to the terms. And so that's where we know it was a contract of adhesion, based upon the facts and circumstances. Then we look at the terms, which we talked about. But we know, for example, in Simpson, they found unconscionability and discussed the depravation of statutory remedies, just like we

have in this case.

In Huskins vs. Mungo Homes, a 2022 case that our court came out with this year; which, of course, involved a construction of a home, they found that the shortening of the Statue of Limitations provision was unconscionable. In Smith vs. D.R. Horton, a limitation on damages was found to be unconscionable. And so in all those situations, it's very akin to this particular situation, except, I believe, this agreement was even more onerous and more of a stressful time than what those folks were dealing with.

And so based upon those factors, Your Honor, we believe that it was unconscionable. Also, based on the fact that all of these provisions are so intertwined throughout the agreement, that there's no way that The Court could sever out just the unconscionable provision without really rewriting this agreement. And, for example, I believe, it was the Mungo Homes decision where they talked about when it can be severed or when it can't be severed. Smith vs. D.R. Horton, The Court goes on and talks about when it's so intertwined, when these unconscionable provisions are so intertwined with the rest of the agreement, The Court can't sever it out because

you're, essentially, rewriting the agreement.

And then, finally, we got a case that just came out in the last few weeks from the South Carolina Supreme Court. And it was Damico vs. Lennar Carolina, Inc. And there was a unconscionable provision in the agreement and there was, actually, a severability clause. The Supreme Court said just because there's a severability clause doesn't mean we're going to sever it out. And they said, first of all, that encourages defendants to put unconscionable provisions in their agreements, hoping they don't get caught. But if they do, we saved ourselves with this severability clause.

And what the Supreme Court said was, number one, there's a public policy consideration to prevent defendants from inserting such unconscionability provisions in their arbitration agreements and then trying to save themselves with a severability clause. And we quoted that we -- put this in our brief, Your Honor, this case. And The Court talked about how it was a contract of adhesion and they were refusing to to sever it for that reason. And they also went on and talked about how there was multiple unconscionable provisions intertwined throughout the agreement and it would, essentially, require The

Court to blue pencil in to the contract order, rewrite the contract and the court just couldn't do that. And so for all those reasons, we also believe that the this agreement is not enforceable because it's unconscionable.

And then, finally, Your Honor, the last two issues are one, as Mr. Thompson pointed out, if for some reason The Court did find that this agreement was enforceable, we do not believe that it is enforceable as to the wrongful death claim. And we've attached to our brief a number of other state circuit court orders finding that these agreements are not applicable or enforceable as to the wrongful death claim. And what we are saying -- we're not saying that an arbitration agreement could never apply to a wrongful death claim, that is not what we're saying. I believe that if the arbitration agreement, within it's scope, considered or included the scope of the wrongful death claim and the statutory beneficiaries. And, if they were, in fact, parties or signatories to the agreement, then it could be enforced as to the wrongful death statutory beneficiaries claim.

But in this circumstances, number one, the definition of the parties, in no way include or

encompass wrongful death claims. It doesn't include or encompass wrongful death claims in the definition. I've seen so many arbitration agreements where it talks about it includes the resident's heirs, beneficiaries. You know, whether the claims are survival for personal injury or for wrongful death and all their assigns and agents. And they, specifically, included this agreement doesn't. But secondly and most importantly, the statutory beneficiaries are not parties to this agreement.

Ms. Galloway signed, not as a statutory beneficiary but on behalf of her mother. In fact, she wrote below that she was signing a durable healthcare power of attorney. Not on her own behalf. And she, certainly, did have the authority to sign on behalf of her other sisters, who are her co-statutory beneficiaries.

THE COURT: So your argument then -- and I know there's no South Carolina case law that I'm aware, at least.

MR. CHRISTIAN: There's not.

THE COURT: But one of the argument's you're saying is that if all of the beneficiaries had been a party to this agreement, then it could --

MR. CHRISTIAN: Yes, sir --

THE COURT: -- possibly apply?

MR. CHRISTIAN: Yes, sir, yes, sir. Absolutely.

THE COURT: Of course, that, in reality, I don't see where or how that could ever happen. I hear your argument but I'm just trying to think from a practical standpoint, where it may be 15 beneficiaries and in order to be bound by it, all of them would have to sign. I think that would be a very rare situation where that would happen.

MR. CHRISTIAN: I don't disagree that that might be rare, Your Honor. But that, nonetheless, doesn't mean that their claims should be bound when they weren't parties or signatories or didn't agree to it. And we know -- we went though the significant history in our brief of the wrongful death action and how it involved and how it started. And there's a lot of law that talks about how it is a independent claim. We know there's separate causes of action. The jury has to render separate verdicts. There's separate claims. The types of damages the wrongful death statutory beneficiaries can recover are completely separate from the survival action.

We included a federal district court case that had to do with the non-economic -- yeah, the non-economic damages caps in medical malpractice

actions. And the purpose of including that was because The Court found that their claims could be capped individually. They can stack their claims individually, rather. And so what The Court was finding was that these were independent claims. They're not all one in the same. And so, I believe, that the law reflects that these are independent claims. You know, like, if we have a lost of consortium claim, you know, defendants require a separate release for the consortium claim all the time.

And so -- and we know that if we look at the Wilson v. Willis case, there's some very strong language from the Supreme Court about enforcing an arbitration agreement against non-signing third parties. The Court, actually, said that there is a presumption against arbitration when the person or persons they're trying to enforce it against are non-signatories to the agreement. And The Court says that those tools should be used sparingly as to those people. And so in this instance, the statutory beneficiaries, who weren't signatories, it shouldn't be enforced as to them.

We've cited a number of other states. There's many, many other states that we included in our brief

that have held the exact same thing. And many of those states, the wrongful death statute is almost exactly like ours. And they have analyzed it the same way. And the Kentucky was very interesting to me because The Court said in Ping v. Beverly Enterprises, Inc., in Kentucky they said, what's interesting as life might be, if we could make third parties parties to a contract, who weren't signatories to the contract, that would be really nice but that's not what the law is. And whether or not it's a wrongful death case or whether or not it's a third party business, it really doesn't matter, you can't enforce it. So for those reasons, Your Honor, we believe that it's non-enforceable as to the wrongful death claim.

And then, finally, Your Honor, it is not enforceable. We do not believe it's enforceable as to the corporate defendants who were not parties to this agreement. First of all, as we indicated, these folks were not identified as being parties to the agreement. The parties to the agreement -- it says -- the agreement, specifically, says, Is made by and between Dominion Clemson LLC, which is the facility, doing business as Dominion Senior Living of Clemson. Lindsey Daugherty, who's the manager of the

facility; and Earline Cooley, who's the resident. And the only signatories to the agreement are Debra Galloway, as the healthcare power of attorney; and the executive director of the facility. The corporate defendants were not signatories or defined as parties to this agreement.

The agreement doesn't even contemplate third parties rights in the agreement. And that's important because, as I noted, Wilson vs. Willis says, South Carolina contract law carries a presumption that a individual who is not a party -- excuse me, this is Trancik v. USAA Insurance. It says, South Carolina contract law carries a presumption that a individual who is not a party to a contract, lacks privity to enforce it.

That's exactly what these corporate defendants are trying to do here. In Ancrum v. Camden Water, Light and Ice Company, another South Carolina case, it says, That is to be observed that the presumption is that the parties contract for their own benefit and not for that of other -- others not parties to the contract.

And then we know that in Schulmeyer v. State Farm, it says that the interpretation is to give legal effect to the intentions of the parties by the

contractual language.

And then in Windsor Green Owners Association, it says, Only if a contract -- The Court held that only if a contract is made for the benefit of the third person and the contracting parties intended to create a direct, rather than a incidental or consequential benefit to the third person, can that third person make a claim under the contract. And there's no evidence in the language of this arbitration or admission agreement that they intended to benefit or create a benefit for these third party corporate defendants. So they should not be allowed to enforce this agreement.

And then, finally, Your Honor, one last point that I'd like to make. The south Carolina Supreme Court in Berry v. Spang, this is not included in our brief, but in Berry v. Spang, South Carolina Supreme Court said that, When a party is attempting to enforce an arbitration agreement, that they have to be able to lay the foundation and authentication for that arbitration agreement when they file it with the court. And that's usually done with an affidavit or testimony.

In the Berry v. Spang case, there was, actually, an affidavit that was used to authenticate the

arbitration agreement and the other documents submitted by the parties that were trying to enforce the arbitration agreement. And while The Court questioned, you know, kind of whether or not it was sufficient, they ultimately found that affidavit was sufficient.

In the particular incident we have here today, The Defendants have not identified any affidavit or testimony to authenticate or lay the foundation for this arbitration agreement. And today is, essentially, their trial on this arbitration agreement to have it enforced. And so we believe that also they failed in that regard in precuring their burden to authenticate and lay the foundation for the agreement.

THE COURT: What's that case? You said, Barry, B-A-R-R-Y?

MR. CHRISTIAN: I think it's B-E-R-R-Y, Your Honor. Versus Spang.

THE COURT: S-P-A-N-G?

MR. CHRISTIAN: I think that's right. I don't think there's a H in there. I think it's S-P-A-N-G.

THE COURT: All right.

MR. CHRISTIAN: So for all of those reasons, Your Honor, we believe the arbitration agreement is

unenforceable. I don't know if you want to talk about the motion to compel discovery now or what The Court's preference is on that. I know I've been going for a while.

THE COURT: Well, he addressed it as far as the discovery issue interrelated to the arbitration and they didn't want to go through the discovery because of the arbitration --

MR. CHRISTIAN: Yes, sir --

THE COURT: -- didn't want to waive it. So, I'll go ahead and hear you.

MR. CHRISTIAN: Okay. We, of course, filed that motion before we knew that they were going to file their motion to compel arbitration. And then we did engage in some discussions after we filed the motion to try to resolve it and it never resolved. We've addressed that in a separate brief in our motion to compel. But they're six outstanding issues, other than the fact that we've got two defendants that haven't answered at all. We don't have any responses from them at all. We would like, if we continue in litigation, to have responses from them.

But the six outstanding issues include, first of all, the interrogatories. We asked them to identify the employees who provided care to my client at the

facility. And we asked them to identify their job title and whether they were current or former employee and their last known contact information. I don't know that I've ever had a defendant not produce that information to me. Sometimes these signatures aren't always legible. I know that there's some electronic copies of the chart but there's also handwritten parts of the chart. They're not all legible, number one. Number two, I don't know what their role was at the facility. It doesn't always identify what their role was, whether they were a LPN or a med-tech or a CNA.

And then, finally, it doesn't tell us whether or not they're former or current employee and their last known contact information. I've had some defendants just print up a list and say, here's our employees from that time period, with their last known and these are current, these are former, that's it.

THE COURT: All right. Those responses were, initially, provided and then nothing else was done after the arbitration issue came up?

MR. CHRISTIAN: Yes, sir.

THE COURT: Is that correct?

MR. CHRISTIAN: Yes, sir.

THE COURT: Okay.

MR. CHRISTIAN: Yes, sir.

THE COURT: All right.

MR. CHRISTIAN: Then the next issue was with regards to the request for production number 19. And let me back up for just a second. So we've got the claim against the facility for the clinical negligence. And then our South Carolina Supreme Court has, specifically, recognized a cause of action against nursing homes and assisted living facilities and hospitals for corporate negligence for understaffing and underfunding those facilities. And we've made that claim in this case, alleging that they were underfunded and understaffed. The corporate entities took the profit out of the facility that was needed to adequately staff the facility.

And so we asked for a copy of the budgets for the facility for the two years proceeding her residency in the time of her residency. We then told Mr. Thompson, I believe, and as we indicated here, we're willing to limit those requests to just the budgets for only the year that she was a resident there. That enables us to be able to look at some of those issues about underfunding and understaffing and where the money was going.

Number -- and again, we also to this attached orders from a number of other courts where courts have ordered these types of documents to be produced in the very same types of cases. But then number 21, we ask for a copy of the timecards, schedules and punched details during the time that my client's residency. And what that does is we can go in and we can, actually, calculate the exact amount of staff at any given time that was working at the facility.

So my client had 10 falls at this facility. I think that's pretty significant during the short time that she was there, she had these 10 falls. And we know they never changed the care plan despite all these falls. And it's fairly concerning to me about staffing and how much staff's there if a lady has fallen 10 times. And so we believe that that not only enables us to calculate the staffed patient ratio, but helps us determine these issues about understaffing and underfunding. And, of course, without these documents, we can't prove that part of the case. I mean, they've got the information we need to be able to prove that part.

We know what our clients have told us about what they believe about staffing. And we know what witnesses are going to say but to be able to -- well

prove that through the numbers, those are -- those are -- that's information that in every other case, the defendants just print that up, they print up punch detail, they got where these people clock in and clock out. And so all they have to do is just print it out for that time period. They produce it to us. It might come in a big box. And then we have the responsibility to go through it.

Number 22, this request seeks the copies of the employee work schedules, sign-in sheets and time sheets. This shows the number and classification of who worked there. Again, these are documents these folks keep in the ordinary course of business, they're usually contained in reports. And it helps us determine the staffing numbers. Number 23, this is copies of any documents they have showing the actual number of available nursing personnel, nurse assistances, orderlies or aides during her residency or admission. Again, this just goes to the staffing claims and helps us to determine staffing numbers.

And then number 25, that's copies of inserts as training. We have, specifically, made claims for failure to train their staff adequately. And I'm sure that if we go, whether it's -- if we go to trial, they are going to contend that they train

their staff adequately. They're going to say, well, we train them when they came to work there, we train -- we did in-service training throughout. And -- but they're refusing to produce that to us. And so I think we're entitled to A, have that to deal with their offense. But B, also know whether they train on certain things. And to know if they train them on falls. What do you teach your people to prevent falls? Which is a direct issue in this case.

THE COURT: So let me ask you this, just to make sure I'm clear. So the initial failure to provide that information was when the initial discovery responses were sent, and so they objected at that point. And after that is when the arbitration issue came up and then they just stopped totally; correct?

MR. CHRISTIAN: Yes, sir, correct.

THE COURT: So, at the time, those objections were made that you've gone through, 21, 23, 25, 19, a couple others, those are objections that you anticipate -- if I were to rule and say, okay, go to arbitration, not valid, we're going forward, you're going forward on the lawsuit, you anticipating that those objections will remain? And the reason I'm asking that, I'm just trying to make sure that we don't get a little ahead of ourselves. I mean, I've

got to make the decision, obviously, on whether we're going forward with the lawsuit or whether it's --

MR. CHRISTIAN: Yes, sir --

THE COURT: -- it's going over to arbitration. And so it may be a little premature to some degree because, depending on which way I rule. And I'm not putting you on the spot or if I were to rule that this goes forward. Are you objecting to those, continuing to object? And do we really need to hear those at this point? Is it something that, as far as that's concerned, maybe, can be decided down the road a little bit?

MR. THOMPSON: Your Honor, before I became aware of the durable power of attorney, as I outlined in my memorandum, as outlined in my brief, Mr. Christian and I participated in a lengthy discovery consultation call on all of these issues on April 22 of this year. And Mr. Christian, after we went back and forth on these particular, my objections, the basis for my objections, you know, I don't think it's as straight forward as The Plaintiff's position is. For example, work schedules for every single day for a year long admission. When we're talking about isolated incidents. But things of that nature. It's not as straightforward and simple. If we're going to

argue that, I've got it all laid out in my brief, we can go point by point.

After we negotiated and talked about it, Mr. Christian charged me to come back to him on whether the agreements or potential agreements we discussed would work. And Exhibit 11 to our memorandum was the framework of what we thought -- what I had proposed in response to the discovery consultation call, reflecting my position on what I would advocate for my client to produce. And I was working with the client to gather those documents. And so, it's not as though I was throwing up a roadblock to say never, ever am I going to produce any of this. It was, we can produce -- we'll produce the budgets for the years of her residency. Which is what Mr. Christian said he can live with.

Or we'll produce -- we no longer have work schedules for that period of time but we're trying to see if HR can generate an actual hours worked report. I mean, so there were things we we're doing on the training. Every single in-service on every type of training. We had talked about the issues, actually, in this case. Assessments, ADL, changes in condition, falls and care planning. And I had agreed that, you know, I would attempt to get those things

for three years for my client. So it's not as though I was roadblocking it. I just could not move forward on what I had proposed because of the waiver of argument.

THE COURT: Yeah, I think probably the best thing to do, and this is not like a three year old case --

MR. THOMPSON: No.

THE COURT: -- or two year old case. I think probably the best thing to do is let me rule on the arbitration issue. And then -- and y'all are good lawyers and y'all are civil lawyers and probably work out discovery issues. And if you can't, then refile your motion to compel and whether it's me or whoever.

MR. CHRISTIAN: Sure. And that's fair enough, Your Honor. And again, the reason we're here is because they produced the objections, we wrote a letter, we didn't get a response, we filed the motion. And then after we filed the motion we started having discussions. And then he filed the motion to compel arbitration. And so the court has set both of these motions at the same time.

THE COURT: Why don't we do that.

MR. CHRISTIAN: That sounds good.

THE COURT: I think that's most sufficient.

MR. CHRISTIAN: Okay.

THE COURT: And I think that will take care of it. And again, if you can't work it out --

MR. CHRISTIAN: Sure.

THE COURT: -- then you come back and me or whoever is on the bench --

MR. CHRISTIAN: That sounds good.

THE COURT: -- can resolve that.

MR. CHRISTIAN: That sounds good.

THE COURT: Hopefully, y'all can get it resolved.

MR. CHRISTIAN: That's it from my perspective, Your Honor.

THE COURT: All right.

Mr. Thompson, anything in reply?

MR. THOMPSON: Well, Your Honor, we have taken up -- I've taken up far more than the time requested so I just want to be brief. I don't think there's anything that Mr. Christian raised that's not addressed in our brief or that I did not raise -- that I did not proactively address. Just a couple of points of clarification, where I didn't want the -- where I wanted to make sure it was clear with the court what the facts of this case were. There is no separate arbitration agreement and admission

agreement. There is an arbitration provision--

THE COURT: Within --

MR. THOMPSON: -- within an admission agreement. The arguments Thompson, Hodge, Coleman, most of those cases out there involve separate agreements where the question of merger is raised. That is not at issue here. This is all self contained. The regulations require us to have an admission agreement. The regulations requires us to document levels of care in an admission agreement and many of the things in there. What will be provided, what won't be provided, what the monthly rate is. All of those things are required by regulation.

So we do in this agreement, this agreement -- this agreement is a regulatory required document. Without it Ms. Cooley would not have ever been able to step forward through the threshold of our facility.

THE COURT: Which did? The admission --

MR. THOMPSON: The admission agreement, right. It's regulatory required. You have to have one. Now, I guess, we could wheel her in but then we get popped by DHEC if they inspect us and don't have an admission agreement on file. So--

THE COURT: But it's the content of the

admission agreement that's at issue, though.

MR. THOMPSON: I understand. I understand. But the fact that we're talking about tort claims versus contract claims and not based on contract, the service would have never been provided. There would be no relationship between the parties if this threshold regulatory required document was not executed. And so, you know, and it's all self contained. There is a severability provision in the admission agreement. I've talked about that in our brief. We believe that if Your Honor thought that one of the limitations on damages was inappropriate, those are in separate categories, separate headings of the agreement from the arbitration provision. The severability clause is there just for issues such as that. And has been done under our law.

Finally, just to clarify one point of fact. The power of attorney, absolutely in Paragraph 18, authorize the agent to act on behalf of the estate beneficiaries, airs, successors. And the admission agreement, absolutely in Paragraph 20-G, says it is binding not only on the parties but their successors, airs, personal representative estate. So we've talked about who the parties are defined as. I just want to be clear that there is both language that

conveys the authority to power of attorney. And language in the admission agreement that does envision that this is binding on more than just Ms. Cooley. Thank you, Your Honor.

THE COURT: All right.

Anything else? I give anybody the opportunity.

MR. CHRISTIAN: The only thing I'd say, Your Honor, is that Weaver case where -- it's Weaver vs. Brookdale Senior Living, Court of Appeals case. That was the case where the arbitration agreement was contained within the admission agreement. And the court said that they were not suing under the admission agreement. That they were suing under tort that arose out of the provider/patient relationship. And so that's the import of that.

And then, finally, the -- if The Court goes back and looks at the exhibits, the resident admission agreement, on the first page, defines the parties. And, specifically, does not include the corporate defendants or the wrongful death statutory beneficiaries. And just because the power of attorney may have said -- in other words, just because Ms. Cooley may have said, you have the authority to bind the statutory beneficiaries or airs, that doesn't really mean that they do.

Ms. Cooley can't give Ms. Weldon or Ms. Galloway the authority to waive their siblings rights. Only their siblings -- only their siblings could do that. And so, I don't think that what the power of attorney says with regard to that has any bearing on these issues. And that's all I would say, Your Honor.

THE COURT: All right.

Thank you both for your arguments, I'll take it under advisement. And I will let you know my decision.

MR. CHRISTIAN: Thank you, Your Honor.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: Good to see both of you.

MR. CHRISTIAN: Good to see you too.

(WHEREUPON, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**MOTION TO COMPEL**
	)	
v.	)	
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	

TO: THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY

PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorney, hereby moves to compel discovery responses from the Defendant before the Court to be heard the tenth day after service hereof, or soon thereafter as Counsel may be heard in connection with the above-captioned matter. This Motion is made pursuant to Rules 26(b)(3) and Rule 37(a) of the South Carolina Rules of Civil Procedure.

Plaintiffs would show this Honorable Court the following:

1. Plaintiff served her First Interrogatories and First Requests for Production upon the Defendants on November 4, 2021.

2. Defendants responded to Plaintiff's First Interrogatories and First Requests for Production on February 22, 2022. A copy of those requests and responses are attached hereto as Exhibit A.

3. After reviewing the responses, Plaintiff discovered a number of items to which Defendants objected which were not objectionable and for which full production/responses should have been provided. As a result, Plaintiff sent a letter to Defendants on March 1, 2022 addressing the deficiencies. A copy of that correspondence is attached hereto as Exhibit B.

4. At the time of the filing of this motion, Plaintiff has yet to receive any response to Plaintiff's March 1, 2022 correspondence and concerns regarding Defendants' discovery responses.

WHEREFORE, Plaintiff would seek an Order from this Court compelling full and complete responses from the Defendants, to provide and supplement the responses identified in Exhibit B, and for the costs and expenses for having to file this Motion.

Respectfully Submitted,

CHRISTIAN & CHRISTIAN, LLC
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

s/Matthew W. Christian
Matthew W. Christian
SC Bar No: 70516
Attorney for the Plaintiff

Greenville, South Carolina
Date: March 22, 2022

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EXHIBIT A

ELECTRONICALLY FILED - 2022 Mar 22 10:45 AM - PICKENS - COMMON PLEAS - CASE#2021CP3901127

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant(s).	)	**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT DOMINION CLEMSON, LLC D/B/A DOMINION SENIOR LIVING AT PATRICK SQUARE**

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

Comes now Plaintiff and serves the Interrogatories upon Defendant and requests that it would be answered fully and in writing under oath within forty-five (45) days of the date of service thereof, all in accordance with the South Carolina Rules of Civil Procedure 33.

Instructions and Definitions

I. **Introduction**—The obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore employ a fair and just result.

A. According to the express language of the Rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery is to be accomplished voluntarily; that is the party should affirmably disclose relevant information without the necessity of Courts ordering compelling of disclosure.

B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Requests for Discovery should contain a full disclosure of all information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really know what information is being sought. The courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objectives of the inquiry, or of the party from whom the Discovery is being sought has no real difficulty understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including designing and/or testing activities) either at the request of or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are able to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. Every Interrogatory should be answered fully, in writing, and under oath.

H. In the event that you choose to object to a particular request or part of the request, please note that the rules require:

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1. That the reasons for the objections shall be stated; and
2. The affirmative responses to the remaining portion of the request to which you do not object.

I. An evasive or incomplete answer may be treated by the Court as failure to answer.

J. Please produce all requested documents and things at the office of the attorney for the Plaintiff.

K. The requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

L. If you claim that any information is privileged, please state the:

1. Date of the document, communication or other information;
2. Identity of the parties to the communication;
3. Identity of the other person who participated in, overheard, or became privy to the communication;
4. The subject matter of the communication;
5. The capacity in which each communicant was acting; and
6. Any citations of statute, case law, or other authority in support of your privileged claim.

M. In answering Interrogatories, you may wish to refer to your business records. In that event, please follow the directions of Rule 33.

N. An Interrogatory is not necessarily objectionable because it calls for an opinion or requests the factual basis of a contention or involves the application of law to facts in relation to a particular contention. Rule 33(b).

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct or legally binding on the Defendant.

A. Communication—The act or an effort to transmit information whether that information is written, oral, or electronic.

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B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type or character) and any method or medium at which information may be communicated, recorded, or retrieved by people or computers. If the documents/information is on a disc, please specify the software (including the exact version and date of release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including memory size (and graphics control board in the event that the information contained requires graphics). Finally, give the exact name, release and version of the operating system used on the hardware.

1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

    a. Any material which was used or referred to in the preparations of the document;
    b. All attachments to the document;
    c. Any documents referred to in the subject document; and
    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify Communication—A request to identify communication shall require the following information:

1. The name, last known address and job title of:

    a. Each person who was present at the time of the communication;
    b. Each person who participated in the communication;
    c. Each person who could have heard the communication or might have acquired knowledge of the communication; and
    d. The employer of each person covered in the above.

2. The date of the communication;
3. Whether all or a portion of the communication was reduced to writing; and
4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

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1. The Incident—The event described in the Complaint which caused Plaintiff's damages.
2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency or affiliate of legal entity. The term includes any successor or predecessor of legal entity.
3. Plaintiffs—Include all parties represented by Christian & Davis Attorneys.
4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

    a. This includes any test to which Defendant referred in the preparation for any communication regarding the treatment, diagnostic, or other evaluations of any of the Plaintiff(s); and
    b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendant(s)—The main party, its attorney, agents, employees, representatives, investigators, or other who have obtained information on behalf of the party where the Defendant is a legal entity. The term embraces the meaning of the legal entity.

E. "Identify", "identity", or "identification" used in reference to an individual person means to provide the full name, telephone number, present address, present or last position, and the business affiliation during the period covered by these Interrogatories. When used with respect to an entity, corporation, partnership, or other business enterprise, it means to provide the full name and address of said entity, corporation, partnership or other business enterprise.

F. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

G. "Describe" or "description":

1. If used in reference to a person, means to identify each individual person; and
2. When used in reference to a document, means to state the following as to each document:

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a. The nature and contents thereof;
b. The date thereof;
c. The name, present address and position of the author or signer thereof;
d. The name, address, and position of addressee, if any; and
e. The present location thereof and the name, present address, and position of the person or persons having present custody thereof.

H. "Facility" means the operating Assisted Living Facility known as Dominion Clemson

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to the Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was

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admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

8. Identify this Defendant's mailing address and principal place of business address.

9. Identify the officers of this Defendant.

10. Identify the name and address of every person whom the Defendant expects to call as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;

b. Each and every fact which qualifies the person intended as an expert;

c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;

d. Each and every fact upon which the person identified bases each of his or her opinions;

e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;

f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;

g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;

h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and

i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:

i. The date and place it was made;
ii. The name and address of the person(s) who made it;
iii. The basis of the claim; and

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iv. The outcome of the claim.

11. Identify any and all policies and procedures maintained by this Defendant for the hiring and supervision of its staff and for the care and treatment of Earline Cooley.

12. Identify any and all policies and procedures regarding resident care, assessments, evaluation, admission, treatment, and supervision.

13. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident at the facility.

14. Identify all policies and procedures used in determining whether or not a resident or patient qualifies as being eligible to be admitted to and remain at your facility, including but not limited to factors and criteria considered for eligibility.

15. For the time that Earline Cooley was a resident at your facility and at present, identify any and all directors, medical directors, administrators, scheduling coordinators, CNA's, PCT's, Registered Nurses, Licensed Practical Nurses, Speech Therapists, Nurse Practitioners, Dieticians, Physical Therapists, Med Techs, Occupational Therapists, and other resident care staff including, but not limited to, their last known address, telephone number, position, and whether or not they are still an employee of this Defendant.

16. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages suffered by the Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

17. Identify any and all marketing or advertising for this Defendant in the past five (5) years.

18. Identify any other lawsuits this Defendant has had filed against it for damages that resulted from the actions of the facility within the last seven (7) years, its staff, its agents/employees, for failing to properly treat and care for residents, including, but not limited to, the civil action number, venue, attorneys for all parties, and the disposition of said case.

19. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

20. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was

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responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;
b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;
c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;
d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or
e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

21. Identify (by stating the name, address, telephone number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

22. Identify any contracts, service agreements, leases (whether Master leases or sub-leases), provider agreements, purchase agreements, assignments, and/or management agreements which this Defendant has with any of the Co-Defendants.

23. Identify whether or not an outside consultant or regional consultant was used for making recommendations for any oversight or direction of the facility at the time that Earline Cooley was a resident, including but not limited to the role of each consultant, the name, address, and telephone number of the consultants, the employer of the consultant, and the consultant's duties and responsibilities.

24. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

25. Identify all staffing ratios for the time that Earline Cooley was a resident at this Defendant's facility.

26. State the method by which your nurses and staff chart resident care, conditions, and observations. If you contend your staff chart by exception, state the parameters and guidelines for same.

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27. Identify any and all policies and procedures of the facility regarding maintenance, retention, and destruction of any and all records maintained on residents.

28. Identify any and all forms of payment for services rendered that are accepted by the facility.

29. Identify this Defendant's relationship with each of the Co-Defendants.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10/18/21, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant(s).	)	**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT DOMINION SENIOR LIVING, LLC**

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

Comes now Plaintiff and serves the Interrogatories upon Defendant Dominion Senior Living, LLC and requests that they would be answered fully and in writing under oath within forty-five (45) days of the date of service thereof, all in accordance with the South Carolina Rules of Civil Procedure 33.

Instructions and Definitions

I. **Introduction**—The obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore employ a fair and just result.

A. According to the express language of the Rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery is to be accomplished voluntarily; that is the party should affirmably disclose relevant information without the necessity of Courts ordering compelling of disclosure.

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B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Requests for Discovery should contain a full disclosure of all information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really know what information is being sought. The courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objectives of the inquiry, or of the party from whom the Discovery is being sought has no real difficulty understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including designing and/or testing activities) either at the request of or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are able to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. Every Interrogatory should be answered fully, in writing, and under oath.

H. In the event that you choose to object to a particular request or part of the request, please note that the rules require:

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1. That the reasons for the objections shall be stated; and
2. The affirmative responses to the remaining portion of the request to which you do not object.

I. An evasive or incomplete answer may be treated by the Court as failure to answer.

J. Please produce all requested documents and things at the office of the attorney for the Plaintiff.

K. The requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

L. If you claim that any information is privileged, please state the:

1. Date of the document, communication or other information;
2. Identity of the parties to the communication;
3. Identity of the other person who participated in, overheard, or became privy to the communication;
4. The subject matter of the communication;
5. The capacity in which each communicant was acting; and
6. Any citations of statute, case law, or other authority in support of your privileged claim.

M. In answering Interrogatories, you may wish to refer to your business records. In that event, please follow the directions of Rule 33.

N. An Interrogatory is not necessarily objectionable because it calls for an opinion or requests the factual basis of a contention or involves the application of law to facts in relation to a particular contention. Rule 33(b).

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct or legally binding on the Defendant.

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B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type or character) and any method or medium at which information may be communicated, recorded, or retrieved by people or computers. If the documents/information is on a disc, please specify the software (including the exact version and date of release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including memory size (and graphics control board in the event that the information contained requires graphics). Finally, give the exact name, release and version of the operating system used on the hardware.

1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

    a. Any material which was used or referred to in the preparations of the document;
    b. All attachments to the document;
    c. Any documents referred to in the subject document; and
    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify Communication—A request to identify communication shall require the following information:

1. The name, last known address and job title of:

    a. Each person who was present at the time of the communication;
    b. Each person who participated in the communication;
    c. Each person who could have heard the communication or might have acquired knowledge of the communication; and
    d. The employer of each person covered in the above.

2. The date of the communication;
3. Whether all or a portion of the communication was reduced to writing; and
4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

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1. The Incident—The event described in the Complaint which caused Plaintiff's damages.
2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency or affiliate of legal entity. The term includes any successor or predecessor of legal entity.
3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.
4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

    a. This includes any test to which Defendant referred in the preparation for any communication regarding the treatment, diagnostic, or other evaluations of any of the Plaintiff(s); and
    b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendant(s)—The main party, its attorney, agents, employees, representatives, investigators, or other who have obtained information on behalf of the party where the Defendant is a legal entity. The term embraces the meaning of the legal entity.

E. "Identify", "identity", or "identification" used in reference to an individual person means to provide the full name, telephone number, present address, present or last position, and the business affiliation during the period covered by these Interrogatories. When used with respect to an entity, corporation, partnership, or other business enterprise, it means to provide the full name and address of said entity, corporation, partnership or other business enterprise.

F. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

G. "Describe" or "description":

1. If used in reference to a person, means to identify each individual person; and
2. When used in reference to a document, means to state the following as to each document:

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a. The nature and contents thereof;
b. The date thereof;
c. The name, present address and position of the author or signer thereof;
d. The name, address, and position of addressee, if any; and
e. The present location thereof and the name, present address, and position of the person or persons having present custody thereof.

H. "Facility" means the operating Assisted Living Facility known as Dominion Clemson.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was

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admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

8. Identify this Defendant's mailing address and principal place of business address.

9. Identify the name and address of every person whom the Defendant expects to call as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;
b. Each and every fact which qualifies the person intended as an expert;
c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;
d. Each and every fact upon which the person identified bases each of his or her opinions;
e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;
f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;
g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;
h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and
i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:
    i. The date and place it was made;
    ii. The name and address of the person(s) who made it;
    iii. The basis of the claim; and
    iv. The outcome of the claim.

11. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

12. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident of this Defendant's facility.

13. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages

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suffered by Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

14. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

15. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;
b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;
c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;
d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or
e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

16. Identify (by stating the name, address, telephone number, Social Security Number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

17. Identify any contracts, service agreements, provider agreements, and/or management agreements which this Defendant has with any of the Co-Defendants.

18. Identify any and all reports, letters, emails or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant, resident care, budget matters, staffing matters, or occupancy at the facility.

19. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including

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but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

20. Identify this Defendant's relationship with each of the Co-Defendants.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-20, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant(s).	)	**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT DOMINION CLEMSON, II, LLC**

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

Comes now Plaintiff and serves the Interrogatories upon Defendant Dominion Clemson, II, LLC and requests that they would be answered fully and in writing under oath within forty-five (45) days of the date of service thereof, all in accordance with the South Carolina Rules of Civil Procedure 33.

Instructions and Definitions

I. **Introduction**—The obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore employ a fair and just result.

A. According to the express language of the Rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery is to be accomplished voluntarily; that is the party should affirmably disclose relevant information without the necessity of Courts ordering compelling of disclosure.

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B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Requests for Discovery should contain a full disclosure of all information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really know what information is being sought. The courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objectives of the inquiry, or of the party from whom the Discovery is being sought has no real difficulty understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including designing and/or testing activities) either at the request of or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are able to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. Every Interrogatory should be answered fully, in writing, and under oath.

H. In the event that you choose to object to a particular request or part of the request, please note that the rules require:

1. That the reasons for the objections shall be stated; and
2. The affirmative responses to the remaining portion of the request to which you do not object.

I. An evasive or incomplete answer may be treated by the Court as failure to answer.

J. Please produce all requested documents and things at the office of the attorney for the Plaintiff.

K. The requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

L. If you claim that any information is privileged, please state the:

1. Date of the document, communication or other information;
2. Identity of the parties to the communication;
3. Identity of the other person who participated in, overheard, or became privy to the communication;
4. The subject matter of the communication;
5. The capacity in which each communicant was acting; and
6. Any citations of statute, case law, or other authority in support of your privileged claim.

M. In answering Interrogatories, you may wish to refer to your business records. In that event, please follow the directions of Rule 33.

N. An Interrogatory is not necessarily objectionable because it calls for an opinion or requests the factual basis of a contention or involves the application of law to facts in relation to a particular contention. Rule 33(b).

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct or legally binding on the Defendant.

A. Communication—The act or an effort to transmit information whether that information is written, oral, or electronic.

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B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type or character) and any method or medium at which information may be communicated, recorded, or retrieved by people or computers. If the documents/information is on a disc, please specify the software (including the exact version and date of release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including memory size (and graphics control board in the event that the information contained requires graphics). Finally, give the exact name, release and version of the operating system used on the hardware.

1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

    a. Any material which was used or referred to in the preparations of the document;
    b. All attachments to the document;
    c. Any documents referred to in the subject document; and
    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify Communication—A request to identify communication shall require the following information:

1. The name, last known address and job title of:

    a. Each person who was present at the time of the communication;
    b. Each person who participated in the communication;
    c. Each person who could have heard the communication or might have acquired knowledge of the communication; and
    d. The employer of each person covered in the above.

2. The date of the communication;
3. Whether all or a portion of the communication was reduced to writing; and
4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

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1. The Incident—The event described in the Complaint which caused Plaintiff's damages.
2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency or affiliate of legal entity. The term includes any successor or predecessor of legal entity.
3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.
4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

    a. This includes any test to which Defendant referred in the preparation for any communication regarding the treatment, diagnostic, or other evaluations of any of the Plaintiff(s); and
    b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendant(s)—The main party, its attorney, agents, employees, representatives, investigators, or other who have obtained information on behalf of the party where the Defendant is a legal entity. The term embraces the meaning of the legal entity.

E. "Identify", "identity", or "identification" used in reference to an individual person means to provide the full name, telephone number, present address, present or last position, and the business affiliation during the period covered by these Interrogatories. When used with respect to an entity, corporation, partnership, or other business enterprise, it means to provide the full name and address of said entity, corporation, partnership or other business enterprise.

F. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

G. "Describe" or "description":

1. If used in reference to a person, means to identify each individual person; and
2. When used in reference to a document, means to state the following as to each document:

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a. The nature and contents thereof;
b. The date thereof;
c. The name, present address and position of the author or signer thereof;
d. The name, address, and position of addressee, if any; and
e. The present location thereof and the name, present address, and position of the person or persons having present custody thereof.

H. "Facility" means the operating Assisted Living Facility known as Dominion Clemson.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was

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admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

8. Identify this Defendant's mailing address and principal place of business address.

9. Identify the name and address of every person whom the Defendant expects to call as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;
b. Each and every fact which qualifies the person intended as an expert;
c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;
d. Each and every fact upon which the person identified bases each of his or her opinions;
e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;
f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;
g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;
h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and
i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:
    i. The date and place it was made;
    ii. The name and address of the person(s) who made it;
    iii. The basis of the claim; and
    iv. The outcome of the claim.

11. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

12. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident of this Defendant's facility.

13. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages

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suffered by Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

14. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

15. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;
b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;
c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;
d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or
e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

16. Identify (by stating the name, address, telephone number, Social Security Number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

17. Identify any contracts, service agreements, provider agreements, and/or management agreements which this Defendant has with any of the Co-Defendants.

18. Identify any and all reports, letters, emails or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant, resident care, budget matters, staffing matters, or occupancy at the facility.

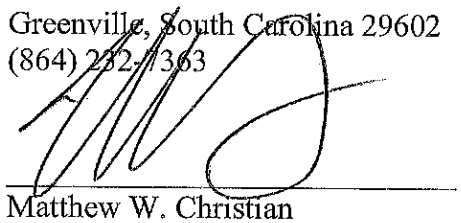
19. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including

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but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

20. Identify this Defendant's relationship with each of the Co-Defendants.

CHRISTIAN & CHRISTIAN
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Post Office Box 332
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Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
Plaintiff,	)	**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT DOMINION GROUP, LLC**
v.	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
Defendant(s).	)	

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

Comes now Plaintiff and serves the Interrogatories upon Defendant Dominion Group, LLC and requests that they would be answered fully and in writing under oath within forty-five (45) days of the date of service thereof, all in accordance with the South Carolina Rules of Civil Procedure 33.

Instructions and Definitions

I. **Introduction**—The obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore employ a fair and just result.

A. According to the express language of the Rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery is to be accomplished voluntarily; that is the party should affirmably disclose relevant information without the necessity of Courts ordering compelling of disclosure.

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B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Requests for Discovery should contain a full disclosure of all information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really know what information is being sought. The courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objectives of the inquiry, or of the party from whom the Discovery is being sought has no real difficulty understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including designing and/or testing activities) either at the request of or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are able to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. Every Interrogatory should be answered fully, in writing, and under oath.

H. In the event that you choose to object to a particular request or part of the request, please note that the rules require:

1. That the reasons for the objections shall be stated; and
2. The affirmative responses to the remaining portion of the request to which you do not object.

I. An evasive or incomplete answer may be treated by the Court as failure to answer.

J. Please produce all requested documents and things at the office of the attorney for the Plaintiff.

K. The requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

L. If you claim that any information is privileged, please state the:

1. Date of the document, communication or other information;
2. Identity of the parties to the communication;
3. Identity of the other person who participated in, overheard, or became privy to the communication;
4. The subject matter of the communication;
5. The capacity in which each communicant was acting; and
6. Any citations of statute, case law, or other authority in support of your privileged claim.

M. In answering Interrogatories, you may wish to refer to your business records. In that event, please follow the directions of Rule 33.

N. An Interrogatory is not necessarily objectionable because it calls for an opinion or requests the factual basis of a contention or involves the application of law to facts in relation to a particular contention. Rule 33(b).

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct or legally binding on the Defendant.

A. Communication—The act or an effort to transmit information whether that information is written, oral, or electronic.

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B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type or character) and any method or medium at which information may be communicated, recorded, or retrieved by people or computers. If the documents/information is on a disc, please specify the software (including the exact version and date of release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including memory size (and graphics control board in the event that the information contained requires graphics). Finally, give the exact name, release and version of the operating system used on the hardware.

1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

    a. Any material which was used or referred to in the preparations of the document;
    b. All attachments to the document;
    c. Any documents referred to in the subject document; and
    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify Communication—A request to identify communication shall require the following information:

1. The name, last known address and job title of:

    a. Each person who was present at the time of the communication;
    b. Each person who participated in the communication;
    c. Each person who could have heard the communication or might have acquired knowledge of the communication; and
    d. The employer of each person covered in the above.

2. The date of the communication;
3. Whether all or a portion of the communication was reduced to writing; and
4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

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1. The Incident—The event described in the Complaint which caused Plaintiff's damages.
2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency or affiliate of legal entity. The term includes any successor or predecessor of legal entity.
3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.
4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

    a. This includes any test to which Defendant referred in the preparation for any communication regarding the treatment, diagnostic, or other evaluations of any of the Plaintiff(s); and
    b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendant(s)—The main party, its attorney, agents, employees, representatives, investigators, or other who have obtained information on behalf of the party where the Defendant is a legal entity. The term embraces the meaning of the legal entity.

E. "Identify", "identity", or "identification" used in reference to an individual person means to provide the full name, telephone number, present address, present or last position, and the business affiliation during the period covered by these Interrogatories. When used with respect to an entity, corporation, partnership, or other business enterprise, it means to provide the full name and address of said entity, corporation, partnership or other business enterprise.

F. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

G. "Describe" or "description":

1. If used in reference to a person, means to identify each individual person; and
2. When used in reference to a document, means to state the following as to each document:

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a. The nature and contents thereof;
b. The date thereof;
c. The name, present address and position of the author or signer thereof;
d. The name, address, and position of addressee, if any; and
e. The present location thereof and the name, present address, and position of the person or persons having present custody thereof.

H. "Facility" means the operating Assisted Living Facility known as Dominion Clemson.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was

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admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

8. Identify this Defendant's mailing address and principal place of business address.

9. Identify the name and address of every person whom the Defendant expects to call as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;
b. Each and every fact which qualifies the person intended as an expert;
c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;
d. Each and every fact upon which the person identified bases each of his or her opinions;
e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;
f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;
g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;
h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and
i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:
    i. The date and place it was made;
    ii. The name and address of the person(s) who made it;
    iii. The basis of the claim; and
    iv. The outcome of the claim.

11. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

12. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident of this Defendant's facility.

13. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages

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suffered by Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

14. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

15. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;
b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;
c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;
d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or
e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

16. Identify (by stating the name, address, telephone number, Social Security Number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

17. Identify any contracts, service agreements, provider agreements, and/or management agreements which this Defendant has with any of the Co-Defendants.

18. Identify any and all reports, letters, emails or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant, resident care, budget matters, staffing matters, or occupancy at the facility.

19. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including

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but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

20. Identify this Defendant's relationship with each of the Co-Defendants.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT DOMINION MANAGEMENT GROUP, LLC**
	)	
v.	)	
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

Comes now Plaintiff and serves the Interrogatories upon Defendant Dominion Management Group, LLC and requests that they would be answered fully and in writing under oath within forty-five (45) days of the date of service thereof, all in accordance with the South Carolina Rules of Civil Procedure 33.

Instructions and Definitions

I. **Introduction**—The obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore employ a fair and just result.

A. According to the express language of the Rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery is to be accomplished voluntarily; that is the party should affirmably disclose relevant information without the necessity of Courts ordering compelling of disclosure.

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B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Requests for Discovery should contain a full disclosure of all information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really know what information is being sought. The courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objectives of the inquiry, or of the party from whom the Discovery is being sought has no real difficulty understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including designing and/or testing activities) either at the request of or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are able to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. Every Interrogatory should be answered fully, in writing, and under oath.

H. In the event that you choose to object to a particular request or part of the request, please note that the rules require:

1. That the reasons for the objections shall be stated; and
2. The affirmative responses to the remaining portion of the request to which you do not object.

I. An evasive or incomplete answer may be treated by the Court as failure to answer.

J. Please produce all requested documents and things at the office of the attorney for the Plaintiff.

K. The requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

L. If you claim that any information is privileged, please state the:

1. Date of the document, communication or other information;
2. Identity of the parties to the communication;
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4. The subject matter of the communication;
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M. In answering Interrogatories, you may wish to refer to your business records. In that event, please follow the directions of Rule 33.

N. An Interrogatory is not necessarily objectionable because it calls for an opinion or requests the factual basis of a contention or involves the application of law to facts in relation to a particular contention. Rule 33(b).

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct or legally binding on the Defendant.

A. Communication—The act or an effort to transmit information whether that information is written, oral, or electronic.

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B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type or character) and any method or medium at which information may be communicated, recorded, or retrieved by people or computers. If the documents/information is on a disc, please specify the software (including the exact version and date of release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including memory size (and graphics control board in the event that the information contained requires graphics). Finally, give the exact name, release and version of the operating system used on the hardware.

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    a. Any material which was used or referred to in the preparations of the document;
    b. All attachments to the document;
    c. Any documents referred to in the subject document; and
    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify Communication—A request to identify communication shall require the following information:

1. The name, last known address and job title of:

    a. Each person who was present at the time of the communication;
    b. Each person who participated in the communication;
    c. Each person who could have heard the communication or might have acquired knowledge of the communication; and
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2. The date of the communication;
3. Whether all or a portion of the communication was reduced to writing; and
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D. Identify a Document—A request to identify a document shall require the following information:

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1. The Incident—The event described in the Complaint which caused Plaintiff's damages.
2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency or affiliate of legal entity. The term includes any successor or predecessor of legal entity.
3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.
4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

    a. This includes any test to which Defendant referred in the preparation for any communication regarding the treatment, diagnostic, or other evaluations of any of the Plaintiff(s); and
    b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendant(s)—The main party, its attorney, agents, employees, representatives, investigators, or other who have obtained information on behalf of the party where the Defendant is a legal entity. The term embraces the meaning of the legal entity.

E. "Identify", "identity", or "identification" used in reference to an individual person means to provide the full name, telephone number, present address, present or last position, and the business affiliation during the period covered by these Interrogatories. When used with respect to an entity, corporation, partnership, or other business enterprise, it means to provide the full name and address of said entity, corporation, partnership or other business enterprise.

F. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

G. "Describe" or "description":

1. If used in reference to a person, means to identify each individual person; and
2. When used in reference to a document, means to state the following as to each document:

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a. The nature and contents thereof;
b. The date thereof;
c. The name, present address and position of the author or signer thereof;
d. The name, address, and position of addressee, if any; and
e. The present location thereof and the name, present address, and position of the person or persons having present custody thereof.

H. "Facility" means the operating Assisted Living Facility known as Dominion Clemson.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was

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admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

8. Identify this Defendant's mailing address and principal place of business address.

9. Identify the name and address of every person whom the Defendant expects to call as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;
b. Each and every fact which qualifies the person intended as an expert;
c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;
d. Each and every fact upon which the person identified bases each of his or her opinions;
e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;
f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;
g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;
h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and
i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:
    i. The date and place it was made;
    ii. The name and address of the person(s) who made it;
    iii. The basis of the claim; and
    iv. The outcome of the claim.

11. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

12. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident of this Defendant's facility.

13. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages

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suffered by Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

14. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

15. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;
b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;
c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;
d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or
e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

16. Identify (by stating the name, address, telephone number, Social Security Number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

17. Identify any contracts, service agreements, provider agreements, and/or management agreements which this Defendant has with any of the Co-Defendants.

18. Identify any and all reports, letters, emails or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant, resident care, budget matters, staffing matters, or occupancy at the facility.

19. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including

but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

20. Identify this Defendant's relationship with each of the Co-Defendants.

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Attorneys at Law
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Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
Plaintiff,	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT DOMINION CLEMSON, LLC D/B/A DOMINION SENIOR LIVING AT PATRICK SQUARE**
v.	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
Defendant(s).	)	

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

COMES NOW, the Plaintiff, by and through his undersigned attorney, and requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, within forty-five (45) days after the service hereof, the Defendant(s) above-named, to produce and permit counsel for the Plaintiff(s) to inspect and copy the documents requested herein at the offices of Christian & Christian, 1007 E. Washington Street, Post Office Box 332, Greenville, South Carolina 29602.

Instructions and Definitions

I. **Introduction**—the obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore embody a fair and just result.

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A. According to the express language of the rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery to be accomplished voluntarily; that is, the party should affirmably disclose relevant information without the necessity of Courts ordering compelling disclosure.

B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Request for Discovery should contain a full disclosure of all the information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really do know what information is being sought. The Courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objects in the inquiry, or of the party from whom the Discovery is sought has no real difficulty in understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including design and/or testing activities) either at the request or under a contract with you; and

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6. Other representatives of you who have possession of or may obtain information for or on behalf of you.

E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are unable to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. In the event that you choose to object to a particular request or to part of the request, please note that the rules require:

1. That the reasons for objections shall be stated; and

2. The affirmative responses to the remaining portion of the request to which you do not object.

H. An evasive or incomplete answer may be treated by the Court as failure to answer.

I. Please produce all requested documents and things at the office of the attorneys for the Plaintiff.

J. These requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

K. If you claim that any information is privileged, please state the:

1. Date of document, communication, or other information;

2. Identity of the parties to the communication;

3. Identity of the other person who participated in, overheard, or became privy to the communication;

4. Subject matter of the communication;

5. Capacity in which each communicant was acting; and

6. Any citations of statute, case law, or other authority in support of your privileged claim.

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II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the objectives of the Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct, or legally binding on the Defendant.

A. Communication—The act of or an effort to transmit information or receive information whether that information is written, oral, or electronic.

B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type, or character) and any method or medium by people or by computers. If the documents/information is on a disc please specify the software (including the exact version and release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including the memory size (and graphics control board in the event the information contained requires graphics). Finally, give the exact name, release, and version of the operating system used on the hardware.

1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

    a. Any material which was used or referred to in the preparations of the document;

    b. All attachments to the document;

    c. Any document referred to in the subject document; and

    d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify communication—A request to identify communication shall require the following information:

1. The name, last known address, and job title of:

a. Each person who was present at the time of the communication;

b. Each person who participated in the communication;

c. Each person who could have heard the communication or might have acquired knowledge of the communication; and

d. The employer of each person covered in the above.

2. The date of the communication;

3. Whether all or a portion of the communication was reduced to writing; and

4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

1. The incident—The event described in the Complaint which caused Plaintiff's damages.

2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency, or affiliate of legal entity. The term includes any successor or predecessor of legal entity.

3. Plaintiffs—Include all parties represented by Christian & Davis Attorneys.

4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

a. This includes any test to which the Defendant referred to in the preparation for any communication regarding the treatment, diagnostic or other evaluations of any of the Plaintiffs.

b. Any test performed by or on behalf of the Defendant in the investigation.

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5. You, Your or the Defendants—The main party, its attorney, agents, employees, representatives, investigators, or others who have obtained information on behalf of the party. Where the Defendant is a legal entity, the term embraces the meaning of the legal entity.

E. Facility – Facility means the operating Assisted Living Facility known as Dominion Clemson.

REQUESTS

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of the decedent which is the subject matter of this lawsuit.

2. Please provide copies of any and all notes, investigative reports, memoranda, correspondence, or statements now in the possession of you or your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business.

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may be submitted as evidence in the Trial of this case.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including, but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by said expert in the formulation of his/her opinion.

6. Copies of any and all policies and procedures for resident care, dietary screening, dietary needs, speech language pathology screening, speech language pathology evaluation, nursing care, evaluation, hydration, nutrition and feeding, contacting physicians, transfers to hospitals, CNA policies and procedures, LPN policies and procedures, administrative protocol, speech therapy, registered dieticians, feeding residents/supervision of residents while eating, dietary assessments, assessment policies and procedures, intake and output policies and procedures, charting policies and procedures, skin breakdown prevention and turning and repositioning policies and procedures, care plan policies and procedures, change of condition policies and procedures, choking and resuscitation, contacting emergency medical personnel and/or

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911, facility crash carts, and all other policies and procedures maintained by the Defendant regarding staffing, funding, and resident care, as well as all documentation detailing the facility's processes and procedures to care for residents with any level of cognitive impairment, including, but not limited to, depression, anxiety and Alzheimer's disease. This request includes, but is not limited to, policies and procedures concerning nutrition, pain management, and assistance with activities of daily living.

7. Copies of the table of contents/index for the policies and procedures at the facility.

8. Copies of any and all policies and procedures for charting or otherwise recording resident condition, treatment, and care. If it is the position of this Defendant that they employ "charting by exception," also provide copies of the defined parameters or "within normal parameters" definitions for the facility, floor, wing, and/or nursing department which included the room where Earline Cooley was a resident and which were in effect at the time Earline Cooley was a resident at the facility and which are in effect at the present time. If there has been a change to these definitions or parameters, please state the reason for such change.

9. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

10. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

11. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

12. All contracts or documents regarding the relationship between this Defendant and the Medical Director of the facility, for the present and at the time of Earline Cooley's residency.

13. Color copies of any and all administrative file documents, records and billing records for Earline Cooley.

14. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

15. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of

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Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

16. Copies of the facility's application for licensure and all exhibits related thereto.

17. Copies of all documents submitted to the S.C. Department of Health and Environmental Control as evidence that the owners or Co-Defendants of the facility were able and suitable to be licensed to operate the facility.

18. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

19. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

20. Complete copy of all performance evaluations for the Director/Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

21. Copies of all timecards, schedules, punch detail reports, Payroll Based Journal reports and assignments for all nursing personnel (RN, LPN, Nurse Aides/Restorative Aides/Restorative Nurse Aides, Orderlies, Medication Aides, including relief pool personnel) who worked at Defendant's facility for the entire time Earline Cooley was a resident at said facility.

22. Copies of all work schedules, employee sign in sheets and time sheets showing the identity, number (quantity) and classification of any nursing personnel who worked at Defendant's facility for the entire time that Earline Cooley was a resident at said facility.

23. Copies of all documents showing the actual number of hours available of nursing personnel, time on a per shift basis or the actual number of nurse assistants, orderlies, medication aides, and nurses on duty at any time during Earline Cooley's stay as a resident at Defendant's facility.

24. Copies of any and all documentation and contracts for any personnel supplied by any agent or contractor where the employee or contractor was being utilized to perform direct care services as a nurse, nurse aide, therapist or other direct care provider, or consultation, including, but not limited to, all documentation evidencing when and where such person worked and the total hours and dates of such work, payroll records, related to such work and any documents supporting any payment made directly to such personnel, agency, or contractor at the time Earline Cooley was a resident at Defendant's facility.

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25. Copies of any in-service training/reports, including sign-in sheets, tenant's rosters, handouts, videos, and all other training documentation provided to any and all of Earline Cooley's caregivers during the time that Earline Cooley was a resident at Defendant's facility and during the two (2) years preceding Earline Cooley's residence at Defendant's facility.

26. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

27. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

28. Any and all reports, letters, emails or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant's budget matters or PPD matters for the facility

29. Copies of the floor plan and daily room assignment sheets.

30. All material in any format or media (documents, video, CD, etc.) concerning accommodations offered at the facility, including but not limited to all sales, marketing, and advertising materials for the time Earline Cooley was a resident at Defendant's facility.

31. A complete copy of all compliance reviews conducted by the South Carolina Department of Health and Environmental Control or its authorized designee, including, but not limited to all associated documents, written rebuttals, debriefing decisions, settlements, suspensions, revocations or appeals, and plans of correction for the facility.

32. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

33. Copies of any and all policies and procedures this Defendant has for hiring qualified staff and supervision of same, as well as for maintaining a sufficient number of staff to meet the residents' needs.

34. All agreement, including but not limited to, contracts, service agreements, lines of credit agreements, etc, between. this Defendant and any Co-Defendants.

35. Copies of redacted state and federal tax returns for the years 2018 and 2019.

36. Copies of personnel files for all former employees who provided care to Earline Cooley during his residency at Defendant's facility, including personnel files for all department heads during the time of Earline Cooley's residency and the current department heads.

37. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

38. Color copy of the chart.

39. If you withheld any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
Plaintiff,	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT DOMINION SENIOR LIVING, LLC**
v.	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
Defendant(s).	)	

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

COMES NOW, the Plaintiff, by and through his/her undersigned attorney, and requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, within forty-five (45) days after the service hereof, the Defendant(s) above-named, to produce and permit counsel for the Plaintiff(s) to inspect and copy the documents requested herein at the offices of Christian & Christian, 1007 E. Washington Street, Post Office Box 332, Greenville, South Carolina 29602.

Instructions and Definitions

I. **Introduction**—the obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore embody a fair and just result.

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A. According to the express language of the rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery to be accomplished voluntarily; that is, the party should affirmably disclose relevant information without the necessity of Courts ordering compelling disclosure.

B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Request for Discovery should contain a full disclosure of all the information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really do know what information is being sought. The Courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objects in the inquiry, or of the party from whom the Discovery is sought has no real difficulty in understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including design and/or testing activities) either at the request or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information for or on behalf of you.

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E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are unable to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. In the event that you choose to object to a particular request or to part of the request, please note that the rules require:

1. That the reasons for objections shall be stated; and

2. The affirmative responses to the remaining portion of the request to which you do not object.

H. An evasive or incomplete answer may be treated by the Court as failure to answer.

I. Please produce all requested documents and things at the office of the attorneys for the Plaintiff.

J. These requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

K. If you claim that any information is privileged, please state the:

1. Date of document, communication, or other information;

2. Identity of the parties to the communication;

3. Identity of the other person who participated in, overheard, or became privy to the communication;

4. Subject matter of the communication;

5. Capacity in which each communicant was acting; and

6. Any citations of statute, case law, or other authority in support of your privileged claim.

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the

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objectives of the Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct, or legally binding on the Defendant.

A. Communication—The act of or an effort to transmit information or receive information whether that information is written, oral, or electronic.

B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type, or character) and any method or medium by people or by computers. If the documents/information is on a disc please specify the software (including the exact version and release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including the memory size (and graphics control board in the event the information contained requires graphics). Finally, give the exact name, release, and version of the operating system used on the hardware.

    1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

        a. Any material which was used or referred to in the preparations of the document;

        b. All attachments to the document;

        c. Any document referred to in the subject document; and

        d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify communication—A request to identify communication shall require the following information:

    1. The name, last known address, and job title of:

        a. Each person who was present at the time of the communication;

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b. Each person who participated in the communication;

c. Each person who could have heard the communication or might have acquired knowledge of the communication; and

d. The employer of each person covered in the above.

2. The date of the communication;

3. Whether all or a portion of the communication was reduced to writing; and

4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

1. The incident—The event described in the Complaint which caused Plaintiff's damages.

2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency, or affiliate of legal entity. The term includes any successor or predecessor of legal entity.

3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.

4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

a. This includes any test to which the Defendant referred to in the preparation for any communication regarding the treatment, diagnostic or other evaluations of any of the Plaintiffs.

b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendants—The main party, its attorney, agents, employees, representatives, investigators, or others who have obtained information on behalf of the party. Where the

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Defendant is a legal entity, the term embraces the meaning of the legal entity.

E. Facility – Facility means the operating Assisted Living Facility known as Dominion Clemson.

REQUESTS

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of Earline Cooley which is the subject matter of this lawsuit.

2. Please provide copies of any and all notes, investigative reports, memoranda, correspondence, or statements now in the possession of you or your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business.

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may be submitted as evidence in the Trial of this case.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including, but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by said expert in the formulation of his/her opinion.

6. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

7. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

8. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

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9. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

10. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

11. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

12. Copies of any and all budgets and hiring plans associated with any Master Lease Agreements identified in the preceding Request.

13. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

14. Complete copy of all performance evaluations for the Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

15. Copies of the Corporate Philosophy Statement and Mission Statement at the time Earline Cooley was a resident at Defendant's facility.

16. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

17. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

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18. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

19. All agreement, including but not limited to, contracts, service agreements, lines of credit agreements, etc, between. this Defendant and any Co-Defendants.

20. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

21. Copies of federal and state tax returns filed for years 2019 and 2020.

22. If you withheld any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-20, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT DOMINION CLEMSON, II, LLC**
	)	
v.	)	
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

COMES NOW, the Plaintiff, by and through his/her undersigned attorney, and requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, within forty-five (45) days after the service hereof, the Defendant(s) above-named, to produce and permit counsel for the Plaintiff(s) to inspect and copy the documents requested herein at the offices of Christian & Christian, 1007 E. Washington Street, Post Office Box 332, Greenville, South Carolina 29602.

Instructions and Definitions

I. **Introduction**—the obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore embody a fair and just result.

A. According to the express language of the rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery to be accomplished voluntarily; that is, the party should affirmably disclose relevant information without the necessity of Courts ordering compelling disclosure.

B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Request for Discovery should contain a full disclosure of all the information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really do know what information is being sought. The Courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objects in the inquiry, or of the party from whom the Discovery is sought has no real difficulty in understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including design and/or testing activities) either at the request or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information for or on behalf of you.

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E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are unable to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. In the event that you choose to object to a particular request or to part of the request, please note that the rules require:

1. That the reasons for objections shall be stated; and

2. The affirmative responses to the remaining portion of the request to which you do not object.

H. An evasive or incomplete answer may be treated by the Court as failure to answer.

I. Please produce all requested documents and things at the office of the attorneys for the Plaintiff.

J. These requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

K. If you claim that any information is privileged, please state the:

1. Date of document, communication, or other information;

2. Identity of the parties to the communication;

3. Identity of the other person who participated in, overheard, or became privy to the communication;

4. Subject matter of the communication;

5. Capacity in which each communicant was acting; and

6. Any citations of statute, case law, or other authority in support of your privileged claim.

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the

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objectives of the Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct, or legally binding on the Defendant.

A. Communication—The act of or an effort to transmit information or receive information whether that information is written, oral, or electronic.

B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type, or character) and any method or medium by people or by computers. If the documents/information is on a disc please specify the software (including the exact version and release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including the memory size (and graphics control board in the event the information contained requires graphics). Finally, give the exact name, release, and version of the operating system used on the hardware.

    1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

        a. Any material which was used or referred to in the preparations of the document;

        b. All attachments to the document;

        c. Any document referred to in the subject document; and

        d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify communication—A request to identify communication shall require the following information:

    1. The name, last known address, and job title of:

        a. Each person who was present at the time of the communication;

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b. Each person who participated in the communication;

c. Each person who could have heard the communication or might have acquired knowledge of the communication; and

d. The employer of each person covered in the above.

2. The date of the communication;

3. Whether all or a portion of the communication was reduced to writing; and

4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

1. The incident—The event described in the Complaint which caused Plaintiff's damages.

2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency, or affiliate of legal entity. The term includes any successor or predecessor of legal entity.

3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.

4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

a. This includes any test to which the Defendant referred to in the preparation for any communication regarding the treatment, diagnostic or other evaluations of any of the Plaintiffs.

b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendants—The main party, its attorney, agents, employees, representatives, investigators, or others who have obtained information on behalf of the party. Where the

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Defendant is a legal entity, the term embraces the meaning of the legal entity.

E. Facility – Facility means the operating Assisted Living Facility known as Dominion Clemson.

REQUESTS

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of Earline Cooley which is the subject matter of this lawsuit.

2. Please provide copies of any and all notes, investigative reports, memoranda, correspondence, or statements now in the possession of you or your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business.

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may be submitted as evidence in the Trial of this case.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including, but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by said expert in the formulation of his/her opinion.

6. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

7. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

8. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

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9. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

10. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

11. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

12. Copies of any and all budgets and hiring plans associated with any Master Lease Agreements identified in the preceding Request.

13. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

14. Complete copy of all performance evaluations for the Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

15. Copies of the Corporate Philosophy Statement and Mission Statement at the time Earline Cooley was a resident at Defendant's facility.

16. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

17. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

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18. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

19. All agreement, including but not limited to, contracts, service agreements, lines of credit agreements, etc, between. this Defendant and any Co-Defendants.

20. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

21. Copies of federal and state tax returns filed for years 2019 and 2020.

22. If you withheld any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7303

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant(s).	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT DOMINION GROUP, LLC**

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

COMES NOW, the Plaintiff, by and through his/her undersigned attorney, and requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, within forty-five (45) days after the service hereof, the Defendant(s) above-named, to produce and permit counsel for the Plaintiff(s) to inspect and copy the documents requested herein at the offices of Christian & Christian, 1007 E. Washington Street, Post Office Box 332, Greenville, South Carolina 29602.

Instructions and Definitions

I. **Introduction**—the obvious and overall purpose of the Discovery Rules is to affirmably accomplish a disclosure of all relevant information so that the ultimate resolution of disputed issues may be based on a full and accurate understanding of the true facts and therefore embody a fair and just result.

A. According to the express language of the rules, Discovery should be accomplished by and between the parties; that is, without the necessity of the Court's intervention. As a necessary and corollary to this proposition, the rules require that Discovery to be accomplished voluntarily; that is, the party should affirmably disclose relevant information without the necessity of Courts ordering compelling disclosure.

B. It is the clear intent of the Rules, expressed by the language of the Rules and in many cases construing them, that responses to the Request for Discovery should contain a full disclosure of all the information relevant to the issues. Parties should not resort to a hyper-technical interpretation of the language contained in the Requests for Discovery when, in fact, they really do know what information is being sought. The Courts do not require "exactness of definition" in Requests for Discovery, so long as the language of the request gives a reasonably clear indication of the objects in the inquiry, or of the party from whom the Discovery is sought has no real difficulty in understanding what is being sought.

C. Please note that Discovery extends to all relevant and non-privileged information which might reasonably lead to the Discovery of admissible evidence.

D. Please furnish all information or tangible items which are either in your possession or which are accessible to you. In responding to the Request for Discovery, you may have a legal duty to obtain documents and information which are physically in the possession of some person or legal entity. This includes information or things in the possession, custody, or control of:

1. Your "employee";
2. Your "corporate departments or division";
3. Parent or subsidiary corporations of your corporation;
4. Corporation affiliates of your corporation;
5. Other persons or legal entities which perform such services or research and development (including design and/or testing activities) either at the request or under a contract with you; and
6. Other representatives of you who have possession of or may obtain information for or on behalf of you.

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E. That after you have made a reasonable inquiry to obtain the necessary information, you are still unable to make a complete response, please respond to the fullest extent possible. Please specify the particular part of the request to which you are unable to respond.

F. Whenever your response includes a document, please furnish clear and legible copies. Please include a copy of the entire document; that is, all of the pages and all the attachments thereto.

G. In the event that you choose to object to a particular request or to part of the request, please note that the rules require:

1. That the reasons for objections shall be stated; and

2. The affirmative responses to the remaining portion of the request to which you do not object.

H. An evasive or incomplete answer may be treated by the Court as failure to answer.

I. Please produce all requested documents and things at the office of the attorneys for the Plaintiff.

J. These requests are deemed continuing after your initial response and until Trial. The party's duty to formally supplement this response is set forth in the Rules.

K. If you claim that any information is privileged, please state the:

1. Date of document, communication, or other information;

2. Identity of the parties to the communication;

3. Identity of the other person who participated in, overheard, or became privy to the communication;

4. Subject matter of the communication;

5. Capacity in which each communicant was acting; and

6. Any citations of statute, case law, or other authority in support of your privileged claim.

II. **Definitions**—The Plaintiff provides the following definitions for the purpose of clarifying the meaning of various words and phrases contained in the attached Request for Discovery in order to help the Defendant understand the

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objectives of the Plaintiff's Discovery efforts and to locate and furnish the relevant information and materials. It is, therefore, expressly agreed by the Plaintiff(s) an affirmative response on the part of the Defendant will not be construed as admission that any definition contained herein is either factual, correct, or legally binding on the Defendant.

A. Communication—The act of or an effort to transmit information or receive information whether that information is written, oral, or electronic.

B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type, or character) and any method or medium by people or by computers. If the documents/information is on a disc please specify the software (including the exact version and release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including the memory size (and graphics control board in the event the information contained requires graphics). Finally, give the exact name, release, and version of the operating system used on the hardware.

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        a. Any material which was used or referred to in the preparations of the document;

        b. All attachments to the document;

        c. Any document referred to in the subject document; and

        d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify communication—A request to identify communication shall require the following information:

    1. The name, last known address, and job title of:

        a. Each person who was present at the time of the communication;

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b. Each person who participated in the communication;

c. Each person who could have heard the communication or might have acquired knowledge of the communication; and

d. The employer of each person covered in the above.

2. The date of the communication;

3. Whether all or a portion of the communication was reduced to writing; and

4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

1. The incident—The event described in the Complaint which caused Plaintiff's damages.

2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency, or affiliate of legal entity. The term includes any successor or predecessor of legal entity.

3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.

4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

a. This includes any test to which the Defendant referred to in the preparation for any communication regarding the treatment, diagnostic or other evaluations of any of the Plaintiffs.

b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendants—The main party, its attorney, agents, employees, representatives, investigators, or others who have obtained information on behalf of the party. Where the

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Defendant is a legal entity, the term embraces the meaning of the legal entity.

E. Facility – Facility means the operating Assisted Living Facility known as Dominion Clemson.

REQUESTS

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of Earline Cooley which is the subject matter of this lawsuit.

2. Please provide copies of any and all notes, investigative reports, memoranda, correspondence, or statements now in the possession of you or your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business.

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may be submitted as evidence in the Trial of this case.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including, but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by said expert in the formulation of his/her opinion.

6. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

7. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

8. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

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9. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

10. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

11. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

12. Copies of any and all budgets and hiring plans associated with any Master Lease Agreements identified in the preceding Request.

13. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

14. Complete copy of all performance evaluations for the Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

15. Copies of the Corporate Philosophy Statement and Mission Statement at the time Earline Cooley was a resident at Defendant's facility.

16. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

17. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

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18. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

19. All agreement, including but not limited to, contracts, service agreements, lines of credit agreements, etc, between. this Defendant and any Co-Defendants.

20. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

21. Copies of federal and state tax returns filed for years 2019 and 2020.

22. If you withheld any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant(s).	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT DOMINION MANAGEMENT GROUP, LLC**

TO: THE DEFENDANT AND THE DEFENDANT'S ATTORNEY:

COMES NOW, the Plaintiff, by and through his/her undersigned attorney, and requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, within forty-five (45) days after the service hereof, the Defendant(s) above-named, to produce and permit counsel for the Plaintiff(s) to inspect and copy the documents requested herein at the offices of Christian & Christian, 1007 E. Washington Street, Post Office Box 332, Greenville, South Carolina 29602.

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I. Please produce all requested documents and things at the office of the attorneys for the Plaintiff.

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4. Subject matter of the communication;

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A. Communication—The act of or an effort to transmit information or receive information whether that information is written, oral, or electronic.

B. Documents—Any medium by which information is recorded, stored, communicated or utilized, including papers (of any kind, type, or character) and any method or medium by people or by computers. If the documents/information is on a disc please specify the software (including the exact version and release) used to create the information such as password or user supplied files that are required or desirable in order to examine and use the information contained on the disc. Specify the exact configuration of the hardware in which the information was created, including the memory size (and graphics control board in the event the information contained requires graphics). Finally, give the exact name, release, and version of the operating system used on the hardware.

    1. A Request for Production of a document should be deemed to include a request for any and all photographs, studies, reports, memos, inter-office communications, or other written materials which relate to the document or to the subject matter of the document. This specifically includes:

        a. Any material which was used or referred to in the preparations of the document;

        b. All attachments to the document;

        c. Any document referred to in the subject document; and

        d. All additions, deletions, substitutions, amendments, or changes to the original of the document.

C. Identify communication—A request to identify communication shall require the following information:

    1. The name, last known address, and job title of:

        a. Each person who was present at the time of the communication;

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b. Each person who participated in the communication;

c. Each person who could have heard the communication or might have acquired knowledge of the communication; and

d. The employer of each person covered in the above.

2. The date of the communication;

3. Whether all or a portion of the communication was reduced to writing; and

4. The detailed substance of the communication.

D. Identify a Document—A request to identify a document shall require the following information:

1. The incident—The event described in the Complaint which caused Plaintiff's damages.

2. Legal Entity—Any entity other than natural persons. This includes partnerships, firms, proprietorships, groups, incorporated and/or unincorporated associations, public and private corporations, political corporations or subdivisions, and any other type of business or public organization. The term also includes any department, division, office, agency, or affiliate of legal entity. The term includes any successor or predecessor of legal entity.

3. Plaintiffs—Include all parties represented by Christian & Christian Attorneys.

4. Test, Testing—Any testing by the Defendant or other person or legal entity to which the Defendant referred.

a. This includes any test to which the Defendant referred to in the preparation for any communication regarding the treatment, diagnostic or other evaluations of any of the Plaintiffs.

b. Any test performed by or on behalf of the Defendant in the investigation.

5. You, Your or the Defendants—The main party, its attorney, agents, employees, representatives, investigators, or others who have obtained information on behalf of the party. Where the

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Defendant is a legal entity, the term embraces the meaning of the legal entity.

E. Facility – Facility means the operating Assisted Living Facility known as Dominion Clemson.

REQUESTS

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of Earline Cooley which is the subject matter of this lawsuit.

2. Please provide copies of any and all notes, investigative reports, memoranda, correspondence, or statements now in the possession of you or your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business.

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may be submitted as evidence in the Trial of this case.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including, but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by said expert in the formulation of his/her opinion.

6. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

7. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

8. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

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9. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

10. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

11. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

12. Copies of any and all budgets and hiring plans associated with any Master Lease Agreements identified in the preceding Request.

13. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

14. Complete copy of all performance evaluations for the Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

15. Copies of the Corporate Philosophy Statement and Mission Statement at the time Earline Cooley was a resident at Defendant's facility.

16. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

17. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

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18. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

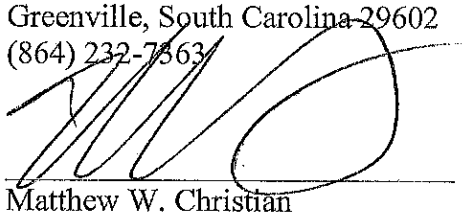
19. All agreement, including but not limited to, contracts, service agreements, lines of credit agreements, etc, between. this Defendant and any Co-Defendants.

20. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

21. Copies of federal and state tax returns filed for years 2019 and 2020.

22. If you withheld any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 10-18, 2021

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	)	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **DEFENDANT DOMINION CLEMSON, LLC D/B/A DOMINION SENIOR LIVING AT PATRICK SQUARE'S ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES**

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") answers the Plaintiffs' First Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: **Dominion Clemson identifies the following:**

A. Deonda Cooley Weldon
Address unknown to Dominion Clemson.

Ms. Weldon is the named Plaintiff and Personal Representative in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion

Clemson is not aware of any written or recorded statements of this witness.

B. Debra Cooley Galloway
Address unknown to Dominion Clemson.

Ms. Galloway is the daughter of the decedent in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion Clemson is not aware of any written or recorded statements of this witness.

C. Phyllis Cooley Elliott
Address unknown to Dominion Clemson.

Ms. Elliott is the daughter of the decedent in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion Clemson is not aware of any written or recorded statements of this witness.

D. Lindsey Adams
Assistant Executive Director
Dominion Clemson
100 Pershing Ave
Clemson, SC 29631
Available through the undersigned counsel.

Ms. Adams was the Assistant Executive Director at Dominion Clemson during all times relevant to this matter. She provided care to Ms. Cooley from March 2019-March 2020 at Dominion Clemson. She will testify to the facts and circumstances surrounding the care that she provided. No written or recorded statements have been taken from this witness.

E. Lindsey Daughtery
Executive Director
Dominion Clemson
100 Pershing Ave
Clemson, SC 29631
Available through the undersigned counsel.

Ms. Daughtery was the Executive Director at Dominion Clemson during all times relevant to this matter. She provided care to Ms. Cooley from March 2019-March 2020 at Dominion Clemson. She will testify to the facts and circumstances surrounding the care that she provided. No written or recorded statements have been taken from this witness.

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F. Erica Gillepsie, RN
Krista Turpin, RN
Wellness Director
Dominion Clemson
100 Pershing Ave
Clemson, SC 29631
Available through the undersigned counsel.

The above-named are registered nurses and were the Wellness Directors at Dominion Clemson during all times relevant to this matter. They provided care to Ms. Cooley from March 2019-March 2020 at Dominion Clemson. They will testify to the facts and circumstances surrounding the care that they provided. No written or recorded statements have been taken from these witnesses.

G. William Bedingfield, Jr., MD
Pediatric & Internal Medicine-Patrick Square
101 Chapman Hill Road
Suite 201
Clemson, SC 29631

Dr. Bedingfield is an internal medicine physician and was an employee of Prisma Health at all times relevant to this matter. He is the Medical Director of Dominion Clemson and provided care to Ms. Cooley from March 2019-March 2020 at Dominion Clemson. He will testify to the facts and circumstances surrounding the care that he provided. No written or recorded statements have been taken from this witness.

H. Dawn Ashley, MT
Debra Cannon, MT
Megan Eades, MT
Michelle Smith, MT
Tonya Saylors, MT
Ashley Warren, MT
Chloe Woodmansee, MT
Laura Ziluge, MT
Dominion Clemson
100 Pershing Ave
Clemson, SC 29631
Available through the undersigned counsel.

The above-named individuals are medical technicians and were employees of Dominion Clemson at all times relevant to this matter.

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They provided care to Ms. Cooley from March 2019-March 2020 at Dominion Clemson. They will testify to the facts and circumstances surrounding the care that they provided. No written or recorded statements have been taken from these witnesses.

I. **In addition to the above listed witness, Dominion Clemson reserves the right to call the following at trial:**
   a. **Any individual listed in Ms. Cooley's medical records who is not otherwise listed above;**
   b. **Any expert witness identified by Dominion Clemson to testify at trial in conformity with the South Carolina Rules of Civil Procedure;**
   c. **Any witnesses, including expert witnesses, identified in the discovery responses of any other party to this matter; and**
   d. **Any person identified in any depositions taken in this matter.**

2. Set forth a list of photographs, plats, sketches, diagrams, items, or other prepared documents in possession of the party that relate to the claim or the defenses in the case.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to these objection, Dominion Clemson identifies the following:**

A. **Ms. Cooley's medical records from Dominion Clemson, Bates No. Dominion Clemson 1 – 237;**
B. **Ms. Cooley's bills from Dominion Clemson, Bates No. Dominion - Cooley 1 – 4;**
C. **DHEC Survey Completed September 2019, Bates No. Dominion - Cooley 5 - 10;**
D. **March 26, 2020 DHEC Accident/Incident Report, Bates No. Dominion – Cooley 11 - 16;**
E. **Ms. Cooley's Incident Reports from Dominion Clemson, Bates No. Dominion – Cooley 17 - 27;**
F. **Ms. Cooley's medical records from Pickens County EMS, Bates No. Pickens County EMS 1 – 44;**
G. **Ms. Cooley's Resident Agreement with Dominion Clemson, Bates No. Dominion – Cooley 28 - 63; and**
H. **Dominion Clemson Nursing Manual Policies and Procedures Index, Bates No. Dominion – Cooley 155 - 162.**

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies

involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: **Defendant Dominion Clemson is insured through HealthCap Policy Number HRG-TN01-0065-OC-05 with a general liability per occurrence limit of $2,000,000 and a general aggregate limit of $4,000,000.**

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: **Please see Answer to Interrogatory No. 1.**

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: **Dominion Clemson, LLC is properly identified.**

6. Please state the complete name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

ANSWER: **Dominion Clemson identifies the following:**

A. Joshua T. Thompson, Esq.
Ayla G. Luers Connor, Esq.
Boulier Thompson & Barnes, LLC
P.O. Box 6470
Spartanburg, SC 29304

B. Natalie Cudzilo
Chief Financial Officer
Dominion Senior Living
3834 Sutherland Ave
Knoxville, TN 37919
Available through the undersigned counsel.

C. Chris Pepper

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Campus Director
Dominion Clemson
100 Pershing Ave
Clemson, SC 29631
Available through the undersigned counsel.

7. Without referring to the medical records as your answer, give the name, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to the Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, please see Answer to Interrogatory No. 1.**

8. Identify this Defendant's mailing address and principal place of business address.

ANSWER: **Dominion Clemson, LLC**
100 Pershing Ave
Clemson, SC 29631

9. Identify the officers of this Defendant.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, Dominion Clemson identifies the following officers during Ms. Cooley's residency:**

A. Peter Hall – President;
B. Doug Veazey – VP Operations; and
C. Lindsey Daughtery – Executive Director.

These persons are available through the undersigned counsel.

10. Identify the name and address of every person whom the Defendant expects to call

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as an expert witness at the trial of this case. For each such person, state:

a. The specific area of expertise in which you contend the person identified is competent to testify;

b. Each and every fact which qualifies the person intended as an expert;

c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;

d. Each and every fact upon which the person identified bases each of his or her opinions;

e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;

f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;

g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;

h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and

i. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:

i. The date and place it was made;
ii. The name and address of the person(s) who made it;
iii. The basis of the claim; and
iv. The outcome of the claim.

ANSWER: **Dominion Clemson has not formally retained an expert to testify at the trial of this case at this time. Dominion Clemson reserves the right to name an expert at a later date and in conformity with the South Carolina Rules of Civil Procedure and any scheduling order entered into this case.**

11. Identify any and all policies and procedures maintained by this Defendant for the hiring and supervision of its staff and for the care and treatment of Earline Cooley.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited to the time of Ms. Cooley's residency, Dominion Clemson identifies the following:**

A. Dominion Clemson's Policy and Procedure on Health and Immunization Requirements, Bates No. Dominion – Cooley 64;
B. Dominion Clemson's Written Ergonomics Program, Bates No. Dominion – Cooley 65 - 71;
C. Dominion Senior Living – Staffing Practices, Bates No. Dominion – Cooley 72; and
D. Dominion Clemson's Nursing Manual Policies and Procedures Index, Bates No. Dominion – Cooley 155 – 162.

12. Identify any and all policies and procedures regarding resident care, assessments, evaluation, admission, treatment, and supervision.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited to the time of Ms. Cooley's residency, please see Dominion Clemson's Nursing Manual Policies and Procedures Index, which is produced in Dominion Clemson's Responses to Plaintiff's First Set of Requests for Production to Dominion Clemson.**

13. Identify the person and entity responsible for drafting, developing, updating, reviewing, and implementing the policies and procedures at the time that Earline Cooley was a resident at the facility.

ANSWER: **Dominion Clemson identifies the following individuals during Ms. Cooley's residence:**

E. Jenny Perkins – Wellness Director;
F. Lindsey Daughterty – Executive Director; and
G. Will Otis – VP of Operations.

These persons are available through the undersigned counsel.

14. Identify the policies and procedures used in determining whether or not a resident or patient qualifies as being eligible to be admitted to and remain at your facility, including but not limited to factors and criteria considered for eligibility.

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ANSWER: **Dominion Clemson identifies the following:**

A. South Carolina Department of Health and Environmental Control R.61-84 Standards for Licensing Community Residential Care Facilities, Bates No. Dominion – Cooley 73 - 139; and
B. A blank copy of Dominion Senior Living Physician Evaluation Form, Bates No. Dominion – Cooley 140 – 141.

15. For the time that Earline Cooley was a resident at your facility and at present, identify any and all directors, medical directors, administrators, scheduling coordinators, CNA's, PCT's, Registered Nurses, Licensed Practical Nurses, Speech Therapists, Nurse Practitioners. Dieticians, Physical Therapists, Med Techs, Occupational Therapists, and other resident care staff including, but not limited to, their last known address, telephone number, position, and whether or not they are still an employee of this defendant.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, please see Answer to Interrogatory No. 1 and all providers listed in Ms. Cooley's medical records, which are produced in Dominion Clemson's Responses to Plaintiff's First Set of Requests for Production to Dominion Clemson.**

16. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages suffered by the Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what that person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

ANSWER: **Dominion Clemson makes no such contention at this time.**

17. Identify any and all marketing or advertising for this Defendant in the past five (5) years.

ANSWER: **Dominion Clemson identifies the following:**

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A. Dominion Clemson Marketing Packet, Bates No. Dominion – Cooley 142 - 147; and
B. Dominion Clemson's public Facebook page.

18. Identify any other lawsuits this Defendant has had filed against it for damages that resulted from the actions of the facility within the last seven (7) years, its staff, its agents/employees, for failing to properly treat and care for residents, including, but not limited to, the civil action number, venue, attorneys for all parties, and the disposition of said case.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that records concerning lawsuits are public records and equally accessible to Plaintiff. Subject to this objection, none.**

19. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

ANSWER: **Dominion Clemson identifies the following:**

A. Dominion Senior Living, LLC
3834 Sutherland Ave
Knoxville, TN 37919

As to the nature of the relationship, see answer to Interrogatory No. 20 below.

20. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or polices of the facility. This Interrogatory seeks and includes, but is not limited to, the identity of the following:

a. Any management company having responsibilities for any part of the facility;

b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities

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operations;

c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;

d. Any business entity because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or

e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Senior Living, LLC was the sole entity providing management services to Dominion Clemson, LLC during all times relevant to this matter. Dominion Clemson identifies the below ownership interest in Dominion Clemson, LLC at the time of Ms. Cooley's residence:**

A. Stephen D. Hall – 50% ownership interest;
B. Peter Hall – 25% ownership interest; and
C. Mark D. Taylor – 25% ownership interest.

These persons are available through the undersigned counsel.

21. Identify (by stating the name, address, telephone number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

ANSWER: **Dominion Clemson identifies the following during Ms. Cooley's residence:**

A. Peter Hall – President; and
B. Lindsey Daughterty – Executive Director.

These persons are available through the undersigned counsel.

22. Identify any contracts, service agreements, leases (whether Mast leases or sub-leases), provider agreements, purchase agreements, assignments, and/or management agreements which this Defendant has with any of the Co-Defendants.

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ANSWER: **Dominion Clemson identifies the following:**

A. Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living, Bates No. Dominion – Cooley 148 – 154.

23. Identify whether or not an outside consultant or regional consultant was used for making recommendations for any oversight or direction of the facility at the time that Earline Cooley was a resident, including but not limited to the role of each consultant, the name, address, and telephone number of the consultants, the employer of the consultant, and the consultant's duties and responsibilities.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Clemson identifies the following:**

A. Pharmacy Services
- **a. Blue Ridge Long Term Care Pharmacy**
  Courtney Mabe, PharmD
  Pharmacy Director
  1070 Tunnel Road
  Asheville, NC 28805
  (828) 298-7600

B. Food Service Auditors
- **a. Claxton Dietetic Solutions, LLC**
  713 Westborough Road
  Knoxville, TN 37909
  (865) 748-0449

24. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

ANSWER: **William Bedingfield, Jr., MD**
Pediatric & Internal Medicine-Patrick Square
101 Chapman Hill Road
Suite 201
Clemson, SC 29631

25. Identify all staffing ratios for the time that Earline Cooley was a resident at this Defendant's facility.

ANSWER: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited to the time of Ms. Cooley's residency, please see Dominion Senior Living's Staffing Practices, which are produced in Dominion Clemson's Responses to Plaintiff's First Set of Requests for Production to Dominion Clemson.**

26. State the method by which your nurses and staff chart resident care, conditions, and observations. If you contend you staff chart be exception, state the parameters and guidelines for same.

ANSWER: **At the time of Ms. Cooley's residence, Dominion Clemson documented paper monthly observation notes entitled "Notes of Observation". In addition to the monthly observation notes, medication administration was also recorded.**

27. Identify any and all policies and procedures of the facility regarding maintenance, retention, and destruction of any and all records maintained on residents.

ANSWER: **To be supplemented.**

28. Identify any and all forms of payment for services rendered that are accepted by the facility.

ANSWER: **Dominion Clemson receives payment for services only from private payers and does not receive payment from insurance companies or any other entity.**

29. Identify this Defendant's relationship with each of the Co-Defendants.

ANSWER: **Dominion Clemson has the below relationship with the following Co-Defendants:**

A. Dominion Senior Living, LLC
  i. Dominion Clemson's management company.
B. Dominion Clemson II, LLC
  i. Dominion Clemson II, LLC is an Independent Living community that is adjacent to Dominion Clemson but the only relationship between the entities is common owners.

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C. **Dominion Management Group, LLC**
   i. **Dominion Clemson II, LLC is a market rate apartment management company. The only relationship between the entities is common owners.**

D. **Dominion Group, LLC**
   i. **No relationship other than common owners.**

BOULIER THOMPSON & BARNES, LLC

By: _____

Joshua T. Thompson
Ayla Luers Connor
Post Office Drawer 6470
Spartanburg, SC 29304
(864) 606-9610

Attorneys for Defendants

February 22, 2022

Spartanburg, SC

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	IN THE COURT OF COMMON PLEAS C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **DEFENDANT DOMINION CLEMSON, LLC D/B/A DOMINION SENIOR LIVING AT PATRICK SQUARE'S RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION**

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") responds to Plaintiff's' First Requests for Production as follows:

REQUESTS FOR PRODUCTION

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witness or any other individual pertaining to the medical care or treatment of the decedent which is the subject matter of this lawsuit.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it seeks documentation subject to attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to this objection, please see the documents produced in response to Request No. 3.**

2. Please provide copies of any and all notes, investigative reports, memoranda,

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correspondence, or statements now in the possession of you and your insurance carrier, including all of said items obtained in any manner prior to this lawsuit and all such items prepared in the ordinary course of company business

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it seeks documentation subject to attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions.**

3. Please produce a copy of any and all documents, photographs, reports, statements, etc., identified or relied upon in preparation of the Answers to Interrogatories.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it seeks documentation subject to attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to this objection, Dominion Clemson produces the following:**

A. **Ms. Cooley's medical records from Dominion Clemson, Bates No. Dominion Clemson 1 – 237;**
B. **Ms. Cooley's bills from Dominion Clemson, Bates No. Dominion – Cooley 1 – 4;**
C. **DHEC Survey Completed September 2019, Bates No. Dominion – Cooley 5 - 10;**
D. **March 10, 2020 and March 26, 2020 DHEC Accident/Incident Reports, Bates No. Dominion – Cooley 11 - 16;**
E. **Ms. Cooley's Incident Reports from Dominion Clemson, Bates No. Dominion – Cooley 17 - 27;**
F. **Ms. Cooley's medical records from Pickens County EMS, Bates Nos. Pickens County EMS 1 – 44;**
G. **Ms. Cooley's Resident Agreement with Dominion Clemson, Bates No. Dominion – Cooley 28 - 63;**
H. **Dominion Clemson's Policy and Procedure on Health and Immunization Requirements, Bates No. Dominion – Cooley 64;**
I. **Dominion Clemson's Written Ergonomics Program, Bates No. Dominion – Cooley 65 - 71;**
J. **Dominion Senior Living – Staffing Practices, Bates No. Dominion – Cooley 72;**
K. **South Carolina Department of Health and Environmental Control R.61-84 Standards for Licensing Community Residential Care Facilities, Bates No. Dominion – Cooley 73 - 139;**
L. **A blank copy of Dominion Senior Living Physician Evaluation Form, Bates No. Dominion – Cooley 140 - 141;**

M. Dominion Clemson's Marketing Packet, Bates No. Dominion – Cooley 142 - 147;

N. Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living, Bates No. Dominion – Cooley 148 - 154; and

O. Dominion Clemson Nursing Manual Policies and Procedures Index, Bates No. Dominion – Cooley 155 - 162.

4. Produce a copy of every item, document, photograph, diagram, or material that supports the position taken by the Plaintiff or this Defendant, including any which may by submitted as evidence in the trial of this case.

RESPONSE: Dominion Clemson has not yet determined what exhibits it will offer as evidence at trial. Dominion Clemson reserves the right to utilize any documents provided or produced by the parties to this case an all documents obtained pursuant to authorization, subpoena, or other legal forms of request and will make all proposed trial exhibits available for inspection within a reasonable time prior to trial in this matter.

5. Produce a copy of the current Curriculum Vitae of each and every expert this Defendant intends to call or list as a witness to testify regarding standards of care, proximate cause, damages, corporate structures, business management, or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by dais expert in the formulation of his/her opinion.

RESPONSE: Dominion Clemson has not formally retained an expert to testify at the trial of this case at this time. Dominion Clemson reserves the right to name an expert at a later date and in conformity with the South Carolina Rules of Civil Procedure and any scheduling order entered in this case.

6. Copies of any and all policies and procedures for resident care, dietary screening, dietary needs, speech language pathology screening, speech language pathology evaluation, nursing care, evaluation, hydration, nutrition and feeding, contacting physicians, transfers to

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hospitals, CNA policies and procedures, LPN policies and procedures, administrative protocol, speech therapy, registered dieticians, feeding residents/supervision of residents while eating, dietary assessments, assessment policies and procedures, intake and output policies and procedures, charting policies and procedures, skin breakdown prevention and turning and repositioning policies and procedures, care plan policies and procedures, change of condition policies and procedures, choking and resuscitation, contacting emergency medical personnel and/or 911, facility crash carts, and all other policies and procedures maintained by the Defendant regarding staffing, funding, and resident care, as well as all documentation detailing the facility's processes and procedures to care for residents with any level of cognitive impairment, including, but not limited to, depression, anxiety and Alzheimer's disease. This request includes, but is not limited to, policies and procedures concerning nutrition, pain management, and assistance with activities of daily living.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited in time to Ms. Cooley's residency, see Dominion Clemson's Nursing Manual Policies and Procedures Index produced in response to Request No. 3. If Plaintiff will identify a narrowly tailored list of relevant policies that she wishes to obtain from Dominion Clemson's policy and procedure index, Dominion Clemson will endeavor to produce the same.**

7. Copies of the table of contents/index for the policies and procedures at the facility.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited in time to Ms. Cooley's residency, see Dominion Clemson's Nursing Manual Policies and Procedures Index produced in response to Request No. 3.**

8. Copies of any and all policies and procedures for charting or otherwise recording resident condition, treatment, and care. If it is the position of this Defendant that they employ "charting by expenses," also provide copies of the defined parameters or "within normal parameters" definitions for the facility, floor, wing, and/or nursing department which included the

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room where Earline Cooley was a resident at the facility, and which are in effect at the present time. If there has been a change to these definitions or parameters, please state the reason for such change.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited in time to Ms. Cooley's residency, see Dominion Clemson's Nursing Manual Policies and Procedures Index produced in response to Request No. 3. If Plaintiff will identify a narrowly tailored list of relevant policies that she wishes to obtain from Dominion Clemson's policy and procedure index, Dominion Clemson will endeavor to produce the same.**

9. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time periods Earline Cooley's residency.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Dominion Clemson also objects to this request to the extent that it seeks information subject to the attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Dominion Clemson further objects to this request on the grounds that it seeks individually identifiable patient health information of residents other than Ms. Cooley in violation of HIPAA and similar provisions of law. Subject to these objections and limited to Ms. Cooley, please see the DHEC reports and incident reports produced in response to Request No. 3.**

10. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Dominion Clemson also objects to this request on the grounds that this request seeks proprietary business information that is not relevant to this matter.**

11. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

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RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection and limited to the time of Ms. Cooley's residency, please see the Management Agreement produced in response to Request No. 3.**

12. All contracts or documents regarding the relationship between this Defendant and the Medical Director of the facility, for the present and at the time of Earline Cooley's residency.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Clemson identifies the Facilities Use Agreement, which is confidential pursuant to the terms of the Agreement.**

13. Color copies of any and all administrative file documents, records, and billing records for Earline Cooley.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Dominion Clemson also objects to this request to the extent that it seeks information subject to the attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to these objections, please see response to Request No. 3.**

14. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Clemson produces the following:**

- **A. Facility Services Agreement between 360care and Dominion Clemson, Bates No. Dominion – Cooley 163 - 170; and**
- **B. Lease Agreement between Fox Therapy and Dominion Clemson, Bates No. Dominion – Cooley 171 - 178.**

15. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and

bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, to be supplemented.**

16. Copies of the facility's application for licensure and all exhibits related thereto.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, which is limited in time relevant to Ms. Cooley's residence, to be supplemented.**

17. Copies of all documents submitted to the S.C. Department of Health and Environmental Control as evidence that the owners or Co-Defendants of the facility were able and suitable to be licensed to operate the facility.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, which is limited in time relevant to Ms. Cooley's residence, to be supplemented.**

18. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

RESPONSE: **None. Dominion Clemson owns the facility.**

19. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Dominion Clemson also objects to this request on the grounds that this request seeks proprietary business information that is not relevant to this matter.**

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20. Complete copy of all performance evaluations for the Director/Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

RESPONSE: To be supplemented.

21. Copies of all timecards, schedules, punch detail reports, Payroll based Journal reports and assignments for all nursing personnel (Rn, LPN, Nurse aides/Restorative Aides/Restorative Nurse Aides, Orderlies, Medication Aides, including relief pool personnel) who worked at Defendant's facility for the entire time Earline Cooley was a resident at said facility.

RESPONSE: Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence.

22. Copies of all work schedules, employee sign in sheets and time sheets showing the identity, number (quantity) and classification of any nursing personnel who worked at Defendant's facility for the entire time that Earline Cooley was a resident at said facility.

RESPONSE: Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence.

23. Copies of all documents showing the actual number of hours available of nursing personnel, time on a per shift basis or the actual number of nurse assistants, orderlies, medication aides, and nurses on duty at any time during Earline Cooley's stay as a resident at Defendant's facility.

RESPONSE: Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence.

24. Copies of any and all documentation and contracts for any personnel supplied by any agent or contractor where the employee or contractor was being utilized to perform direct care

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services as a nurse, nurse aide, therapist or other direct care provider, or consultation, including, but not limited to, all documentation evidencing when and where such person worked and the total hours and dates of such work, payroll records, related to such work and any documents supporting any payment made directly to such personnel, agency, or contractor at the time Earline Cooley was a resident at Defendant's facility.

RESPONSE: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Clemson identifies the Blue Ridge Pharmacy Pharmaceutical Services Contract, which is confidential pursuant to the terms of the Agreement. Dominion Clemson produces the following, which are also produced in Response to Request No. 14:**

C. Facility Services Agreement between 360care and Dominion Clemson, Bates No. Dominion – Cooley 163 - 170; and
D. Lease Agreement between Fox Therapy and Dominion Clemson, Bates No. Dominion – Cooley 171 - 178.

25. Copies of any in-service training/reports, including sign-in sheets, tenant's rosters, handouts, videos, and all other training documentation provided to any and all of Earline Cooley's caregivers during the time that Earline Cooley was a resident at Defendant's facility and during the two (2) years preceding Earline Cooley's residence at Defendant's facility.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence.**

26. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;
b. Listing of all DBA's of Defendant and its subsidiaries;
c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;
d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is**

overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection and limited to the time of Ms. Cooley's residency, to be supplemented.

27. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this Defendant and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, to be supplemented.**

28. Any and all reports, letters, emails, or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant's budget matters or PPD matters for the facility

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Dominion Clemson also objects to this request on the grounds that this request seeks proprietary business information that is not relevant to this matter.**

29. Copies of the floor plan and daily room assignment sheets.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome. Subject to this objection, Dominion Clemson produces the following:**

A. Dominion Clemson Floor Plan, Bates No. Dominion – Cooley 179.

30. All material in any format or media (documents, video, CD, etc.) concerning accommodations offered at the facility, including but not limited to all sales, marketing, and advertising materials for the time Earline Cooley was a resident at Defendant's facility.

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RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome. Subject to this objection, please see Response to Request No. 3, which produces Dominion Clemson's marketing packet.**

31. A complete copy of all compliance reviews conducted by the South Carolina Department of Health and Environmental Control or its authorized designee, including, but not limited to all associated documents, written rebuttals, debriefing decisions, settlements, suspensions, revocations or appeals, and plans of correction for the facility.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Subject to this objection, please see response to Request No. 3.**

32. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at Defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence.**

33. Copies of any and all policies and procedures this Defendant has for hiring qualified staff and supervision of same, as well as for maintaining a sufficient number of staff to meet the residents' needs.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, please see Dominion Clemson's Nursing Manual Policies and Procedures Index, which is produced in response to Request No. 3.**

34. All agreements, including but not limited to, contracts, service agreements, lines of credit agreements, etc., between this Defendant and any Co-Defendants.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, please see Facility Management Agreement between Dominion Clemson, LLC and**

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Dominion Management Group, LLC d/b/a Dominion Senior Living, which is produced in response to Request No. 3.

35. Copies of redacted state and federal tax returns for the years 2018 and 2019.

RESPONSE: **Objection. Dominion Clemson objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Dominion Clemson also objects to this request on the grounds that this request seeks proprietary business information that is not relevant to this matter.**

36. Copies of personnel files for all former employees who provided care to Earline Cooley during his residency at Defendant's facility, including personnel files for all department heads during the time of Earline Cooley's residency and the current department heads.

RESPONSE: **Objection. Dominion Clemson objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome.**

37. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

RESPONSE: **Please see Pickens County EMS records, which are produced in Response to Request No. 3.**

38. Color copy of the chart.

RESPONSE: **Please see Ms. Cooley's medical records from Dominion Clemson, Bates No. Dominion Clemson 1 – 237, which was produced in Response to Request No. 3.**

39. If you withheld any documents, provide a privilege log, as required, and described in Rule 26(b)(5)(A) SCRCP.

RESPONSE: **In addition to routine attorney-client correspondence, work product, and file notes created by Joshua T. Thompson, Esq. and Ayla G. Luers Connor, Esq., none at this time.**

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[*Signature block on next page*]

BOULIER THOMPSON & BARNES, LLC

By: _____

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Ayla G. Luers Connor
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(864) 606-9610

Attorneys for Defendants

February 22 2022

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC Defendants.	)	**CERTIFICATE OF SERVICE** **C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128**

I, the undersigned paralegal in the Law Offices of Boulier Thompson & Barnes, LLC., attorneys for Defendants, do hereby certify that I have caused a copy of the hereinbelow listed pleadings to be mailed to all parties in this matter on the 22 day of February 2022, as follows:

PLEADINGS: 1) Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square's Answers to Plaintiff's First Interrogatories

2) Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square's Responses to Plaintiff's First Requests for Production

SERVED: Matthew W. Christian, Esq.
Christian & Christian
P.O. Box 332
Greenville, South Carolina 29602

By: _____
Jenna Bynum

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **DEFENDANT DOMINION SENIOR LIVING, LLC'S ANSWERS PLAINTIFF'S FIRST INTERROGATORIES**

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

Defendant Dominion Senior Living, LLC ("Dominion Senior Living") answers the Plaintiffs' First Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: **Dominion Senior Living identifies the following:**

A. Deonda Cooley Weldon
Address unknown to Dominion Senior Living.

Ms. Weldon is the named Plaintiff and Personal Representative in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion

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Senior Living is not aware of any written or recorded statements of this witness.

B. Debra Cooley Galloway
Address unknown to Dominion Senior Living.

Ms. Galloway is the daughter of the decedent in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion Senior Living is not aware of any written or recorded statements of this witness.

C. Phyllis Cooley Elliott
Address unknown to Dominion Senior Living.

Ms. Elliott is the daughter of the decedent in this matter. It is expected that she will testify to her knowledge of the facts and circumstances set forth in her Complaint. Dominion Senior Living is not aware of any written or recorded statements of this witness.

D. In addition to the above listed witnesses, Dominion Senior Living reserves the right to call the following at trial:

a. Any individual listed in Ms. Cooley's medical records who is not otherwise listed above;
b. Any expert witness identified by Dominion Senior Living to testify at trial in conformity with the South Carolina Rules of Civil Procedure;
c. Any witnesses, including expert witnesses, identified in the discovery responses of any other party to this matter; and
d. Any person identified in any depositions taken in this matter.

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

ANSWER: **Objection. Dominion Senior Living objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to this objection, Dominion Senior Living identifies the following:**

A. DHEC Survey Completed September 2019, Bates No. Dominion Senior Living Cooley 1 – 6;
B. March 26, 2020 DHEC Accident/Incident Report, Bates No. Dominion Senior Living Cooley 7 – 12; and
C. Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior

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Living, Bates No. Dominion Senior Living Cooley 13 - 19.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number of numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: **Defendant Dominion Senior Living is insured through HealthCap Policy Number HRG-TN01-0065-OC-05 with a general liability per occurrence limit of $2,000,000.00 and a general aggregate limit of $4,000,000.00.**

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: **Please see Answer to Interrogatory No. 1.**

5. State whether the defendant has been properly identified, and if not, give the proper identification and state whether counsel will accept services of an amended summons and pleading reflecting the correct information.

ANSWER: **Dominion Senior Living, LLC is properly identified.**

6. Please state the complete, name, address, title, and official capacity of each person who contributed in any way to the gathering of information upon which your Answers to these Interrogatories or Answers to Plaintiff's First Interrogatories are based.

ANSWER: **Dominion Senior Living identifies the following:**

A. Joshua T. Thompson, Esq.
Ayla G. Luers Connor, Esq.
Boulier Thompson & Barnes, LLC
P.O. Box 6470
Spartanburg, SC 29304

B. Dale Torry
Chief Operating Officer

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Dominion Senior Living
3834 Sutherland Ave
Knoxville, TN 37919

C. **Natalie Cudzilo**
Chief Financial Officer
Dominion Senior Living
3834 Sutherland Ave
Knoxville, TN 37919

D. **Doug Veazey**
Senior Vice President of Operations
Dominion Senior Living
3834 Sutherland Ave
Knoxville, TN 37919

7. Without referring to the medical records as your answer, give the names, addresses, and telephone numbers of persons known to the parties or counsel to have provided treatment to Earline Cooley by this Defendant or its agent in this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession of such statements, being sure to identify all persons involved in providing care to the decedent from the time Earline Cooley was admitted to the facility to the time of discharge from the facility and whether they are currently an employee of this Defendant, as well as what treatment they provided.

ANSWER: **None. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

8. Identify this defendant's mailing address and principal place of business address.

ANSWER: **Dominion Senior Living's mailing address and principal place of business is as follows:**

A. **Dominion Senior Living, LLC**
3834 Sutherland Ave
Knoxville, TN 37919

9. Identify the name and address of every person whom the defendant expects to call as an expert witness at the trail of this case. For each person, state:

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a. The specific area of expertise in which you contend the person identified is competent to testify;

b. Each and every fact which qualifies the person intended as an expert;

c. The specific opinion(s) such person holds in each area of expertise which is relevant to this matter;

d. Each and every fact upon which the person identified bases each of his or her opinions;

e. Each and every thing, other than a fact, which will be established in testimony, upon which such witness bases his or her opinion;

f. A complete bibliography of all published medical articles, books, treatises, and papers which your expert witness has authored, co-authored, edited, or made contribution to;

g. Any and all cases in the last five (5) years which your expert witness has reviewed, given depositions or testimony for, including in your answer any questions that are presently in litigation, or which have been in litigation, the case name, the parties involved, and the citation for such cases, including the location;

h. State how much the expert is charging for his or her testimony, review, and consulting on this case; and

1. Has the expert identified ever had a claim presented for any matter arising out of his or her medical practice? If so, for each claim, please state:
   i. The date and place it was made;
   ii. The name and address of the person(s) who made it;
   iii. The basis of the claim; and
   iv. The outcome of the claim.

ANSWER: **Dominion Senior Living has not formally retained an expert to testify at the trial of this case at this time. Dominion Senior Living reserves the right to name an expert at a later date and in conformity with the South Carolina Rules of Civil Procedure and any scheduling order entered into this case.**

10. [Not included in Plaintiff's First Interrogatories to Defendant Dominion Senior Living]

ANSWER: **Not applicable.**

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11. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

ANSWER: **Dominion Senior Living has no ownership or control interest in the captioned co-defendants.**

12. Identify this Defendant's ownership or control interest in the facility and each of the co-Defendants.

ANSWER: **Dominion Senior Living has no ownership or control interest in Dominion Clemson or the captioned co-defendants.**

13. If it is the contention of any of the Defendants that any person or entity, including the Plaintiff, caused or in any way contributed to the injuries and damages suffered by Earline Cooley, please state the name, home address, business address, or last-known residential address and relationship of said person or entity to the Plaintiff, and further, state precisely what the person, persons or entity did or failed to do which contributed to the injuries and damages of the decedent.

ANSWER: **Dominion Senior Living makes no such contention at this time.**

14. Identify any and all related entities to this Defendant, including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

ANSWER: **Dominion Senior Living provides management services to Dominion Clemson. Dominion Senior Living is not related to any other named entities.**

15. During the time frame Earline Cooley was a resident at your facility, identify every business entity who had an ownership interest in the facility, was responsible for managing the facility, or who had the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of the facility. This Interrogatory seeks and includes, but is not limited to, the identify of the following:

a. Any management company having responsibilities for any part of the facility;

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b. A business entity which operated the facility or was under contract with controlling corporate Defendants to form any part of the facilities operations;

c. Any business entities that because of its relationship with the facility or its owner was in a position of actual control;

d. Any business entities that because of its relationship to the facility or the owner participated in the creation, implementation, or review of the budget (annual or otherwise); and/or

e. Any business entity which entered into a corporate integrity agreement, the terms of which apply to the facility.

ANSWER: **Not applicable. Dominion Senior Living provides management services to Dominion Clemson. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

16. Identify (by stating the name, address, telephone number, Social Security Number, date of birth, and period of employment) each person in the chain of command above your administrator/director who directed/supervised or was primarily responsible for monitoring the performance of said administrator/director during the time frame Earline Cooley was a resident at the facility.

ANSWER: **Not applicable. Dominion Senior Living provides management services to Dominion Clemson. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

17. Identify any contract, service agreements, provider agreements, and/or management agreements which this Defendant has with any of the Co-Defendants.

ANSWER: **Please see the Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living, which is produced in Dominion Senior Living's Responses to Plaintiff's First Set of Requests for Production to Dominion Senior Living.**

18. Identify any and all reports, letters, emails, or other communications whether electronic or otherwise concerning the facility and between this Defendant and all other Co-

Defendants during the time that Earline Cooley was a resident at that facility which referenced this Defendant, resident care, budget matters, staffing matters, or occupancy at the facility.

ANSWER: **Objection. Dominion Senior Living objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Dominion Senior Living also objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to these objections, please see Answer to Interrogatory No. 1.**

19. Identify any and all persons/entities involved in Earline Cooley's care who you maintain are independent contractors and not employees of this Defendant including but not limited to names, addresses, the nature of the relationship between each, and the corporate structure of such.

ANSWER: **Not applicable. Dominion Senior Living provides management services to Dominion Clemson. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

20. Identify this Defendant's relationship with each of the Co-Defendants.

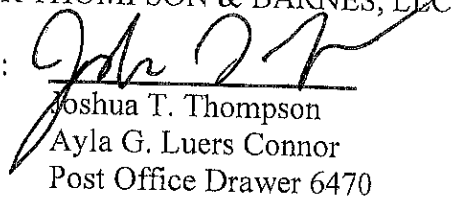
ANSWER: **Dominion Senior Living has the below relationship with the following Co-Defendants:**

- **A. Dominion Clemson**
  - **i. Management company with no ownership interest.**
- **B. Dominion Clemson II, LLC**
  - **i. Management company with no ownership interest.**
- **C. Dominion Management Group, LLC**
  - **i. The only relationship between the entities is common owners.**
- **D. Dominion Group, LLC**
  - **i. The only relationship between the entities is common owners.**

[Signature block on next page]

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BOULIER THOMPSON & BARNES, LLC

By: 

Joshua T. Thompson
Ayla G. Luers Connor
Post Office Drawer 6470
Spartanburg, SC 29304
(864) 606-9610

Attorneys for Defendant

March 15, 2022

Spartanburg, SC

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **DEFENDANT DOMINION SENIOR LIVING, LLC'S RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION**

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

Defendant Dominion Senior Living, LLC ("Dominion Senior Living") Responds to Plaintiff's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

1. Please provide copies of any statements obtained by you, or anyone acting on your behalf, from any witnesses or any other individual pertaining to the medical care or treatment of Earline Cooley which is the subject matter of this lawsuit.

RESPONSE: Objection. Dominion Senior Living objects to this request on the grounds that it seeks documentation subject to attorney-client privilege, and as work product of the party, prepared in anticipation of litigation, and contains mental impressions. Subject to this objection, please the documents produced in Response to Request No. 3.

2. Please provide copies of any and all notes, investigative reports, memoranda,

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damages, corporate structures, business management, or arrangements, and any other documents relating to the opinion formed by Defendant's expert, including but not limited to, copies of any reports given by said expert in regard to the subject of this action and any and all documents and records, memoranda, articles, and texts sent to or relied upon by dais expert in the formulation of his/her opinion.

RESPONSE: **Dominion Senior Living has not formally retained an expert to testify at the trial of this case at this time. Dominion Senior Living reserves the right to name an expert at a later date and in conformity with the South Carolina Rules of Civil Procedure and any scheduling order entered in this case.**

6. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Earline Cooley's residency and the time periods Earline Cooley's residency.

RESPONSE: **Not applicable. Dominion Senior Living does not own the facility at issue in this matter or any other facilities. Dominion Senior Living had knowledge of Dominion Clemson's DHEC Survey Completed September 2019 and Dominion Clemson's March 26, 2020 DHEC Accident/Incident Report, which were produced in Response to Request No. 3.**

7. Copies of all documents related to the corporate supervision or oversight of the facility's budget and expenditures for labor and supplies at present and during the time period of Earline Cooley's residency.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions. Dominion Senior Living is not in possession of any documents related to facility budgets and/or expenditures.**

8. All contracts or documents regarding the relationship between this Defendant and any other named Co-Defendant.

RESPONSE: **Please see Response to Request No. 3, which produces the Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living.**

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9. Copies of all management contracts, service agreements, and provider agreements for this Defendant's facility and copies of all administrative, management, and operations policy and procedure manuals for Defendant's facility and oversight of this Defendant's facility at the time Earline Cooley was a resident and at present.

RESPONSE: **Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions. Dominion Senior Living is not in possession of any documents related to facility contracts or agreements other than the Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living produced in Response to Request No. 3.**

10. The corporate structure and organizational chart for all entities that operate, manage, or have an interest in this Defendant's facility as well as the Articles of Incorporation and bylaws for each such entity at the time Earline Cooley was a resident at Defendant's facility and at present.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

11. Copies of the Master lease or any sublease for any property or real estate used in operating the facility.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

12. Copies of any and all budgets and hiring plans associated with any Master Lease Agreement identified in the preceding Request.

RESPONSE: **None.**

13. All proposed and actual budgets for this Defendant's facility or for any subsidiary or affiliate which was involved, directly or indirectly, in the operation of the facility for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

14. Complete copy of all performance evaluations for the Administrator and other corporate employees for two years preceding Earline Cooley's residency and the time period of Earline Cooley's residency.

RESPONSE: **Objection. Dominion Senior Living objects to this request on the grounds that it is overly broad, vague, and unduly burdensome.**

15. Copies of the Corporate Philosophy Statement and Mission Statement at the time Earline Cooley was a resident at Defendant's facility.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

16. Any organizational documents for this Defendant, including, but not limited to:

a. Bylaws and Articles of Incorporation for Defendant and its affiliates or subsidiaries;

b. Listing of all DBA's of Defendant and its subsidiaries;

c. Organizational charts, including the names of officers, executives, and directors, of Defendant and its subsidiaries;

d. Details of all entities by or under which Defendant or successor entities operate, including, but not limited to, any special purpose or bankruptcy remote entities together with their ownership structure(s).

RESPONSE: **Objection. Dominion Senior Living objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Subject to this objection, Dominion Senior Living produces the following:**

A. Dominion Senior Living's Amended and Restated Operating Agreement, Bates No. Dominion Senior Living Cooley 20 - 61.

17. All operating agreements and management agreements, including interim operating agreements with all exhibits, schedules, or attachments thereto between this defendant

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and its subsidiaries, affiliates, parent companies, management companies, holding companies, successors/assigns, or other related entities.

RESPONSE: **Please see Response to Request No. 3, which produces the Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living and Response to Request No. 16, which produces Dominion Senior Living's Amended and Restated Operating Agreement.**

18. All documents showing the revenue and expenses of the facility for time Earline Cooley was a resident at defendant's facility, including, but not limited to, all Internal Revenue Service forms, accounting statements and annual reports.

RESPONSE: **Not applicable. Dominion Senior Living is not a facility and does not operate as an Assisted Living Facility as defined in Plaintiff's Instructions and Definitions.**

19. All agreements, including but not limited to, contracts, service agreements, lines of credit agreements, etc., between this Defendant and any Co-Defendants.

RESPONSE: **Please see Response to Request No. 3, which produces the Facility Management Agreement between Dominion Clemson, LLC and Dominion Management Group, LLC d/b/a Dominion Senior Living.**

20. Copies of any and all documents you receive pursuant to any and all subpoenas served in this case.

RESPONSE: **None.**

21. Copies of federal and state tax returns filed for years 2019 and 2020.

RESPONSE: **Objection. Dominion Senior Living objects to this request on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to lead to the discovery or relevant or admissible evidence. Dominion Senior Living also objects to this request on the grounds that this request seeks proprietary business information that is not relevant to this matter.**

22. If you withhold any documents, provide a privilege log, as required and described in Rule 26(b)(5)(A) SCRCP.

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RESPONSE: **In addition to routine attorney-client correspondence, work product, and file notes created by Joshua T. Thompson, Esq., and Ayla G. Luers Connor, Esq., none at this time.**

BOULIER THOMPSON & BARNES, LLC

By: _____

Joshua T. Thompson
Ayla G. Luers Connor
Post Office Drawer 6470
Spartanburg, SC 29304
(864) 606-9610

Attorneys for Defendant

March 1st, 2022

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC Defendants.	**CERTIFICATE OF SERVICE** **C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128**

I, the undersigned paralegal in the Law Offices of Boulier Thompson & Barnes, LLC., attorneys for Defendants, do hereby certify that I have caused a copy of the hereinbelow listed pleadings to be mailed to all parties in this matter on the 1st day of March 2022, as follows:

PLEADINGS: 1) Defendant Dominion Senior Living, LLC's Answers to Plaintiff's First Interrogatories

2) Defendant Dominion Senior Living, LLC's Responses to Plaintiff's First Requests for Production

SERVED: Matthew W. Christian, Esq.
Christian & Christian
P.O. Box 332
Greenville, South Carolina 29602

By: Jenna Bynum

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EXHIBIT B

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CHRISTIAN & CHRISTIAN
ATTORNEYS AT LAW

Joshua D. Christian | W. Harold Christian, Jr. | Matthew W. Christian

Christian & Christian, LLC
1007 E. Washington St
Greenville, SC 29601
PO Box 332 | Greenville, SC 29602
Phone: 864-232-7363
Fax: 864-370-3731
cclawfirm.com

March 1, 2022

Joshua T. Thompson
Boulier Thompson & Barnes, P.A.
PO Box 6470
Spartanburg, SC 29304

RE: Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC
C/A Nos.: 2021-CP-39-01127 & 2021-CP-39-01128

Dear Josh:

Thank you for your clients' responses to Plaintiff's First Discovery which we received on recent date in the above-captioned matter. There are several issues with regard to Defendants' responses, particularly items which Defendants objected to and for which we believe full responses should have been provided.

I will take this opportunity to address each in turn:

INTERROGATORIES

#7 & #15 – These interrogatories seek the identification of the employees who provided care to my client at the facility including, but not limited to, their job title at the facility as well as whether or not they were a current or former employee and their last known contact information.

The Defendants' objected to providing this information and obviously, this identifies witnesses as well as vital information regarding these witnesses to which we are otherwise entitled. We would ask that you supplement this information.

REQUESTS FOR PRODUCTION

#19 – This request seeks copies of the proposed and actual budgets for the facility for the two years preceding Ms. Cooley's residency and the time of Ms. Cooley's residency. As you know, we have claims for corporate negligence as well as understaffing and underfunding and these documents are directly relevant to same. Therefore, at this time I am willing to limit our request to the year of Earline Cooley's residency.

#21 – This request seeks copies of timecards, schedules, and punch detail reports for the time of my client's residency. Given that we have claims for understaffing, these documents enable us to determine the staffing numbers at particular times during Ms. Cooley's residency. Therefore, these documents are relevant and should be produced.

#22 – This request seeks copies of employee work schedules and sign-in sheets and timesheets showing the identity and number/quantity and classification of any staffing personnel who worked at the Defendant's facility. Again, for the same reasons as number 21 above, these items are relevant and should be produced.

#23 – This request seeks copies of the actual numbers of available nursing personnel or the actual number of nurse assistants, orderlies, or medication aid's and nurses at any time during Ms. Cooley's residency/admission. For the same reasons identified herein above in number 21, these documents are relevant and should be produced.

#25 – This request seeks copies of in-service training reports, including sign in sheets, tenant rosters, handouts, videos, and other training documentation provided to any of Ms. Cooley's caregivers during the time that she was a resident and during the two years proceeding her residency. The Defendants objected to producing same. As you may know, we have made claims for lack of training and as a result, these documents are directly relevant to those issues. Furthermore, these documents are relevant to show what training for providing care the staff received. I am certain that if we are required to try this case that the Defendants will maintain that they provided adequate proper training to their employees and as a result we are entitled to see what training was provided and when.

#36 – This request seeks copies of personnel files for former employees who provided care to my client as well as personnel files for department heads during Ms. Cooley's residency and the current department heads. Personnel files are something that are routinely produced in these types of cases and are relevant to our claims regarding adequate hiring, staffing, training, etc. I am willing to limit this request to former employees who we specifically request files of as well as anyone we depose and the department heads during Ms. Cooley's residency. I would appreciate it if you would go ahead and supplement the personnel files of the department heads

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for the time of Ms. Cooley's residency and then we can later identify anyone else for which we need personnel files. We are willing to have these produced subject to a mutually agreeable confidentiality order.

Finally, I do believe that there were a number of requests which the Defendants indicated would be supplemented. Please let us know when we may expect to receive the supplemental responses.

Please let me know in the next ten (10) days if we can agree to resolve the above-referenced issues. If not, we will move forward with filing a motion to compel. If you would like to discuss these issues further or if you have any questions or concerns, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

CHRISTIAN & CHRISTIAN, LLC

Matthew W. Christian
Attorney at Law

MC/jw

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ELECTRONICALLY FILED - 2022 Jun 09 8:41 AM - PICKENS - COMMON PLEAS - CASE#2021CP3901127

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128
Plaintiff,	)	
v.	)	
	)	**DEFENDANTS DOMINION CLEMSON, LLC d/b/a DOMINION SENIOR LIVING AT PATRICK SQUARE AND DOMINION SENIOR LIVING, LLC'S MOTION TO COMPEL ARBITRATION AND PROTECTIVE ORDER FROM DISCOVERY**
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC,	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

YOU WILL PLEASE TAKE NOTICE that Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson"), Dominion Senior Living, LLC ("Dominion Senior Living"), Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC (collectively, "Defendants") through their undersigned attorneys, will move on the tenth (10th) day after service of this Motion, or as soon thereafter as this matter can be heard, for an Order compelling arbitration and for a protective order from discovery pursuant to Rule 12(b)(1), (2), (3) and (6), SCRCP, Rule 26(c), SCRCP, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and case law. As part of Defendants' Motion to Compel Arbitration, Defendants seek an Order requiring that arbitration be compelled subject to the limitations set forth in the Dominion Senior Living Resident Admission Agreement

("Admission Agreement"), attached hereto as part of Exhibit A. The Admission Agreement limits awardable damages as follows:

1. Net economic damages shall be offset by any collateral source payments.
2. Non-economic damages shall be limited to a maximum of $250,000.00.
3. Interest on unpaid fees shall not be awarded.
4. Punitive damages shall not be awarded.

More particularly, this Motion is based on the terms and provisions of the arbitration clause found in the Admission Agreement (see Exhibit A). The terms of the Admission Agreement expressly provide that all disputes for $15,000.00 (Fifteen Thousand and 0/100) dollars or more between the parties will be resolved by binding arbitration in South Carolina. The Admission Agreement was executed at or around March 2019 at which time Earline Cooley was admitted to Dominion Clemson and was signed by Earline Cooley's available and present Durable Power of Attorney and Durable Healthcare Power of Attorney. A copy of the Durable Power of Attorney recently produced by Plaintiff in discovery is attached hereto as Exhibit B. In addition to Exhibit A and Exhibit B, Earline Cooley's Healthcare Power of Attorney is attached as Exhibit C.

Further, because this matter is required to be submitted to binding arbitration, Defendants respectfully request that this Court stay and protect Defendants from any requirement to file any further responsive pleadings, respond to any motions filed by Plaintiff, or respond to any discovery served by Plaintiff, in particular Plaintiff's March 22, 2022 pending Motion to Compel with this Court. Alternatively, Defendants request that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the Federal Arbitration Act.

In support of this Motion, Defendants will rely on all attachments filed herewith, and any memoranda of law, affidavits, or exhibits that it might file before the hearing of the Motion.

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s/Joshua T. Thompson
Joshua T. Thompson, Esq. (SC Bar #79137)
Ayla Luers Connor, Esq.(SC Bar # 103057)
BOULIER THOMPSON & BARNES, LLC
P.O. Drawer 6470
Spartanburg, South Carolina 29304
101 W. St. John St., Suite 300
Spartanburg, SC 29306
Phone: (864) 606-9610
jthompson@btblawfirm.com
aconnor@btblawfirm.com

Attorney for Defendants

June 9, 2022

Spartanburg, South Carolina

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EXHIBIT A

Dominion Senior Living

RESIDENT ADMISSION AGREEMENT

This Resident Admission Agreement (the "Agreement") dated this 14th day of Feb 2019 (the "Effective Date") is made by and between Dominion Clemson, LLC doing business as **Dominion Senior Living of Clemson** ("Community"), located at 100 Pershing Ave., Clemson, SC 29631 (the "Establishment"), Lindsey Daugherty ("Manager") and Earline Cooley ("Resident").

In consideration of the Community's acceptance of the undersigned as a resident at the Establishment, Deonda Weldon agrees to act as the "**Financially Responsible Party**" and/or agrees to act as the "**Resident's Representative,**" accepting their respective rights and obligations as set forth in this Agreement. Community, Manager, Resident, Financially Responsible Party and/or Resident's Representative are collectively referred to herein as the "Parties," or individually as a "Party".

1. TERM.

This Agreement shall become effective on 3/8/19 and shall have a term of one (1) month (the "Term") unless terminated earlier as provided below. Following the end of a Term, and provided that the Resident is not in default under this Agreement, this Agreement shall automatically renew for an additional one (1) month Term, unless either Party sends a written notice of termination as provided below.

2. ACCOMMODATIONS.

A. Room. The Resident will reside in Room Number 4AL at the Establishment (the "Room"). The Resident is encouraged to furnish the room with the resident's own furniture. The community may provide a twin bed, linens, pillows, compartmentalized nightstand, and a chair for sitting if needed.

B. Common Areas. The Resident can use the general-purpose rooms of the Establishment, such as lounges, library, and meeting rooms, as applicable.

C. Dual Occupancy. Only two residents may occupy the Room. If only one resident has signed this Agreement, a second person may move into the Room with the prior approval of the Community. The second occupant must meet all of the Community's admission requirements and sign their own Resident Admission Agreement. The fees due under

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this Agreement will be adjusted to reflect the then-current double occupancy rate. If two persons reside in the Room with dual occupancy and one of the occupants passes away or vacates the Room (whether voluntary or involuntary) during the Term of this Agreement, this Agreement shall continue in full force and effect with respect to the remaining resident less any adjustments to fees as a result of the loss of the dual occupancy.

D. **Personal Residence.** The Resident agrees to occupy the Room only as a personal residence and will not use the Room for any unlawful purpose. The Resident will not create or allow in the Room a nuisance or a condition that is a potential fire, safety or health hazard. The Resident will not store or possess at the Establishment or in the Room any explosives, firearms, noxious chemicals or hazardous substances. The Resident will be the only occupant of the Room unless stated otherwise herein.

E. **Maintenance and Alterations.** The Resident agrees to maintain the Room in a clean, sanitary and orderly condition. When the Resident vacates the Room, it shall be in as good condition as on the Effective Date, excluding normal wear and tear. The Resident can decorate the Room as the Resident wishes provided that the Resident complies with the rules of the Community. The Community must give prior written approval for any changes or alterations to the Room that require the assistance of electricians, contractors or similar professionals; and the Resident will be responsible for restoring the original décor when the Resident vacates the Room. Any alterations or improvements shall become the property of the Community. The Resident may not change any lock or add any lock or locking device to the Room.

F. **Liability for Damage.** The Resident agree to reimburse the Community for any loss of, or damage to, the Community's real or personal property, inside or outside of the Room, caused by the Resident, the Resident's guests, or Private Duty Assistant (defined below).

G. **Move to New Room**. If the Resident wishes to change rooms within the Establishment and the Community's executive director approves the Resident's request for a room change, the Resident shall pay a relocation fee of Five Hundred ($500.00). The Resident will be responsible for making arrangements for the move and for handling related expenses.

H. **Pets.** Residents are allowed to have small pets in their room provided that the pet deposit has been paid, the pet regularly receives yearly vaccinations and are kept on file in the business office, and the resident can safely care for the pet without the assistance of community staff members. Visiting pets are allowed provided that the pet's vaccinations are kept on file in the business office and the pet is under supervision by the visitor at all times during the pets visit. Community staff can deny the entry of visiting pets and personal in house pets if these requirements are not met and if the pet poses a threat

to safety.

I. **Smoking**. The Establishment is a smoke-free and tobacco free campus. No tobacco products or smoking of any kind is permitted on the campus or parking areas.

J. **Guests.** Overnight guests are not permitted.

K. **Absences from the Establishment.** If the Resident is absent from the Establishment for a period less than thirty (30) days, the Resident will continue to be responsible for the Rent and other charges due under this Agreement. If the Resident is absent from the Establishment for a period longer than thirty (30) days without written notice to the Community as to the basis for such absence as required by Section 11(i), Community shall be permitted, in its sole discretion, to terminate this Agreement and re-let the Room to another resident.

3. SERVICES.

A. **Services.** Exhibit A to this Agreement details the basic services provided at the Establishment as part of the Rent. Exhibit B to this Agreement describes additional services that the Resident may request for an additional fee.

B. **Meals.** The Establishment will make available three (3) nutritionally well-balanced meals per day. Basic modified diets will be available to the Resident if prescribed by a physician as a medical necessity, or if otherwise requested by the Resident, at no additional charge. Tray service is not permitted. Residents may have meals delivered to their rooms due to temporary illness or other health reasons. The Resident may invite guests to any meal for an extra charge, but the Establishment requests four (4) hours advance notice.

C. **Activities.** The Establishment will provide planned activities and opportunities for community participation subject to the Resident's physical ability to participate. Participation in some exercise or fitness programs may require a liability waiver. An additional charge may apply to activities outside of the Establishment.

D. **Transportation.** As part of the Resident's Rent, the Community will provide regularly scheduled transportation services or arrange for the Resident's transportation to planned social events, local attractions, shopping destinations and to the Resident's medical, dental, nursing, or mental health appointments within a 25 mile radius. The Community's staff can provide the Resident with schedules and destinations for the regular transportation service. Residents requesting transportation beyond a 25 mile radius will be charged accordingly. See exhibit B. All other transportation is the Resident's responsibility.

E. **Maintenance.** The Community shall maintain in good order and repair all plumbing, toilet facilities and other fixtures installed for the general supply of hot and cold water, and

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HVAC.

F. **Laundry and Housekeeping Services.** Laundry and housekeeping services will be provided by the community as set forth in exhibit A.

G. **Resident Funds.** The community will maintain up to $100 of Resident Personal Funds at the request of the resident. The funds will be kept locked in the business office and available upon request. An account balance will be provided to the resident quarterly. In Situations where residents are unable to manage their funds, the administrator will notify a family member or probate court regarding a need for a court-appointed guardian or conservator.

H. **Personal Supplies.** The Resident shall provide your own supplies for personal care and hygiene. The community will provide soap, paper towels, and toilet tissue in all resident restrooms.

I. **Parking.** If the Resident owns a car and maintains a current valid driver's license, registration and insurance, the Community will provide the Community (subject to availability) with the use of a parking space to accommodate a standard size vehicle. The Community assumes no responsibility for loss or damage to the vehicle or its contents, parked on Establishment property, however caused.

J. **Notification of Third Parties.** In the event that the Resident requires emergency services or experiences a significant change in condition, the Establishment will attempt to contact the Resident's Representative and/or Responsible Party timely, using best efforts. The Resident is responsible for ensuring that the Establishment has current telephone numbers for the individuals to be notified. The Resident's Representative and/or Responsible Party will also be contacted in the event that this Agreement is being terminated.

K. **No Discrimination**. The Community will provide care and services without discriminating based on age, gender, race, physical or mental disability, religion, sexual orientation, national origin, marital status, or the source of payment for the Contractual Services.

4. WELLNESS SERVICES.

A. **Required Medical Evaluation.** The Resident agrees to have a medical assessment completed by a physician no more than thirty (30) days prior to the Resident's physical move in date. The Resident must also have a medical assessment completed by a physician when he/she experiences a significant change in condition. The Resident also agrees to have a medical assessment completed by a physician yearly and will provide a copy of the Resident's annual medical evaluation to the Community. Failure to have a medical assessment completed will result in termination of the Agreement.

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B. **Resident Care Plan.** A care plan will be developed based on the medical assessment completed by the Resident's physician and the evaluation completed by the Establishment. The Resident's care plan will be developed with the Resident and/or any individual the Resident designates with the Establishment staff. The care plan will outline the services the Resident is to receive. The care plan will be reviewed every six (6) months and whenever the Resident experiences a significant change in condition. The care plan will be revised as necessary. The Resident may examine his/her care plan at any time.

C. **Assistance with Activities of Daily Living.** The Community will provide to the Resident the assisted living services agreed upon and described in Exhibit A. The Community will conduct an initial assessment to determine the resident's appropriateness for the community before admission and a seventy-two (72) hour assessment. Within seven (7) days of admission, the community will have developed a care plan for the resident. The care plan will be reviewed and updated as needed every six (6) months or when there is a change in condition.

D. **Observation.** The Community's staff, in the ordinary course of their daily interaction with the Resident, shall periodically observe the Resident's health condition, activities and diet, in order to identify changes in the Resident's health and the Resident's physical, mental, and emotional functioning. *The Resident will not be under constant observation or supervision.*

E. **Arranging for Outside Services.** The staff will assist the Resident in making needed appointments with professionals offering medical, dental, nursing, or mental health services and with accessing community resources and transferring to outside facilities as needed and prescribed by the Resident's physician.

F. **Medications.** Medication administration / management is offered by the community. If the resident chooses to self-administer medications, The resident is responsible for obtaining his/her medications and must ensure that the community has up to date and active physician orders on file. The resident must also agree to quarterly self-administration assessments completed by the community due to state requirements.

G. **Resident Records.** The Community maintains certain records on each of its residents that may contain medical and other personal information. The Resident has the right to review the Resident's records or to authorize, in writing, members of the Resident's family to review the Resident's records. All resident information and records are confidential and are not released without the Resident's written consent or the written consent of the Resident's authorized legal representative. Copies of records are normally provided within thirty(30) days of the written request for copies. The Resident's right to refuse release of personal and medical records does not apply when the Resident is transferred

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to another health care facility or record release is required by law or third party payment contract. The state has the authority to examine such records as part of its licensing activities without the Resident's consent.

H. **Medical or Other Emergency.** In the event of an emergency, the Resident shall contact the staff and, if appropriate, the staff will summon emergency service personnel to assist the Resident. If the situation is not deemed an emergency by the staff, the staff has the discretion to instead contact the Resident's Financially Responsible Party, Resident Representative and/or the Resident's physician as appropriate. Where the staff judges a situation to be a possible medical emergency (and the Resident does not agree), the staff has the right (but not the obligation) to take whatever steps are necessary to meet the Resident's emergency medical needs, including summoning emergency service personnel. Any costs incurred, even if the staff ordered the emergency medical services, will be the Resident's sole responsibility.

I. **Excluded Services.** The Community shall not be responsible for furnishing or paying for any supplies or services not expressly included in this Agreement, including, without limitation, hospital services, physicians' services, nursing services, skilled nursing facility services, private duty assistants, medications, personal supplies, toiletries, vitamins, eyeglasses, eye examinations, hearing aids, ear examinations, dental work, dental examinations, orthopedic appliances, laboratory tests, x-ray services, rehabilitative services, or any other care or equipment beyond the Community's routine levels of staffing and equipment. The Community has no express or implied duty to provide services not listed in Exhibits A, B or C (the "Contractual Services").

5. RENT.

The Resident agrees to pay in advance on the first (1st) day of each month during the Term the amount of Three thousand Nine hundred ninety and 00 /100 Dollars ($ 3990.00) (the "Rent"). When there are charges for less than one full month, the Rent will be pro-rated based on the number of days in the given month. The Community anticipates that the Rent will be adjusted annually, but reserves the right to adjust the Rent upon thirty (30) days prior written notice to the Tenant. The fees resulting from Exhibit B services are also due on the first of the month. The Community may adjust the fees as it deems necessary to reflect the costs of providing the facilities, programs, and services described in this Agreement. The Community will provide at least thirty (30) days' written notice to the Resident and the Financially Responsible Party and/or Resident's Representative (if any) prior to any fee changes.

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6. PAYMENT AND LATE CHARGES.

The Resident's stay at the Establishment will be paid for by Deanda Weldon If a third party pays the Resident's bills, their non-payment of any amounts due pursuant to this Agreement shall not relieve the Resident of any obligation to pay such amounts. If the Rent, Establishment Service Fee or any other amount due under this Agreement is not paid on the first of the month, the Community may charge the Resident One-Hundred Fifty Dollars ($150.00) to cover administrative expenses. Failure to make timely payments may result in the Community terminating this Agreement. Medicaid nor Medicare pays for services provided for by the Community.

7. ESTABLISHMENT SERVICE FEE.

The Resident shall pay a non-refundable Community Fee of Fifteen Hundred dollars ($1,500.00) (the "Community Fee") to the Community concurrently with the execution of this Agreement, which covers administrative costs regarding the Resident's application and other administrative fees.

8. ASSISTED LIVING.

A. **Admission/Retention Criteria.** The criteria applied by the Community for the admission and discharge of assisted living residents are set forth in The Resident Handbook, a copy of which is provided to all Residents.

B. **Licensing.** The Establishment is licensed as a Community Residential Care Facility (Assisted Living) governed by the State of South Carolina. The State of South Carolina conducts annual, unannounced, on-site visit of the Establishment to determine compliance with applicable licensure requirements and standards. Additional visits may be conducted without prior notice to the Community. During on-site reviews, State representatives may observe staff and residents in the common areas of the Assisted Living Section of the Establishment, communicate privately with any resident who consents, and inspect the residents' clinical and administrative records. State representatives may only enter a resident's Room if the resident grants permission and entry.

C. **Assisted Living.** The Establishment consists of residential rooms for seniors who are capable of living on their own, provided they have assistance with certain activities of daily living ("Assisted Living"). The Establishment is not licensed to provide 24-hour

skilled nursing care or care for serious psychiatric disorders and is not intended as a substitute for a Skilled Nursing Facility. The Community has no duty to provide, or obtain for the Resident, nursing or health care services other than what is agreed to in Exhibit A. The Resident agrees that the Community has no duty to assess, diagnose, examine or treat any medical, psychological or health care condition the Resident might have or develop.

D. **Release and Assumption of Risk.** With the freedom and independence of Assisted Living come certain risks of personal injury, such as falls or broken bones. The Resident knowingly and voluntarily agrees to assume all risks related to or arising from living in the Establishment, and not a facility that offers a higher level of care. The Resident agrees to waive, release, indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from their failure to obtain or furnish services beyond the Contractual Services.

E. **Injury by Others.** The Resident agrees that the Community, its Manager, and their employees and affiliates are not responsible or liable for injury or loss sustained by the Resident as a result of the act or omission of other residents, their guests or Private Duty Assistant (as such term is defined below).

F. **Transfer to Meet Care Needs.** If at any time, the Community's staff or a physician determines that the Establishment cannot meet your needs, this Agreement will be terminated and the Resident agree to transfer to another facility that is appropriate for the Resident's needs. Upon determination by the Community that the Resident needs services beyond those provided by the Establishment, the Resident (together with the Resident's Representative and/or Responsible Party) shall be notified in writing that the Agreement is terminated and the Resident shall be transferred to an appropriate care setting. The notification will serve as a thirty (30) day notice. The Establishment shall assist the Responsible Party and/or Resident's Representative with discharge planning and referrals.

9. PRIVATE DUTY ASSISTANTS.

A. **Services from Third Parties.** All third party contractors, outside caregivers, companions, private duty aides and other personnel (collectively "Private Duty Assistants") employed or engaged by the Resident to render services to the Resident at the Establishment can do so only if both the Resident and the Private Duty Assistant comply with the Community's policy on Private Duty Assistants and complete the forms and agreements

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referenced therein. The Private Duty Assistant needs the prior permission of the Community, which may be revoked by the Community in its sole discretion. It is the Resident's responsibility to ensure that the Resident's Private Duty Assistant complies with the Community's rules, regulations, Resident Handbook and general policies, together with any specific policies and rules governing Private Duty Assistants. The Resident hereby authorizes and directs that the records regarding the Resident kept by the Resident's Private Duty Assistant will be released to the Community upon request. The community shall not be held responsible for costs or fees associated with hiring or employing any third party or private duty assistants.

B. **Injury Caused by Private Duty Assistant.** The Resident is responsible for all injury or damage caused by a Private Duty Assistant, including injury to the Resident. The Community has no responsibility for the care (or lack thereof) provided by the Private Duty Assistant. The Resident hereby indemnifies, holds harmless and releases Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from the acts or omissions of the Private Duty Assistant.

10. ACCESS TO ROOMS.

The staff may enter the Resident's Room for any reasonable purpose, including, but not limited to, performing housekeeping, maintenance and other services described in this Agreement. The Community will attempt to notify the Resident in advance that a staff member will enter the Room for non-routine events. If the Resident has delivered written notice to the Community of the Resident's intent to terminate the Agreement at the end of the then existing Term, the Resident agrees to allow the Community to show the Room during reasonable hours to prospective residents.

11. RESIDENT'S RIGHTS AND RESPONSIBILITIES.

A. **Rules, Regulations and Resident Handbook.** The Resident agrees to abide by the Community's Rules, Regulations and Resident Handbook as they now exist and as amended. A copy of the Community's rules, regulations, Resident Bill of Rights, and the Resident Handbook has been provided to the Resident as evidenced by the Resident's signature on Exhibit D attached hereto. The Resident, the Resident's guests and Private

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Duty Assistant shall conduct themselves in a manner that is peaceful and harmonious, and will not engage in conduct that interferes with or jeopardizes the health, safety, or peaceful lodging of the residents, staff and others at the Establishment.

B. **Loss/Theft and Insurance.** The Resident is responsible for providing at the Resident's own expense insurance to protect the Resident and the Resident's personal belongings against loss or injury. The Resident is strongly urged to procure insurance including health, life, disability, property, renter's and, if applicable, motor vehicle insurance for the Resident's own protection. The Community shall not be responsible for the loss of any property belonging to the Resident due to theft or any other reason, unless such loss is directly caused by the Community's staff.

C. **Resident's Liability to Others.** The Resident accepts sole responsibility for any loss, injury or damage to others, to the Resident, the Room, the Establishment and the Community caused by or resulting from, in whole or in part, the Resident's acts or omissions, or those of the Resident's guests and Private Duty Assistant. The Resident agrees to indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from such loss, injury or damage.

D. **Admission Information.** The Resident represents that the information set forth on the Resident's application forms, health history and medical report, personal interview and emergency information records, as applicable, is true and correct. Any substantive inaccurate statement made by the Resident, including the Resident's age, finances, resources and health history may render this Agreement voidable and/or immediately terminated at the option of the Community. The Resident agrees to submit updated copies of the above forms upon request from the Community, when required by state regulations or when the Resident become aware of a change in the Resident's medical condition.

E. **Resident Rights.** The Resident has been advised and received a copy of Resident Rights. The Community shall not deprive Residents of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of South Carolina, or the Constitution of the United States solely on account of his or her status as a resident.

F. **Complaint Resolution Procedure.** All Residents are encouraged to exercise their rights as a resident and citizen. Grievances, and recommendations for changes in policies and services, may be voiced to facility staff or outside representatives without interference, discrimination, reprisal, coercion, or restraint. Residents are encouraged to bring their concerns to the Executive Director. The following Parties are also available to assist the Resident with resolution of complaints:

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G. **Resident's Copy of the Agreement.** The Resident will be given a duplicate original of this Agreement.

H. **Bed Hold Policy.** The Community will not reserve a bed for you if you are temporarily admitted to a nursing home, health care facility or psychiatric facility. You are still responsible for payments unless the agreement is terminated.

I. **Notice of Absences.** When the Resident is going to be absent from the Establishment for more than twenty four (24 hrs), the Resident agrees to give prior notice to the Community's staff of such absence the purpose thereof. The Resident agrees to let the Community's staff know the Resident's general whereabouts at all times. The resident is expected to sign out and sign in when leaving and returning to the community at any time.

12. TERMINATION OF AGREEMENT.

A. **Termination by Resident.** The Resident may terminate this Agreement for any reason by giving the Community at least fourteen(14) days prior written notice of termination. Where a physician certifies that it is proper for the Resident to relocate to a facility that provides greater care than provided at the Community, the Resident may terminate this Agreement by giving the Community written notice of termination, together with a copy of the physician's certification. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the notice period has expired or until the Resident has vacated the Room as described below, whichever is later.

B. **Termination by the Landlord.** The Community may terminate this Agreement for any reason by giving thirty (30) days prior written notice to the Resident. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the thirty (30) day period has expired or until the Resident has vacated the Room as described below, whichever is later.

C. **Landlord's Termination for Health or Safety Reasons.** Based upon the discharge criteria set forth in the Resident Handbook, the Community may terminate this Agreement immediately upon written notice and require the Resident's immediate transfer from the Establishment. The Resident will continue to be responsible the Rent, and any other fees payable under this Agreement until the Resident has vacated the Room as described below.

D. **Termination by Mutual Agreement.** The Agreement may be terminated immediately at

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any time upon agreement of the Parties.

E. **Termination by Resident's Estate.** This Agreement shall terminate immediately after the Community receives written notification that the Resident has passed away, or date that the Room is vacated as described below, whichever is later.

F. **Vacating the Apartment.** The Resident shall remain liable for the Rent and the Room shall not be considered vacated, until all of the Resident's property is removed from the Room. If the Resident's property is not removed from the Room, the Community may, upon fourteen (14) days advance written notice (i) remove the Resident's property from the Room and charge for the actual costs of moving and storage or (ii) dispose of the Resident's property in accordance with state law.

G. **Refund of Prepaid amounts.** Amounts that the Resident has prepaid will be returned to the Resident pro rata within thirty (30) days following the Resident vacating the Room, minus all sums owing to the Community, including (i) unpaid Rent, and other charges that the Resident owes to the Community under this Agreement; (ii) the costs of repairing any of the Community's property that was damaged by the Resident, the Resident's guests, or the Resident's Private Duty Assistant; and (iii) any expense incurred by the Community to remove and/or store any of the Resident's property that was not removed. If the amount the Resident owes to the Community exceeds the sum of the prepaid amounts, the Community shall bill the Resident for the difference.

H. **Holding Over.** If either the Resident or the Community gives notice of termination and the Resident remains in the Room after the notice period, the Rent and shall increase to 150% of its current level until the Room is vacated.

13. AGREEMENT TO ARBITRATE.

The Parties desire to resolve disputes between them as expeditiously and economically as possible. Therefore, any claim or dispute (including those based on contract, negligence or statute) amongst the Parties, involving an amount in excess of $15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator. The arbitration shall be administered by JAMS (formerly Judicial Arbitration and Mediation Services) pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The Parties agree that this Agreement evidences a transaction involving interstate commerce. The U. S. Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement. The arbitrator may award economic and non-economic

damages, but shall have no authority to award punitive damages to any Party. Each side shall bear an equal share of the arbitrator's fees and the costs of the arbitration.

14. WAIVER OF JURY TRIAL.

In any dispute arising between the Parties, each Party hereto waives its right to a trial by jury in any action, proceeding or counterclaim brought by any Party against any other Party. The prevailing Party shall be entitled to an award of reasonable costs and attorneys' fees.

15. LIMITATIONS OF LIABILITY PROVISION.

The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement. Liability for any claim brought by a party of this Agreement against the other party, including but not limited to a claim by the Community for unpaid charges, or a claim by the Resident, Resident's Representative or by the Resident's estate, arising out of the care or treatment received by the Resident at the Establishment, including without limitation, claims for medical negligence or violation(s) of South Carolina Statutes, arising from simple or gross negligence, shall be limited as follows:

(1) Net economic damages shall be awardable, including, but not limited to, past and future medical expenses, offset by any collateral source payments.

(2) Non-economic damages shall be limited to a maximum of $250,000.

(3) Interest on unpaid fees shall not be awarded.

(4) Punitive damages shall not be awarded.

16. ADVANCE DIRECTIVES.

If the Resident has executed an advance directive or if the Resident executes such documents after the Resident moves into the Establishment, it is the Resident's responsibility to inform the Community's staff and supply a copy to the Community. (The term "advance directive" includes health care powers of attorney, living wills, or other documents that describe the amount or type of health care that the Resident would want to receive at a time when the Resident can no longer communicate those

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decisions directly to a physician or other health care professional.) If the Resident provides a copy of an advance directive to the Community, the Community will endeavor to provide it to health care professionals who are called to assist the Resident in the event of an emergency or otherwise. The Community does not guarantee that the Resident's advance directive will be given to such health care professionals nor does it guarantee that such health care professionals will abide by its terms. It is also the Resident's responsibility to inform the Community if the Resident revokes or changes the Resident's advance directive.

17. FINANCIALLY RESPONSIBLE PARTY.

The "Financially Responsible Party" is jointly and severally liable with the Resident for all monetary obligations under this Agreement; including the payment of the Rent, and all other amounts that become due to the Community under this Agreement. The Financially Responsible Party may also be the Resident's Representative.

18. RESIDENT'S REPRESENTATIVE.

"Resident's Representative" means an individual designated by the Resident to assist the Resident in making decisions about the Resident's care or has been designated to make decisions on the Resident's behalf regarding the Resident's care. This may include an individual that holds a power of attorney or guardianship. The Resident's Representative may also be the Financially Responsible Party.

19. OWNERSHIP and NO RELIGIOUS AFFILIATION.

The Establishment is owned by Dominion Clemson, LLC with its principal place of business located at 100 Pershing Ave, Clemson, SC 29631. The Establishment is not affiliated with any religious organization.

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20. MISCELLANEOUS.

A. **Fire or Casualty.** If the Resident's Room or the Establishment is damaged or destroyed by fire or casualty so as to make it uninhabitable, the Community may terminate this Agreement immediately upon delivery of notice to the Resident or may abate the Rent until the Room is restored to habitable condition. The Community shall have no obligation to repair or restore the Room or the Establishment in the event of a fire or other casualty.

B. **No Waiver.** The failure by any Party to enforce any of its rights under this Agreement shall not be deemed a waiver of any right, which that Party has under this Agreement.

C. **Entire Agreement.** This Agreement, along with the attached exhibits, constitute the entire agreement between the Parties hereto, and may be amended only in writing signed by Community.

D. **Assignment or Subletting.** The Resident shall not let, sublet, assign or transfer this Agreement, or all or any part of the Room, without the prior written consent of the Community. This Agreement may be freely assigned by the Community to any of its affiliates, parents, subsidiaries, successors or assigns.

E. **Notice.** Notices required by this Agreement shall be in writing and delivered either by personal delivery, overnight delivery service or U.S. mail (certified or registered mail, return-receipt-requested, with all postage and charges prepaid). Notice to the Community and/or Manager shall be sent to the attention of the executive director at the Establishment's address listed above. Notice to the Resident shall be sent to the Room at the Establishment's address listed above, with a copy to the Financially Responsible Party and/or Resident's Representative (if there is one) at the following address:

Debra Galloway
304 East 2nd Ave
Easley SC 29640

F. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, this Agreement shall be read as if such unenforceable provision was not included and all other provisions of this Agreement shall continue in full force and effect.

G. **Successors.** The respective rights and obligations provided in this Agreement shall bind

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and shall inure to the benefit of the Parties hereto, their legal representatives, heirs, estates, successors and assigns.

H. **Survival.** The rights and obligations of the Parties set forth shall survive the termination of this Agreement; together with all rights of indemnification.

I. **Governing Law**. Except as noted above this Agreement shall be governed by and construed under the laws of the State of South Carolina without regard for its conflict of laws or principles.

J. **Headings.** The headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.

K. **Authorization to Release Medical Information.** The Resident hereby authorizes the Resident's health care providers to release the Resident's medical information and medical records to the Landlord as needed.

L. **Incompetence.** If the Resident becomes legally incompetent, or is unable to properly care for him or herself or his or her property, and the Resident has made no other designation of a person or legal entity to serve as the Resident's guardian or conservator; the Resident hereby grants authority to the Community to apply to a court of competent jurisdiction for the appointment of a conservator or guardian.

M. **Risk Management Process.** The Community maintains a risk management process to identify and reduce potential liability, which includes providing the Resident with the following information:

General Provisions

i. **No One-On-One Care.** The Resident understands that the community will not be providing the Resident with one-on-one staff assistance at all times. Rather, at limited time periods during the day, the Resident will receive supervision or assistance from the Community's staff as defined by the level of service under this Agreement. There will be times that the Resident will be in the Resident's Room, hallway or common areas of the Establishment, including outdoors, without a staff member present to supervise, observe or assist the Resident. This is all part of the Establishment's Assisted Living goal of allowing the Resident to live as independently as possible, and with as much personal privacy, dignity, and personal decision-making as possible, and in the least restrictive environment.

ii. **Staff Response Time**. The Resident and the Resident's Representative also fully understand and appreciate the fact that, because the Resident will not be receiving one-on-one staff supervision or assistance, the Resident's requests

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for non-emergency staff assistance will often *not* be responded to immediately. In fact, the Resident and the Resident's Representative understand that a non-emergency request, for example a request to be assisted with changing into the Resident's nightgown, assisted with a shower or bath, assisted to the bathroom, etc., may take approximately 5-10 minutes to be responded to. If the Resident desires quicker response time, the Resident and the Resident's Representative understand that the Resident will need to hire a private helper/companion. If the Resident desires quicker response time and the Resident is not willing to pay for a private helper/companion, then the Resident should consider a different facility.

iii. **Independence**. The Resident and the Resident's Representative understand that because the Resident will be given as much independence, privacy and personal decision-making as possible, there may be times when the Resident is injured trying to independently perform the Resident's activities of daily living such as walking, getting dressed, bathing, transferring from the Resident's bed to bathroom, chair to bed, etc. The Resident and the Resident's Representative hereby agree that injuries, including those from falls, which occur while the Resident is performing an activity that the Resident's physician has designated as an activity that the Resident can perform independently, cannot reasonably be prevented.

iv. **Activities Done Without Supervision/Assistance**. The Resident and the Resident's Representative also agree that for any activity designated by the Resident's physician as requiring supervision or assistance, which the Resident decides to perform *without* reasonably requesting or waiting for staff supervision or assistance and which thereby results in an injury to the Resident, shall not be the liability of the Community.

N. **FURTHERMORE**, the Resident and the Resident's Representative agree that the following events may occur, and result in injury to the Resident, which cannot be reasonably prevented by the Community:

i. The Resident may choose not to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.

ii. The Resident may forget to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.

iii. The Resident may request staff supervision or assistance but then decide to perform an activity of daily living before the staff member has been able to

reasonably respond to the Resident's request.

iv. The Resident may choose to exercise the Resident's right to refuse medications or refuse to follow the Resident's physician's advice.

v. The Resident may refuse to comply with staff's recommendation to use a cane, walker, wheelchair, or other safety precautions.

vi. The Resident may exercise the Resident's right to refuse therapy.

vii. The Resident may exercise the Resident's right to refuse to have a private helper/companion.

O. **Falls**. Generally, as individuals age, they begin to experience an increase in falls, often due to decreased eyesight, weaker muscles, slower response time, shuffling gait and/or side effects of medications. The Resident and the Resident's Representative understand that the Community cannot guarantee that the Resident will not experience a fall, or an injury from a fall, at the Establishment.

P. **Role of the Resident's Physician**. The Resident and the Resident's Representative understand that *only* the Resident's physician can do the following: (1) prescribe any medications or treatments for the Resident; (2) diagnose any medical condition that the Resident may have; (3) order any lab work, therapy or limitations on the Resident's activities that the physician deems appropriate and (4) determine if any follow-up action is necessary based on the results of the Resident's lab work. The Community's staff cannot prescribe medications, nor can they make a medical diagnosis or order lab work, physical, speech or occupational therapy, etc.

21. Alzheimer's Disclosure act

A. SECTION 44-36-520 Information respecting form of Alzheimer's care or treatment provided. A nursing home, community residential care facility, or day care facility for adults licensed by the Department of Health and Environmental Control which offers to provide or provides an Alzheimer's special care unit or program must include in its policies and procedures and disclose to the responsible party seeking a placement within the Alzheimer's special care unit or program, the form of care or treatment provided that distinguishes it as being especially applicable to or suitable for persons with Alzheimer's disease. The information that distinguishes the form of care or treatment shall include criteria for admission, transfer, and discharge; care planning; staffing patterns; staff training; physical environment; resident and participant activities; family role in care; and unique costs to the resident or participant associated with specialized service delivery.

B. Dominion Senior Living offers Tapestry to its residents. Tapestry is a special program designed for the care of Alzheimer's and other related Dementia. See Tapestry Mission and Philosophy attachment.

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22. OPPORTUNITY TO READ AGREEMENT.

The Resident acknowledges that he or she was given the opportunity to read this Agreement before signing it. The Resident acknowledges that if he or she was unable to read the Agreement, the Community took special steps to assure communication of its contents to the Resident.

[*Remainder of this page intentionally left blank; signatures on the following page*]

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IN WITNESS WHEREOF, this Assisted Living Establishment Contract is entered into as of the date set forth above.

Community:

DOMINION CLEMSON , LLC
dba DOMINION SENIOR LIVING AT PATRICK SQUARE

By: _____

Name: Lindsey Daugherty

Title: Principal / ED

Resident:

By: _____

Name: _____

Financially Responsible Party:

By: _____

Name: _____

Resident's Representative:

By: Debra C. Galloway
Medical Power of Attorney

Name: Debra C. Galloway

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TAPESTRY MISSION AND PHILOSOPHY

Our mission is to enrich lives by supporting independence, autonomy and preferences for how care is delivered, based upon the resident's abilities, interests, and values. We provide the opportunity for each resident to demonstrate independence based on his or her experience. Programming thoughtfully guided by our staff will center on meaningful and useful activities that are rewarding and successful for the resident.

1) PHILOSOPHY

- We enhance the quality of life for each resident by recognizing that each person is an individual with unique talents, abilities and life history.
- We create an environment that feels like home, with familiar people and objects, comfortable surroundings and pleasant sounds and aromas.
- Our staff approach each residents needs individually, based on that person's preferences for how care is provided.
- Our families are an integral part of the care process, providing a partnership in the caring for their loved one.
- We provide education to our staff and families in order to create a better understanding of how to meet the needs of each resident, and a better understanding of the disease process.
- In Tapestry, we make each resident's present as meaningful as their past.

2) ADMISSION AND SCREENING CRITERIA

Prior to admission, each resident is assessed by our Wellness Director (WD) or designee to determine eligibility and the type of services and care required. Additionally, DHEC requires a medical evaluation to be completed and signed by a physician. Tapestry residents must have a primary diagnosis of Alzheimer's disease, dementia or dementia-related disorders and the physician must determine that admission to a secured unit is warranted.

Eligibility Criteria:

- Physician determination that admission to a secured unit is warranted.
- Diagnosis of Alzheimer's disease or related dementia.
- Requires 24 hour supervision and ADL care due to cognitive and/or physical impairment.
- Ability to ambulate, or be mobile non-ambulatory.
- Ability to bear weight and transfer independently or with assistance.
- Ability to communicate verbally or non-verbally to indicate needs and ability to respond to direction and cueing.
- Ability to participate in personal care and mealtimes, either independently or with assistance. Assistance may include such actions as cueing, reminders, and prompting.
- Incontinence, bladder and bowel, should be manageable. Unmanageable bowel incontinence will preclude admission.
- No Stage 1 or higher decubitus.

- Hospice residents may be admitted or be permitted to continue to reside if state regulations permit
- The following care needs must be met with an outside agency in order for a resident to be admitted:
    - Complicated wound care such as stage 2 or lower decubitus, new amputations, vascular or non-healing wound
    - Physical, Occupational, or Speech Therapy
    - Catheter care
    - Colostomy/Ileostomy care
    - Cutting of Diabetic toenails

Ineligibility Criteria: The following care needs preclude admission to Tapestry.

- Ventilator Care
- Schedule 1 or 2 injectable drugs
- Total Parenteral Nutrition (TPN)
- Suctioning
- Gastronomy tubes
- Total assist with all aspects of care.
- Inability to participate and benefit from an individualized care plan and the programming provided.
- Continuous nursing care or skilled care that cannot be provided by outside agency or that is not permissible under state regulations.
- Inability or unwillingness to pay for services.
- Behaviors that cannot be redirected by the environment, behavior methods, or appropriate medical intervention; behaviors that repeatedly pose a threat to the individual resident or other residents

3) TRANSFER / DISCHARGE CRITERIA AND PROCEDURES

Discharge criteria will follow state regulations established by DHEC for Assisted Living Facilities. For residents who may require a skilled service beyond the supervision of special diets, applications of dressings or medication administration, a licensed home health agency may be selected by the resident. If the needs of a resident can no longer be met in our community, a 30-day discharge notice will be given. For residents who pose an immediate danger to themselves or others, an immediate discharge can be made. For all discharges, management will work with family in providing assistance with new placement. Additionally, residents who require hospice may continue to reside as long as the continued residency is compliant with state regulations.

- Resident develops an inappropriate diagnosis (such as treatable illness (or untreatable) or psychosis due to mental illness)
- Resident becomes non-ambulatory and cannot benefit from assistive devices such as walkers or manual/motorized wheelchairs that can be propelled independently.
- Resident's cognitive impairment progresses so that needs cannot be understood, either verbally or non-verbally.
- Resident is no longer able to benefit from the special programming and environment.
- Resident experiences unmanageable issues related to bowel or bladder incontinence.
- Resident develops a Stage 1 or higher decubitus.

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- Resident needs exceed120 calendar days of skilled care
- Resident is no longer able to assist with any personal care, and requires total assist with all aspects of care.
- Resident is unable or unwilling to pay.
- Resident or responsible party does not abide by the Residency Agreement
- Resident becomes a danger to him/herself or others.

4) STAFFING

- The Community employs a manager, the Tapestry Leader, specifically dedicated to the secured unit. The Tapestry Leader works full-time, 5 days per week. The Tapestry leader is primarily responsible for the supervision of resident care and programming.
- Resident Assistants (RA) are scheduled 24 hours per day, 7 days per week according to the number of residents and acuity. It is the practice of Dominion that the staffing within Tapestry is a higher staff to resident ratio as compared to the non-secured portion of the Community. There is always at least one RA at duty at all times.

5) PROGRAMMING AND ACTIVITIES

The Tapestry activity program is a separate and distinct program offered exclusively to our Tapestry residents. Our programming is built around each individual's life history, current abilities and interests and is geared toward maintaining abilities. We strive to provide a balance of spiritual, emotional, physical, intellectual and social activities.

Examples of common Tapestry activities

- Listening to Music
- Exercising
- Food Preparation
- Crafts
- Gardening
- Solo Activities
- Reminiscence

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6) COSTS AND SERVICES

The accommodations and services fee for residents residing in the Tapestry range in price from $4800 per month Rates vary depending upon the accommodations chosen, levels of care are inclusive. There is a New Resident Application/Assessment Fee in the amount of $1,500.00 charged upon move-in. Additional fees apply for optional services provided by the Community or another third party, including but not limited to: private duty care, personal telephone service, beauty and barber services, personal and medical supplies, pharmacy supplies, medications, and other medical services or emergency transportation.

Dominion Tapestry Supplemental Services and other Ancillary Charges:

Guest Meals

Breakfast	$6.00/Meal
Lunch	$6.00/Meal
Dinner	$6.00/Meal
Holiday Meals	$12.00/Meal

Incontinence Supplies

Tena Pull on	Per 3rd party
Gloves	Per 3rd party
Tena Wipes	Per 3rd party

Other Supplies

Room Replacement Key	$5.00
Furniture Rental	Not applicable
Basic Cable Television Services	$30.00/Month
Telephone Service (Call BellSouth)	
Pharmacy Service	Per Blue Ridge Pharmacy
Beauty & Barber PS Salon	Per Salon Charges
Pet Fee	$1000 non-refundable
Motorized Cart Fee	$500 one time non-refundable

Personal Transportation Service

(*Please schedule at least 7 days in advance to ensure escort availability*)
Free for transportation to or from our Medical Director/Designated Physicians office.

25 Miles or less on designated days	No Charge
On non-designated days	$20/hour +$.75/mile
In excess of 25 miles	$20/hour + $.75/mile
Escort Service	$20.00 / hr

Respite Fees

Daily (up to 8hrs)	$125/Day
Weekly	$1200/Week

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7) SPECIALIZED STAFF TRAINING

Tapestry associates receive at least 6 hours of Dementia specific training within the first 14-days of hire. Such training includes: Introduction to Alzheimer's disease, communication with residents with Alzheimer's diseases, providing care for confused residents, communication skills, managing challenging behaviors, behavior assessment and response strategy, and programming. Annually, Dominion Tapestry associates are required to complete 4 hours of Alzheimer's continuing education program. In addition, there are also hourly monthly mandatory staff meetings held to discuss issues arising from resident incidents/concerns.

8) ASSESSMENT PROCESS – PROVISION OF SERVICES AND ALTERING SERVICES

Prior to admission, residents are assessed by the Wellness Director or designee for assistance needs with Activities of Daily Living (ADLs), as well as any healthcare needs. This assessment is updated at least semi-annually and is also updated when there is a change in condition. Families and residents are encouraged to participate in care conferences with our staff to discuss changes in a resident's condition and level of care.

9) BEHAVIORAL HEALTH CARE NEEDS

This community practices a Behavior Assessment and Response Strategy (BARS) when working with residents with inappropriate behaviors. This strategy is discussed in the staff training program. Incidents of inappropriate behaviors are reviewed among the staff to try and understand possible antecedents of the behavior. If an antecedent is recognized or there is a pattern as to when an inappropriate behavior occurs, plans are formulated to reduce such behavior. Such plans or interventions may include re-direction or reduction of environmental stimuli. In specific cases, family and resident's physician may also be involved in behavioral interventions.

10) PHYSICAL ENVIRONMENT

Our Tapestry is a secured unit with 15 apartments. The unit is secured by a key pad and magnetic locking mechanism on all exit doors. Residents, staff and visitors are not capable of entering or exiting the unit without the security code. The Tapestry has a common space utilized for activities and living room. Additionally, there is a separate common area utilized for dining. The apartments are private with a private, full bathroom. Apartments also may be rented as semi-private if such a demand exists. All apartments are handicap accessible and equipped with an emergency call system that activates staff pagers.

11) FAMILY INVOLVEMENT AND FAMILY SUPPORT PROGRAMS

Families are encouraged to be as involved in the resident's care as they would like to be and are able. Staff is available to answer any questions that may come up involving the resident. Families will be notified of any changes in condition or behavior that occur with the resident. Support groups are held monthly and families are encouraged to attend all family functions planned each month.

12) OTHER SERVICE PROVIDED

Physical, Occupational, and Speech therapy are available on-site through Dominion's preferred partner. The resident and/or family can also choose a provider of their choice.

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(Exhibit A)

Rate Sheet

Private Room or Companion Room Fee $ $3990.00

Establishment Service Fee $ 1500.00 (one time charge)

Services Include:

- 24 Hour/Day Supervision and Assistance with Personal Care
- Personal Laundry
- Linen Service
- Three Nutritious Meals a Day
- Daily Snacks
- Daily Recreational Program
- Transportation Services
- Trained Staff Members
- Full Time Licensed Nurse
- Maintenance and Housekeeping Services

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(Exhibit B)

Supplemental Rate Sheet

Below is a list of services and pricing that are referred to in the Resident Handbook. These charges are for services not included in your monthly rental rate. When arranging the following services, the charges can be paid for upfront or be assessed on your monthly rental statement. Please contact management with any questions.

Administrative/Community Living	
Apartment Transfer Fee	$500.00
Key Duplication	$5.00/key
Food Service	
Guest Meal Tickets	
Breakfast	$6.00
Lunch	$6.00
Dinner	$6.00
Holiday/Theme Meal	$12.00
Room Service	Not provided
Housekeeping/Maintenance	
Additional Housekeeping/Maintenance	$ 15.00/hr
Transportation	
Transportation – Medical appointments	No Charge (within a 25 mile radius)
Escort Service	$15.00/hour

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(Exhibit C)

ADDENDUM TO THE ASSISTED LIVING ESTABLISHMENT AGREEMENT

TRANSPORTATION GUIDELINE

Dominion Senior Living at Patrick Square has vehicles available for transporting residents from scheduled activities, outings and on assigned days, physician or clinic appointments. Routinely, trips are scheduled to banks, stores, pharmacies, etc. Residents can see a specific schedule printed on the activity calendar. Transportation is managed through the community leadership. If a Resident wishes to be "dropped-off" at an appointment destination or unsupervised shopping trip, the Resident must be capable of navigating buildings unassisted, record the method of contacting the driver when it is time for "pick-up" and/or remembering the location of a pre- determined "pick-up" point.

Physicians and clinic appointments will be scheduled within reasonable proximity of the facility not to exceed a 25 mile radius and is approved by the management. Appointments are scheduled on a first come, first serve basis.

The facility will provide chauffeur services at an additional fee of $15.00 each way. A fee of $15/hr will be charged for an escort service to stay in attendance (if needed) with the resident during the appointment. Residents must inform the management of their need for these services well enough in advance to avoid conflict with the residence's activity schedule and to ensure availability to staff to perform escort services.

LIABILITY INSURANCE

Dominion Senior Living at Patrick Square carries liability insurance with T.I.S. of Knoxville and complies with all state regulations.

Dominion Senior Living

RESIDENT RIGHTS

Receipt and Acknowledgement

I/We Earline Cooley acknowledge that we have read and understand the Contents of Resident Bill of Rights for the State of South Carolina. I/we further acknowledge that the Resident Bill of Rights have been explained in person. I/we were given an opportunity to ask questions relating to the Resident Bill of Rights and those questions were answered.

Debra C. Galloway — 2.14.2019

Resident Signature — Date

[signature] — 2.14.19

Community Representative — Date

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Dominion Senior Living

RECEIPT AND ACKNOWLEDGEMENT

I/We Farino Cooley acknowledge that we have read and understand the Contents of the attached Resident Handbook & House Rules, which is a part of our entire agreement with the community, and will abide by the policies stated. Management has the right to take the necessary action as stated in the lease agreement if policies are not followed. Any questions relating to the information contained in this handbook should be directed to the Executive Director or appropriate department.

Debra C Holloway — 2.14.2019

Resident Signature — Date

[signature] — 2.14.19

Community Representative — Date

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ITEMS PROHIBITED IN THE COMMUNITY

- Heating Pads
- Electric Blankets
- Toaster or Toaster Oven
- Egg Crate Mattresses
- Rice-filled Heating Pads
- Coffee Makers without Auto-off feature
- Non-fused extension cords
- Prescribed medications in resident rooms
- Over-the-Counter medications in resident rooms
- Non-consumable liquids, including toiletry items, stored in resident rooms
- Alcoholic beverages in resident rooms without proper documentation.
- Anything illegal or unlawful
- Weapons or items that poses threats to the overall safety of themselves or others.

Other items may also be prohibited if, in the opinion of the management, they pose a threat to any resident.

I have read and understand this list.

Resident/Responsible Party signature: Ilubia C Galloway

Community Representative: _____ Date: 2.14.19

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Dominion Senior Living

MEDICATION ADMINISTRATION WAIVER

Dominion Senior Living (DSL) recognizes that residents have the choice of receiving their medications from various sources; for example, the VA. DSL is committed to resident safety, and demonstrates this commitment by adhering to the "Gold Standard" for safe medication administration, which is the *unit dose system*. This means that all medications provided by our contracted pharmacy and administered to our residents are packaged in a unit dose dispensing system. If you choose to receive your medications from a source that does not provide a unit dose dispensing system, please be aware that you are choosing a medication dispensing option which does not conform to the highest standards of practice, and does not allow our staff to practice medication administration at the established and recognized "Gold Standard" of resident safety for medication administration. DSL will manage those issues within our control to promote the administration of medication safely and effectively; however, the most important feature of safe medication administration and protection from human error is a unit dose dispensing system. If you choose a pharmacy that does not provide this "Gold Standard" approach to medication administration safety, you are actively choosing an increased risk for medication errors and the associated outcomes. Therefore, you assume the risk associated with your choice.

Our contracted pharmacy guarantees the timely availability of our resident's medications in an appropriate unit dose dispensing system. By choosing an outside pharmacy provider (a pharmacy other than our contracted pharmacy, including the VA), you agree to the following terms for medications received from you or your pharmacy.

1.) If DSL cannot administer up to 3(three) doses of any non-critical medication due to its not being available, we will contact your physician to receive a new prescription to be filled via our contracted pharmacy in unit dose packaging. This will be at the resident's expense.
2.) If DSL cannot administer 1(one) dose of any critical medication due to its not being available, we will contact your physician to receive a new prescription to be filled via our contracted pharmacy in unit dose packaging. This will be at the resident's expense.

I, Fatima Cooley, have read this waiver with full understanding of the context. I have been given the opportunity to ask any questions and clear up any misunderstandings I may have had. Furthermore, I agree to the above waiver and I agree to do whatever is necessary to ensure that DSL has my medications available timely and appropriately for administration per my physician's orders.

Debra C. Galloway
Resident Signature

2.14.2019
Date

Resident Surrogate Signature

Date

DSL Representative Signature

2.14.19
Date

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DOMINION
SENIOR LIVING

Policy & Procedure

DISASTER TRAINING

I acknowledge that I have read and agree with the Disaster Training policy and procedures, and that it is my sole responsibility to read and understand the Disaster Training Policy and ask any question of the community staff if I do not understand.

Signature of Resident: Debra C. Galloway

Printed Name of Resident: Earline S. Cooley

Date: 2.14.19

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DOMINION SENIOR LIVING — ROOM KEY RECEIPT AND ACKNOWLEDGEMENT

I _____ acknowledge receipt of room key for room 4AL and understand that any duplicates made are at the expense and responsibility of the resident. If this room key is lost, a replacement will be provided at the resident's expense.

_____ _____

Signature Date

_____ 2-14-19

Community Representative Date

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DOMINION SENIOR LIVING — CONSENT FOR RELEASE TO MEDIA

I hereby give my full consent to Dominion Senior Living to record my participation in any programs or events associated with Dominion Senior Living. Further, I hereby transfer and assign Dominion Senior Living the exclusive right to use and to authorize others to use said images, video, and audio recordings for promotional and educational use or resource sale in the future. I understand that my image may be used, but my name or personal information will never be shared publicly without additional, separate consent.

Signature – Resident/Representative: _____ Date: 2.14.19

Witness: _____ Date: 2.14.19

DATE AUG - 1 2014
CERTIFIED TO BE A TRUE AND CORRECT COPY
OF DOCUMENT ON FILE IN THIS OFFICE
Timothy L. Hamby
REGISTER OF DEEDS, GREENVILLE COUNTY

EXHIBIT B

BOOK 2185 PAGE 732

FILED
GREENVILLE, SC
2006 JAN 19 P 3:42
TIMOTHY L. HAMBY
REGISTER OF DEEDS

DURABLE POWER OF ATTORNEY OF EARLINE S. COOLEY

Introductory Provision. I, **EARLINE S. COOLEY**, as principal (the "Principal") have this day appointed **DEONDA MICHELLE COOLEY WELDON** to serve as my agent ("Agent") and to exercise the powers and discretions set forth below. If **DEONDA MICHELLE COOLEY WELDON** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **PHYLLIS ROBIN COOLEY ELLIOTT** as substitute or successor Agent to serve with the same powers and discretions as set forth below. If **PHYLLIS ROBIN COOLEY ELLIOTT** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **DEBRA ALISON COOLEY GALLOWAY** as substitute or successor Agent to serve with the same powers and discretions as set forth below.

Statement of Intent to Create Durable Power of Attorney Under State Statute. By this instrument I intend to create a Durable Power of Attorney under South Carolina law.

THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY ANY PHYSICAL DISABILITY OR MENTAL INCOMPETENCE WHICH RENDERS ME INCAPABLE OF MANAGING MY OWN ESTATE.

Revocation of Prior Powers of Attorney. I hereby revoke all powers of attorney, general and/or limited, heretofore created by me as principal and terminate all agency relationships created thereunder, including those of all successor Agents named therein, if any.

Delegation of All Powers Lawful to Delegate. I herewith delegate to my Agent each and every power that I may lawfully delegate, subject only to those limitations specifically set forth in this instrument, giving and granting unto my Agent full power and authority to do and perform all and every act, deed, matter, and things whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the specially enumerated powers herein being in aid and exemplification of the full and complete and general power herein granted and not in limitation or definition thereof, and I hereby ratify all that my Agent shall lawfully do or cause to be done by virtue of these presents.

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ARTICLE I

ASSET POWERS

Introduction. My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, with respect to any and all of my property and interests in property, real, personal, intangible and mixed, as follows:

(1) **Power to Sell**. To sell any and every kind of property that I may own now or in the future, real, personal, intangible and/or mixed, including without being limited to contingent and expectant interests, marital rights and any rights of survivorship incident to joint tenancy or tenancy by the entirety, on such terms and conditions and security as my Agent shall deem appropriate and to grant options with respect to sales thereof; to make such disposition of the proceeds of such sale or sales, including expending such proceeds for my benefit, as my Agent shall deem appropriate.

(2) **Power to Buy**. To buy every kind of property, real, personal, intangible and/or mixed, on such terms and conditions as my Agent shall deem appropriate; to obtain options with respect to such purchases; to arrange for appropriate disposition, use, safekeeping and/or insuring of any such property.

(3) **Power to Invest**. To invest and reinvest all or any part of my property in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether made by me or my Agent; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds; to establish, utilize and terminate accounts with securities brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my Agent may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account.; to establish, utilize and terminate agency accounts with corporate fiduciaries; to employ, compensate and terminate the services of financial and investment advisors and consultants.

(4) **Power to Manage Real Property**. With respect to real property, including but not limited to any real property I may hereafter acquire or receive and my personal residence, my Agent is authorized to lease, sublease, release; to eject and remove tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize any and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of

management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build on, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien; to sell and to buy real property.

(5) **Power to Manage Personal Property**. With respect to personal property; to lease, sublease, and release; to recover possession of by all lawful means; to collect, sue for, receive and receipt for rents and profits therefrom; to maintain, protect, repair, preserve, insure, alter or improve all or any part thereof; to sell and to buy the same or other personal property

(6) **Power to Exercise Rights in Securities**. To exercise all rights with respect to corporate securities which I now own or may hereafter acquire, including the right to sell, grant security interests in and to buy the same or different securities; to establish, utilize and terminate brokerage accounts, including margin accounts; to make such payments as my Agent deems necessary, appropriate, incidental or convenient to the owning and holding of such securities; to receive, retain, expend for my benefit, invest and reinvest or make such disposition of as my Agent shall deem appropriate all additional securities, cash or property, including the proceeds from the sales of my securities, to which I may be or become entitled by reason of my ownership of any securities; to vote at all meetings of security holders, regular or special.

(7) **Power to Demand and Receive**. To demand, arbitrate, settle, sue for, collect, receive, deposit, expend for my benefit, reinvest or make such other appropriate disposition of as my Agent deems appropriate, all cash, rights to the payment of cash, property, real, personal, intangible and/or mixed, debts, dues rights, accounts, legacies, bequests, devises, dividends, annuities, rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved, including but not limited to benefits payable to or for my benefit by any governmental agency or body, such as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and for the purposes of receiving Social Security benefits, my Agent is herewith appointed my "Representative Payee"; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf, and to compromise claims and grant discharges in regard to the matters described herein; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf. The authority herein granted shall include but not be limited to converting my assets into assets that do not disqualify me from receiving such benefits or divesting me of such assets. In any divestment actions or asset conversions, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt such plan, then my Agent is directed to use my

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Agent's best efforts to restore such plan as and when the opportunity to do so is available to my Agent. If a transfer of cash by my Agent is made to a pecuniary legatee under my will, my Agent shall ensure that such transfer is deemed a satisfaction of such legacy, pro tanto.

(8) **Power to Exercise Elective Share Rights**. To elect to take against any will and conveyances of my deceased spouse and/or any other person, if appropriate; to retain any property which I have the right to elect to retain; to file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments; and to take all other actions that my Agent deems appropriate in order to effectuate the election; provided, however, that if any such actions by my Agent require the approval of any court, my Agent is authorized to seek such approval.

(9) **Power with Respect to Employment Benefits**. To create and contribute to an employee benefit plan, including a plan for a self-employed individual, for my benefit; to elect retirement on my behalf; to select any payment option under any IRA or employee benefit plan in which I am a participant, including plans for self-employed individuals, or to change options I have selected; to make voluntary contributions to such plans; to make "roll-overs" of plan benefits into other retirement plans; to apply for and receive payments and benefits; to waive rights given to nonemployee spouses under state or federal law.

(10) **Power with Respect to Bank Accounts**. To establish accounts of all kinds, including checking and savings, for me with financial institutions of any kinds, including but not limited to banks and thrift institutions; to modify, terminate, make deposits to and write checks on or make withdrawals from and grant security interests in all accounts in my name or with respect to which I am an authorized signatory, except accounts held by me in a fiduciary capacity, whether or not any such account was established by me or for me by my Agent, to negotiate, endorse or transfer any checks or other instruments with respect to any such accounts; to contract for any services rendered by any bank or financial institution, and to execute, on my behalf as principal, agency or power of attorney forms furnished by any bank with respect to accounts with such bank, appointing as my Agent or any other person or persons.

(12) **Power with Respect to Safe-Deposit Boxes**. To contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory, whether or not the contract for such safe-deposit box was executed by me, either alone or jointly with others, or by my Agent in my name; to add to and remove from the contents of any such safe deposit box and to terminate any and all contracts for such boxes. In addition, I do hereby authorize and direct my Agent as Attorney-in-Fact under this durable power of attorney, to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove the original durable power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a

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result of permitting the acting Agent under this durable power of attorney to exercise this power. This power is exercisable without: (i) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry.

(13) **Power with Respect to Legal and Other Actions**. To institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving me in any way, including but not limited to claims by or against me arising out of property damages or personal injuries suffered by or caused by me or under such circumstances that the loss resulting therefrom will or may be imposed on me and otherwise engage in litigation involving me, my property or any interest of mine, including any property or interest or person for which or whom I have or may have any responsibility.

(14) **Power to Disclaim, Renounce, Release, or Abandon Property Interests**. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts, including the right to alter, amend, revoke or terminate, and to exercise any right to claim an elective share in any estate or under any will. In exercising such discretion, my Agent shall consider any reduction in estate or inheritance taxes that may be due on my death, and the effect of such renunciation or disclaimer on persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that my Agent shall make no disclaimer that is expressly prohibited by other provisions of this instrument.

(15) **Power with Respect to Insurance**. To purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of any one in whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims, (c) hospital insurance, medical insurance, Medicare supplement insurance, custodial care insurance, and disability income insurance for me or any of my dependents, and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft or other commonly insured risk; to pay all insurance premiums, to select any options under such policies; to increase coverage under any such policy, to borrow against any such policy, to pursue all insurance claims on my behalf, to adjust insurance losses, and the foregoing powers shall apply to private and public plans, including but not limited to Medicare, Medicaid, SSI and Worker's Compensation.

(16) **Power with Respect to Taxes**. To represent me in all tax matters; to prepare, sign, and file federal, state, and/or local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns,

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claims for refunds, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts, including the tax court, regarding tax matters, and any and all other tax related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue Code or any successor section thereto and consents to split gifts, closing agreements and any power of attorney form required by the Internal Revenue Service and/or any state and/or local taxing authority with respect to any tax year; to pay taxes due, collect and make such disposition of refunds as my Agent shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and/or any state and/or local taxing authority; to exercise any elections I may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which I am entitled, and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and/or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have an interest or responsibility; and on my behalf to execute IRS Form 2848 and appoint my Agent or any suitable person selected by my Agent as my representative before the Internal Revenue Service.

(17) **Power to Make Gifts**. Having adopted and implemented a plan of making gifts to my children and others in the past, my Agent is specifically empowered to make gifts to herself and other of my children and my issue in order to take maximum advantage of any provisions of state and/or federal tax laws which allows for the making of gifts without any resulting gift tax. This Power of Attorney shall enable my Agent to take full advantage of these laws including the utilization of the annual exclusion and the exemption equivalent at her discretion. Provided however, my children are to treated equally in the making of these gifts so that no one child will receive more than another. This equality provision shall not apply to my issue other than children. Furthermore this power to make gifts includes the power to create trusts for the benefit of a donee into which a gift authorized hereunder may be placed and administered if my Agent in her/his discretion deems it advisable for the benefit of a donee. No person, firm or business relying upon this Power of Attorney shall have any duty to see to the application of the proceeds or items of value.

ARTICLE II

INCIDENTAL POWERS

Introduction. In connection with the exercise of the powers and discretions herein described, my Agent is fully authorized and empowered to perform any acts and things and to execute and deliver any documents, instruments, affidavits, certificates, and papers necessary or appropriate, to such exercise or exercises, including without limitation the following:

(1) **Resort to Courts**. To seek on my behalf and at my expense:

(a) a declaratory judgment from any court of competent jurisdiction interpreting the validity of this instrument and any of the acts authorized by this instrument, but such declaratory judgment shall not be necessary in order for my Agent to perform any act authorized by this instrument.

(b) a mandatory injunction requiring compliance with my Agent's instructions by any person, organization, corporation, or other entity obligated to comply with instructions given by me.

(c) actual and punitive damages and the recoverable costs, fees and expenses of such litigation, against any person, organization, corporation or other entity obligated to comply with instructions given by me who negligently or willfully fails or refuses to follow such instructions.

(2) **Hire and Fire - All Personnel**. To employ, compensate and discharge such domestic, health care and professional personnel including lawyers, accountants, doctors, nurses, brokers, financial consultants, advisors, consultants, companions, servants and employees as my Agent deems appropriate.

(3) **Sign Documents and Incur Costs in Implementing the Agent's Instructions**. To sign, execute, endorse, seal, acknowledge, deliver and file or record instruments and documents, including but not limited to contracts, agreements and conveyances of real and personal property, instruments granting and perfecting security instruments and obligations, orders for the payment of money, receipts, releases, waivers, elections, vouchers, consents, satisfactions and certificates. In addition, any Agent of mine who has the authority to incur costs on my behalf may render the bills for such costs to any Agent of mine who has been granted the authority to pay such costs or to any trustee of any revocable living trust of mine, or guardian, committee or conservator who has authority to pay such costs I request that costs be paid promptly. Any recipient thereof (i.e. my Agent with authority to pay or my trustee) shall promptly pay such costs.

(4) **Payment of Medical Expenses**. My Agent is directed to pay, or cause to be paid, all bills incurred and presented by any agent representing me under a Durable Power of Attorney for Health Care.

(5) **Borrow, Spend, Liquidate, Secure**. To expend my funds and to liquidate my property or to borrow money to produce such funds and to secure any such borrowings with security interests in any property, real, personal, or intangible that I may now or hereafter own.

(6) **Power to Do Miscellaneous Acts**. To open, read, respond to and redirect my mail; to represent me before the U.S. Postal Service in all matters relating to mail service; to establish, cancel, continue or initiate my membership in organizations and associations of all kinds, to take and give or deny custody of all of my important

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documents, including but not limited to my will, codicils, trust agreements, deeds, leases, life insurance policies, contracts and securities and, bearing in mind the confidential nature of such documents, to disclose or refuse to disclose such documents; to obtain and release or deny information or records of all kinds relating to me, to any interest of mine or to any person for whom I am responsible; to house or provide for housing, support and maintenance of any animals or other living creatures that I may own and to contract for and pay the expenses of their proper veterinary care and treatment; and if the care and maintenance of such animals or other living creatures shall become unreasonably expensive or burdensome in my Agent's opinion, to irrevocably transfer such animals to some person or persons willing to care for and maintain them.

ARTICLE III

THIRD PARTY RELIANCE

Introduction. For the purpose of inducing all persons, organizations, corporations and entities including but not limited to any physician, hospital, nursing home, health care provider, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other party (all of whom will be referred to in this Article as a "Person") to act in accordance with the instructions of my Agent as authorized in this instrument, I hereby represent, warrant and agree that:

(1) **Third Party Liability for Revocation and Amendments**. If this instrument is revoked or amended for any reason, I, my estate, and my personal representative will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person", harmless from any loss suffered, or liability incurred by such Person in acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.

(2) **Agent Has Power to Act Alone**. The powers conferred on my Agent by this instrument may be exercised by my Agent alone and my Agent's signature or act under the authority granted in this instrument may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. Consequently, all acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and shall inure to the benefit of and bind me and my estate and my personal representative.

(3) **No Liability to Third Parties for Reliance on Agent**. No Person who relies in good faith on the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no Person who acts in reliance on any representations my Agent may make as to (a) the fact that my Agent's powers are then in effect, (b) the scope of my Agent's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked or amended, or (e) the fact that my Agent

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continues to serve as my Agent shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent. Any party dealing with any Person named as Agent (including any Person named as an Alternate Agent hereunder) may rely on as conclusively correct an affidavit or certificate of such Agent that (i) my Agent's powers are then in effect, (ii) the action my Agent desires to take is within the scope of my Agent's authority granted under this instrument, (iii) I was competent at the time this instrument was executed, (iv) this instrument has not been revoked, and/or (v) my Agent continues to serve as my Agent.

(4) **Alternate Agent May Give Affidavit or Certificate That He or She Currently Serves**. Any party dealing with any person named as Alternate Agent hereunder may rely on as conclusively correct an affidavit or certificate under penalties of perjury of such Alternate Agent that those persons named as prior Agents are no longer serving.

(5) **Affidavits or Certificates Given by Agent Bind Principal**. No Person who relies on any affidavit or certificate under penalties of perjury that this instrument specifically authorizes my Agent to execute and deliver to such person shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.

(6) **Authorization to Release Information to Agent**. All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my Agent's requests.

(7) **Authorization to Release Medical Information**. I hereby authorize all physicians and psychiatrists who have treated me, and all other providers of health care, including hospitals, to release to my Agent all information or photocopies of any records which my Agent may request. If I am incapacitated at the time my Agent shall request such information, all Persons are authorized to treat any such request for information by my Agent as the request of my legal representative and to honor such requests on that basis. I hereby waive all privileges which may be applicable to such information and records and to any communication pertaining to me and made in the course of any confidential relationship recognized by law. My Agent may also disclose such information to such Persons as my Agent shall deem appropriate.

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ARTICLE IV

RESTRICTION ON POWERS

Introduction. Notwithstanding any provision herein to the contrary, my Agent:

(1) **Prohibition on Power Over Life Insurance on Agent's Life**. Shall have no power or authority whatsoever with respect to any interest in or incidents of ownership in any policy of insurance I may own on the life of my Agent.

(2) **Prohibition on Power Over Prior Transfers**. Shall have no power or authority whatsoever with respect to (a) any irrevocable trust created by my Agent as to which I am a trustee or a beneficiary or (b) any asset given to me by my Agent.

(3) **Prohibition on Power to Benefit Agent**. Shall be prohibited, except as specifically authorized in this instrument, from (a) appointing, assigning or designating any of my assets, interests or rights directly or indirectly to my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (b) exercising any power of appointments I may hold in favor of my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (c) disclaiming assets to which I would otherwise be entitled if the effect of such disclaimer is to pass assets directly or indirectly to my Agent or his or her estate, or (d) using my assets to discharge any of my Agent's legal obligations, including any obligation of support which my Agent may owe to others, excluding those whom I am legally obligated to support.

(4) **Prohibition on Exercise of Fiduciary Powers**. Shall be prohibited from exercising any discretionary fiduciary powers that I now hold or may hereafter acquire.

(5) **Avoid Disrupting Principal's Estate Plan**. If it becomes necessary for my Agent to liquidate my assets to provide support for me, or if liquidation or conversion of assets becomes necessary for any other reason, whether specified in this instrument or otherwise, or such liquidation is deemed by my Agent to be appropriate or convenient, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent, whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt the dispositive provisions of such plan, then my Agent is directed to use my Agent's best efforts to restore the dispositive provisions of such plan as and when the opportunity to do so is available to my Agent. My Agent shall make reasonable efforts to obtain and review my estate plan and any person having knowledge thereof or possession of any documents implementing such estate plan is authorized to make disclosure thereof to my Agent, and to furnish my Agent with copies of such documents.

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ARTICLE V

ADMINISTRATIVE PROVISIONS

Introduction. The following provisions shall apply:

(1) **Reimbursement and Compensation of Agent**. My Agent shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my Agent on my behalf at any time under any provision of this instrument. My Agent shall not be entitled to compensation for services rendered hereunder but shall be entitled to reimbursement for reasonable expenses.

(2) **Waiver of Acts of Omission and Commission**. My Agent (and my Agent's estate and personal representative), acting in good faith, are hereby released and forever discharged from any and all civil liability and from all claims or demands of all kinds whatsoever by me or my estate and personal representative arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence.

(3) **Waiver of Duty to Produce Income, Authority for Transactions between Agent as Agent and Agent as Individual and Eligibility of Agent to Serve in Other Fiduciary Capacities for Principal**. My Agent shall have no responsibility to make my property productive of income, to increase the value of my estate or to diversify my investments. My Agent shall have no liability for entering into transactions authorized by this instrument with my Agent in my Agent's individual capacity as long as my Agent believes in good faith that such transactions are in my best interests or the best interests of my estate and those persons interested in my estate. My Agent shall be eligible to serve in all other fiduciary capacities, for me or my benefit (but not in my place where I may serve as a fiduciary for others), including but not limited to serving as Trustee, Guardian, Conservator, Committee, Personal Representatives.

(4) **No Duty to Monitor Health**. My Agent shall have no responsibility to monitor on any regular basis the state of my physical health or mental capacity to determine if any actions need be taken under this instrument.

(5) **Severability**. If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.

(6) **This Instrument Unaffected by Lapse of Time**. This power of attorney shall be legally unaffected by reason of lapse of time or staleness.

(7) **Agent Authorized to Sign Power of Attorney Forms**. In carrying out the authorizations set forth in this instrument, if in the sole opinion of my

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Agent it is necessary or convenient for my agent to sign my name, as principal, on forms of powers of attorney (the "Forms") required by governmental agencies, corporations or other entities in transactions with me, my agent is authorized to execute such Forms, and to appoint an agent or other person on the Forms to represent me.

(8) **Agent Authorized to Employ Principal's Attorney**. The Principal requests and authorizes the Agent to employ the attorney who prepared this power of attorney or other attorneys employed by the Principal in connection with the Principal's estate plan and business matters and hereby (a) waives any and all conflicts of interest that might arise through such employment, (b) authorizes all such attorneys to make full disclosure of the Principal's estate plan and business to the Agent and (c) authorizes such attorneys to accept such employment.

(9) **Governing Law and Applicability to Foreign Jurisdictions**. This instrument shall be governed by the laws of the State of South Carolina in all respects, including its validity, construction, interpretation and termination. To the extent permitted by law, this power of attorney shall be applicable to all property of mine, real, personal, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located and whether such property is now owned by me or hereafter acquired by me or for me by my Agent. In addition, in regard to health care treatment affecting me, I intend for this Power of Attorney to be honored in any jurisdiction in which it may be presented and given the most liberal interpretation available for purposes of granting my Agent the fullest amount of discretion in making health care decisions on my behalf. I also intend that any such jurisdiction refer to the laws of the state referred to above to interpret and determine the validity of this instrument and any of the powers granted hereunder. Should any physician or health care provider fail to honor this Power of Attorney, then my Agent is authorized to terminate the services of such persons and to transfer my care to another physician or health care provider that will honor the instructions of my Agent.

(10) **Definitions**. Whenever the word:

(a) "Agent" or any modifying or equivalent word or substituted pronoun therefor is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

(b) "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary, appointed by a court of competent jurisdiction or by other lawful means, responsible for the person and/or the property of an individual.

(11) **Revocation, Amendment and Resignation**. This instrument may be amended or revoked by me at any time by the execution by me of a written instrument of revocation or amendment, delivered to my Agent and to all Alternate Agents. If this

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instrument has been filed or recorded in the public records, then the instrument of revocation or amendment shall be filed or recorded in the same public records. My Agent and any Alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or, in the case of an Agent's resignation, by delivery to the Alternate Agent. If my spouse has been appointed my Agent or an Alternate Agent hereunder and subsequent to the execution of this instrument my spouse and I are legally separated or divorced, or in the event that such an action is pending, such legal separation, divorce, or pending action shall automatically and without notice remove my spouse as Agent or Alternate Agent.

(12) **Substitute/Successor Agent Appointed by Court**. If at any time there is no person serving as Agent named herein, my successor or substitute Agent shall be some suitable person or institution, appointed by the court having jurisdiction over this instrument, ex parte, without the necessity of a hearing.

(13) **Appointment of Ancillary Agent**. If at any time my Agent deems it necessary or desirable in my Agent's discretion to appoint one or more Agents to act in another jurisdiction under this power of attorney (such Agent or Agents being hereinafter referred to in the aggregate as my "Ancillary Agent") my Agent from time to time and at any time may appoint one or more such Ancillary Agents. In making such appointment my Agent may execute and deliver such documents and instruments including living wills, Declarations of Desire for Natural Death, Health Care Declarations or Powers of Attorney as may be necessary, desirable, convenient or proper to effectuate any such ancillary appointment, and my Agent may grant to any Ancillary Agent, some or all of the powers and duties and authorities granted to my Agent hereunder, but may not grant to any such Ancillary Agent powers which are inconsistent with or different from those powers granted to my Agent hereunder.

(14) **Agent's Resignation and Selection of Substitute**. If my Agent desires to resign as my Agent, and there is no successor Agent named in this instrument who is willing and able to serve as my Agent, and I am incapacitated at the time of such resignation, then on such resignation my Agent is authorized and empowered to appoint a substitute Agent to act and serve as my Agent, such appointment to be made in a written instrument that shall be (i) signed by my Agent, (ii) delivered to my substitute Agent, and (iii) attached to this instrument.

(15) **Agent's Death, Incapacity, or Resignation and Selection of Substitute**. At any time after my incapacity, my Agent at any time may appoint a future successor Agent to act and serve as my Agent in the event that my Agent shall die or become mentally incapacitated or shall resign prior to my death, and my Agent at any time during my Agent's service as Agent may also revoke any such appointment theretofore made by my Agent, provided, however, that my Agent may not revoke, modify or supersede any appointment of a successor Agent made by me in this power of attorney. Any appointment made by my Agent shall be made in a written instrument that shall (i) specify the event or events on which such substitution shall become effective, (ii)

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be signed by my Agent, (iii) be delivered to my substitute Agent, and (iv) be attached to this instrument.

(16) **Counterpart Originals**. If this instrument has been executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.

(17) **Photocopies**. My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. Each photocopy shall have the same force and effect as any original.

(18) **Binding Effect**. This instrument and actions taken by my Agent properly authorized hereunder shall be binding on me, my estate and my personal representative.

IN WITNESS WHEREOF, I have executed this Power of Attorney this 10 day of January, 2006, and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.

Earline S. Cooley

EARLINE S. COOLEY, Principal

ATTESTATION

The foregoing Durable Power of Attorney was this 10 day of January, 2006, signed, sealed, published and declared by the said Principal as and for the Principal's Durable Power of Attorney in our presence, and at the Principal's request and in the Principal's presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Melissa P. Tate of Greenville, SC

of Greenville, SC

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Principal duly authorized, sign, seal and as the Principal's act and deed deliver the within Durable Power of Attorney and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Melissa P. Fox

SWORN to before me this
19th day of January, 2006

Notary Public for South Carolina
My Commission expires: 4/18/13

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 03:42 PM
01 19 06 RECORDED IN DEED
BOOK 2185 PAGE 0732 THRU 0746
DOC # 2006005588

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COPY

EXHIBIT C

HEALTH CARE POWER OF ATTORNEY
OF
EARLINE S. COOLEY

Introductory Provision. I, **EARLINE S. COOLEY** as principal (the "Principal") have this day appointed **PHYLLIS ROBIN COOLEY ELLIOTT** to serve as my agent ("Agent") and to exercise the powers and discretions set forth below. If **PHYLLIS ROBIN COOLEY ELLIOTT** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **DEBRA ALISON COOLEY GALLOWAY** as substitute or successor Agent to serve with the same powers and discretions as set forth below. If **DEBRA ALISON COOLEY GALLOWAY** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **DEONDA MICHELLE COOLEY WELDON** as substitute or successor Agent to serve with the same powers and discretions as set forth below.

Statement of Intent to Create Durable Power of Attorney Under State Statute. By this instrument I intend to create a Durable Power of Attorney for Health Care under South Carolina law.

This Power of Attorney shall not be affected by any physical disability or mental incompetence which renders me incapable of managing my own estate, nor will this power of attorney shall not be affected by lapse of time.

ARTICLE I

HEALTH CARE

Introduction. My Agent is authorized in my Agent's discretion from time to time and at any time to exercise the authority described below relating to matters involving my health care. In exercising the authority granted to my Agent herein, I first direct my Agent to try to discuss with me the specifics of any proposed decision regarding my health care and treatment if I am able to communicate in any manner, however rudimentary. If I am unable to consent, or refuse to consent, to health care, and my Agent cannot determine the choice I would want made under the circumstances, my Agent shall give, withhold, modify, or withdraw such consent for me based on any health care choices that I may previously have expressed on the subject while competent, whether under this instrument or otherwise. If my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent shall make such choice for me based on what my Agent believes to be in my best interests. Accordingly, my Agent is authorized as follows:

(1) **Power of Access and Disclosure of Medical Records and Other Personal Information**. To request, receive and review any information, verbal or written, regarding my personal affairs or my physical or mental health, including medical and hospital records, and to execute any releases or other documents that may be required to obtain such information, and to disclose or deny such information to such persons, organizations, firms or corporations as my Agent shall deem appropriate.

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(2) **Power to Employ and Discharge Health Care Personnel**. To employ and discharge health care personnel including physicians, psychiatrists, dentists, nurses, and therapists as my Agent shall deem necessary for my physical, mental and emotional well-being, and to pay them, or cause them to be paid, reasonable compensation.

(3) **Power to Give, Withhold, or Withdraw Consent to Health Care Treatment**. To give, withhold, withdraw or modify consent to any health care procedures, tests or treatments, including surgery; to arrange for my hospitalization, convalescent care, hospice or home care; to summon paramedics or other emergency medical personnel and seek emergency treatment for me, as my Agent shall deem appropriate; to give, withhold, withdraw or modify consent to such procedures, tests and treatments, as well as hospitalization, convalescent care, hospice or home care which I or my Agent may have previously allowed or consented to or which may have been implied due to emergency conditions. My Agent's decisions should be guided by taking into account (1) the provisions of this instrument, (2) any reliable evidence of preferences that I may have expressed on the subject whether before or after the execution of this document, (3) what my Agent believes I would want done in the circumstances if I were able to express myself, and (4) any information given to my Agent by the physicians treating me as to my health care diagnosis and prognosis and the intrusiveness, pain, risks, and side effects of the treatment.

(4) **Power to Give or Withhold Consent to Psychiatric Treatment**. To arrange, on the execution of a certificate by two independent psychiatrists who have examined me and in whose opinions I am in immediate need of hospitalization because of mental disorder, alcoholism or drug abuse, for my voluntary admission to an appropriate hospital or institution for treatment of the diagnosed problem or disorder; to arrange for private psychiatric and psychological treatment for me; and to revoke, modify, withdraw or change consent to such hospitalization, institutionalization or private treatment which I or my Agent may have previously given. The consent of my Agent to my hospitalization for psychiatric help, alcoholism or drug abuse shall have the same legal effect, subject to applicable local law, as a voluntary admission made by me.

(5) **Power to Maintain Me in My Residence**. To take whatever steps are necessary or advisable to enable me to remain in my personal residence as long as it is reasonable under the circumstances. I realize that my health may deteriorate so that it becomes necessary to have round-the-clock nursing care if I am to remain in my personal residence, and I direct my Agent to obtain such care, including any equipment that might assist in such care, as is reasonable under the circumstances. Specifically, I do not want to be hospitalized or put in a convalescent or similar home as long as it is reasonable to maintain me in my personal residence.

(6) **Power to Exercise My Health Care Right of Privacy**. To exercise all state and federal rights that I may have, including but not limited to my right of privacy to make decisions regarding my health care even though the exercise of those rights might hasten my death or be contrary to conventional health care advice.

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(7) **Power to Authorize Relief from Pain**. To consent to and arrange for the administration of pain-relieving drugs of any kind, or other surgical or health care procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful to me, even though such drugs or procedures may lead to permanent physical damage, addiction or even hasten the moment of, but not intentionally cause, my death.

(8) **Power to Grant Releases**. To grant, in conjunction with any instructions given under this Article, releases to hospital staff, physicians, nurses and other health care providers who act in reliance on instructions given by my Agent or who render written opinions to my Agent in connection with any matter described in this Article from all liability for damages suffered or to be suffered by me; to sign documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" as well as any necessary waivers of or releases from liability required by any hospital or physician to implement my wishes regarding medical treatment or nontreatment.

ARTICLE II

CARE AND CONTROL OF THE PERSON

Introduction. My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, with respect to the control and management of my person, as follows:

(1) **Power to Provide for Principal's Support**. To do all acts necessary for maintaining my customary standard of living, to provide a place of residence by purchase, lease or other arrangement, or by payment of the operating costs of my existing place of residence, including interest, amortization payments, repairs and taxes, to provide normal domestic help for the operation of my household, to provide clothing, transportation, medicine, food and incidentals, and if necessary to make all necessary arrangements, contractual or otherwise, for me at any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and to assure that all of my essential needs are provided for at such a facility or in my own residence, as the case may be. .

(2) **Power to Make Advance Funeral Arrangements**. To make advance arrangements for my funeral and burial, including the purchase of a burial plot and marker, and such other related arrangements as my Agent shall deem appropriate; if I have not previously done so myself.

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(3) **Power to Change Domicile**. To establish a new residency or domicile for me, from time to time and at any time, within or without the state, and within or without the United States, for such purposes as my Agent shall deem appropriate, including but not limited to any purpose for which this instrument was created.

ARTICLE III

REFUSAL OF HEALTH CARE TREATMENT

Introduction and Recitals. I wish to live and enjoy life as long as possible. However, I do not wish to receive health care treatment that will only postpone the moment of my death from an incurable and terminal condition or prolong an irreversible coma. For purposes of this instrument, (1) "terminal condition" shall refer to a condition that is reasonably expected to result in my death within twelve (12) months regardless of the treatment I may receive, and (2) "irreversible coma" shall refer to a permanent loss of consciousness from which there is no reasonable possibility that I will return to a cognitive and sapient life and shall include but shall not be limited to that condition known as a persistent vegetative state.

Therefore, if two licensed qualified physicians who are familiar with my condition have diagnosed and noted in my medical records that:

(i) I am unable to give informed consent to health care treatment that is proposed or available for my condition and my condition is terminal as defined above, or

(ii) I have been in a coma for at least sixty (60) days and that the coma is irreversible as defined above,

then my Agent is authorized to:

(1) direct that health care which will only postpone the moment of my death or prolong my irreversible coma, whether or not such treatment is directed toward my terminal condition, be withheld or, if previously begun, to direct that such treatment be withdrawn whether or not such treatment is related to my terminal condition or irreversible coma; and

(2) request, require or consent to the writing of a "No-Code" or "Do Not Resuscitate" order by any of my attending physician; and

(3) sign on my behalf any documents necessary to carry out the authorizations described in this instrument, including waivers or releases of liability required by any health care provider; and

(4) order whatever is appropriate to keep me as comfortable and free of pain as is reasonably possible, including the administration of pain relieving drugs

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of any kind or other surgical or medical procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful, even though such drugs or procedures may lead to permanent physical damage, addiction or hasten the moment of, but not intentionally cause, my death.

I desire that my wishes be carried out through the authority given to my Agent by this instrument despite any contrary feelings, beliefs or opinions of members of my family, relatives, friends, conservator or guardian.

In exercising the authority given to my Agent herein, my Agent shall first follow the instructions of this document and any other subsequent instructions, oral or written, that I may give my Agent while I am competent. Notwithstanding such instruction, if my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent should make such choice for me based on what my Agent believes to be in my best interest.

If no Agent designated in this instrument is available or able or willing to serve as my Agent or to exercise the powers granted in this Article, then I request that this instrument be given the same force and effect as any other written expression of intent under applicable law.

It is my intention that this instrument, both as a self-executing document and a delegation of power to my Agent, shall be deemed an exercise of all rights and interests that I may have under the United States Constitution, the constitution of the state of my domicile, state and federal laws, rules, regulations and decisions, judicial and administrative, to refuse health care treatment, including but not limited to artificial nutrition and artificial hydration.

I authorize my Agent to establish a new residency or domicile for me, from time to time and at any time, within or without the state, and within or without the United States, for the purpose of exercising effectively the powers granted to my Agent in this Article.

In addition, if I have been in an irreversible coma, as defined above, for sixty (60) days or more, or if because of my terminal condition as defined above it is no longer possible to nourish me without severe discomfort, and the two physicians described above also conclude that the nourishment will not improve my physical condition and I will not experience pain as a result of the withdrawal of nutrition and hydration, then my Agent may require that procedures used to provide me with nutrition and hydration, including, by way of example only, all forms of intravenous and parenteral feeding, all forms of tube feeding and misting, be withheld or, if previously instituted, to require that they be withdrawn.

In addition, my Agent is authorized to receive and retain custody of any instrument signed by me that is effective under law to require the withdrawal or withholding

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of life sustaining treatment or procedures, including but not limited to a "Living Will," "Directive to Physician" and a "Declaration of Desire for Natural Death," (hereinafter referred to in the aggregate as "Advance Directives") and if the circumstances described above authorizing my Agent to require that life sustaining treatment be withheld or withdrawn have occurred, then as an alternative or supplemental act, I authorize my Agent to deliver to my physicians, health care providers and other appropriate recipients, this instrument and any other writings and Advance Directives signed by me that express my desire under the circumstances to require the withholding or withdrawal of futile, health care treatment, and to instruct such physicians, health care providers and other appropriate recipients to act immediately in accordance with my desires.

ARTICLE IV

INCIDENTAL POWERS

Introduction. In connection with the exercise of the powers and discretions herein described, my Agent is fully authorized and empowered to perform any acts and things and to execute and deliver any documents, instruments, affidavits, certificates, and papers necessary or appropriate, to such exercise or exercises, including without limitation the following:

(1) **Resort to Courts**. To seek on my behalf and at my expense:

(a) a declaratory judgment from any court of competent jurisdiction interpreting the validity of this instrument and any of the acts authorized by this instrument, but such declaratory judgment shall not be necessary in order for my Agent to perform any act authorized by this instrument.

(b) a mandatory injunction requiring compliance with my Agent's instructions by any person, organization, corporation, or other entity obligated to comply with instructions given by me.

(c) actual and punitive damages and the recoverable costs, fees and expenses of such litigation, against any person, organization, corporation or other entity obligated to comply with instructions given by me who negligently or willfully fails or refuses to follow such instructions.

(2) **Hire and Fire - All Personnel**. To employ, compensate and discharge such domestic, health care and professional personnel including lawyers, doctors, nurses, , companions, servants and employees as my Agent deems appropriate for my health care or the enforcement of this Power of Attorney.

(3) **Sign Documents and Incur Costs in Implementing the Agent's Instructions**. To sign, execute, endorse, seal, acknowledge, deliver and file or record instruments and documents, including but not limited to contracts, agreements and consents. In addition, any Agent of mine who has the authority to incur costs on my behalf may render

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the bills for such costs to any Agent of mine who has been granted the authority to pay such costs or to any trustee of any revocable living trust of mine, or guardian, committee or conservator who has authority to pay such costs I request that costs be paid promptly. Any recipient thereof (i.e. my Agent with authority to pay or my trustee) shall promptly such costs.

ARTICLE V

THIRD PARTY RELIANCE

Introduction. For the purpose of inducing all persons, organizations, corporations and entities including but not limited to any physician, hospital, nursing home, health care provider, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other party (all of whom will be referred to in this Article as a "Person") to act in accordance with the instructions of my Agent as authorized in this instrument, I hereby represent, warrant and agree that:

(1) **Third Party Liability for Revocation and Amendments**. If this instrument is revoked or amended for any reason, I, my estate, and my personal representative will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person", harmless from any loss suffered, or liability incurred by such Person in acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.

(2) **Agent Has Power to Act Alone**. The powers conferred on my Agent by this instrument may be exercised by my Agent alone and my Agent's signature or act under the authority granted in this instrument may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. Consequently, all acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and shall inure to the benefit of and bind me and my estate and my personal representative.

(3) **No Liability to Third Parties for Reliance on Agent**. No Person who relies in good faith on the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no Person who acts in reliance on any representations my Agent may make as to (a) the fact that my Agent's powers are then in effect, (b) the scope of my Agent's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked or amended, or (e) the fact that my Agent continues to serve as my Agent shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent. Any party dealing with any Person named as Agent (including any Person named as an Alternate Agent hereunder) may rely on as conclusively correct an affidavit or

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certificate of such Agent that (i) my Agent's powers are then in effect, (ii) the action my Agent desires to take is within the scope of my Agent's authority granted under this instrument, (iii) I was competent at the time this instrument was executed, (iv) this instrument has not been revoked, and/or (v) my Agent continues to serve as my Agent.

(4) **Alternate Agent May Give Affidavit or Certificate That He or She Currently Serves**. Any party dealing with any person named as Alternate Agent hereunder may rely on as conclusively correct an affidavit or certificate under penalties of perjury of such Alternate Agent that those persons named as prior Agents are no longer serving.

(5) **Affidavits or Certificates Given by Agent Bind Principal**. No Person who relies on any affidavit or certificate under penalties of perjury that this instrument specifically authorizes my Agent to execute and deliver to such person shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.

(6) **Authorization to Release Information to Agent**. All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my Agent's requests.

(7) **Authorization to Release Medical Information**. I hereby authorize all physicians and psychiatrists who have treated me, and all other providers of health care, including hospitals, to release to my Agent all information or photocopies of any records which my Agent may request. If I am incapacitated at the time my Agent shall request such information, all Persons are authorized to treat any such request for information by my Agent as the request of my legal representative and to honor such requests on that basis. I hereby waive all privileges which may be applicable to such information and records and to any communication pertaining to me and made in the course of any confidential relationship recognized by law. My Agent may also disclose such information to such Persons as my Agent shall deem appropriate.

ARTICLE VI

ADMINISTRATIVE PROVISIONS

Introduction. The following provisions shall apply:

(1) **Reimbursement and Compensation of Agent**. My Agent shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my Agent on my behalf at any time under any provision of this instrument. My Agent shall not be entitled to compensation for services rendered hereunder but shall be entitled to reimbursement for reasonable expenses.

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(2) **Waiver of Acts of Omission and Commission**. My Agent (and my Agent's estate and personal representative), acting in good faith, are hereby released and forever discharged from any and all civil liability and from all claims or demands of all kinds whatsoever by me or my estate and personal representative arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence.

(3) **Severability**. If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.

(4) **This Instrument Unaffected by Lapse of Time**. This power of attorney shall be legally unaffected by reason of lapse of time or staleness.

(5) **Agent Authorized to Employ Principal's Attorney**. The Principal requests and authorizes the Agent to employ the attorney who prepared this power of attorney or other attorneys employed by the Principal in connection with the Principal's estate plan and business matters and hereby (a) waives any and all conflicts of interest that might arise though such employment, (b) authorizes all such attorneys to make full disclosure of the Principal's estate plan and business to the Agent and (c) authorizes such attorneys to accept such employment.

(6) **Governing Law and Applicability to Foreign Jurisdictions**. This instrument shall be governed by the laws of the State of South Carolina in all respects, including its validity, construction, interpretation and termination. To the extent permitted by law, this power of attorney shall be applicable to all property of mine, real, personal, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located and whether such property is now owned by me or hereafter acquired by me or for me by my Agent. In addition, in regard to health care treatment affecting me, I intend for this Power of Attorney to be honored in any jurisdiction in which it may be presented and given the most liberal interpretation available for purposes of granting my Agent the fullest amount of discretion in making health care decisions on my behalf. I also intend that any such jurisdiction refer to the laws of the state referred to above to interpret and determine the validity of this instrument and any of the powers granted hereunder. Should any physician or health care provider fail to honor this Power of Attorney, then my Agent is authorized to terminate the services of such persons and to transfer my care to another physician or health care provider that will honor the instructions of my Agent.

(7) **Definitions**. Whenever the word:

(a) "Agent" or any modifying or equivalent word or substituted pronoun therefor is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

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(b) "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary, appointed by a court of competent jurisdiction or by other lawful means, responsible for the person and/or the property of an individual.

(8) **Revocation, Amendment and Resignation**. This instrument may be amended or revoked by me at any time by the execution by me of a written instrument of revocation or amendment, delivered to my Agent and to all Alternate Agents. If this instrument has been filed or recorded in the public records, then the instrument of revocation or amendment shall be filed or recorded in the same public records. My Agent and any Alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or, in the case of an Agent's resignation, by delivery to the Alternate Agent.

(9) **Substitute/Successor Agent Appointed by Court**. If at any time there is no person serving as Agent named herein, my successor or substitute Agent shall be some suitable person or institution, appointed by the court having jurisdiction over this instrument, ex parte, without the necessity of a hearing.

(10) **Appointment of Ancillary Agent**. If at any time my Agent deems it necessary or desirable in my Agent's discretion to appoint one or more Agents to act in another jurisdiction under this power of attorney (such Agent or Agents being hereinafter referred to in the aggregate as my "Ancillary Agent") my Agent from time to time and at any time may appoint one or more such Ancillary Agents. In making such appointment my Agent may execute and deliver such documents and instruments including living wills, Declarations of Desire for Natural Death, Health Care Declarations or Powers of Attorney as may be necessary, desirable, convenient or proper to effectuate any such ancillary appointment, and my Agent may grant to any Ancillary Agent, some or all of the powers and duties and authorities granted to my Agent hereunder, but may not grant to any such Ancillary Agent powers which are inconsistent with or different from those powers granted to my Agent hereunder.

(11) **Agent's Resignation and Selection of Substitute**. If my Agent desires to resign as my Agent, and there is no successor Agent named in this instrument who is willing and able to serve as my Agent, and I am incapacitated at the time of such resignation, then on such resignation my Agent is authorized and empowered to appoint a substitute Agent to act and serve as my Agent, such appointment to be made in a written instrument that shall be (i) signed by my Agent, (ii) delivered to my substitute Agent, and (iii) attached to this instrument.

(12) **Agent's Death, Incapacity, or Resignation and Selection of Substitute**. At any time after my incapacity, my Agent at any time may appoint a future successor Agent to act and serve as my Agent in the event that my Agent shall die or become mentally incapacitated or shall resign prior to my death, and my Agent at any time during my Agent's service as Agent may also revoke any such appointment theretofore made

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by my Agent, provided, however, that my Agent may not revoke, modify or supersede any appointment of a successor Agent made by me in this power of attorney. Any appointment made by my Agent shall be made in a written instrument that shall (i) specify the event or events on which such substitution shall become effective, (ii) be signed by my Agent, (iii) be delivered to my substitute Agent, and (iv) be attached to this instrument.

(13) **Counterpart Originals**. If this instrument has been executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.

(14) **Photocopies**. My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. Each photocopy shall have the same force and effect as any original.

(15) **Binding Effect**. This instrument and actions taken by my Agent properly authorized hereunder shall be binding on me, my estate and my personal representative.

IN WITNESS WHEREOF, I have executed this Power of Attorney this 10 day of January, 2006, and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.

Earline S. Cooley

EARLINE S. COOLEY, PRINCIPAL

ATTESTATION

The foregoing Durable Power of Attorney was this 10 day of January, 2006, signed, sealed, published and declared by the said Principal as and for the Principal's Durable Power of Attorney in our presence, and at the Principal's request and in the Principal's presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Melissa P Fox of Greenville, South Carolina

of Greenville, South Carolina

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Principal duly authorized, sign, seal and as the Principal's act and deed deliver the within Durable Power of Attorney and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Melissa P. Fox

SWORN to before me this
12 day of January, 2006

Notary Public for South Carolina
My Commission expires: 4/18/13

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC And Dominion Group, LLC, Defendants.	)	C.A. Number: 2021-CP-39-01127 & 2021-CP-39-01128 **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND PROTECTIVE ORDER FROM DISCOVERY AND MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

On February 14, 2019, Earline Cooley's daughter and available durable power of attorney Debra Galloway ("Ms. Galloway") executed documents as part of the process for admitting Cooley to Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") for assisted living care twenty-two (22) days later on March 8, 2019. During the admission process, Galloway elected to sign the Admission Agreement which contains an arbitration clause as well as clauses limiting damages recoverable in any subsequent qualifying claim between the parties.

Plaintiff now brings claims against Defendants that are subject to this willing agreement to arbitrate as well as the damages limitation clauses. As such, Defendants respectfully request that the Court to compel arbitration pursuant to the Admission Agreement, Rule 12(b)(1), (2), (3), and (6), SCRCP, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and

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case law. Additionally, pursuant to Rule 26(c), SCRCP, Defendants respectfully request protection from being required to answer Plaintiff's written discovery served in this improperly filed action.

BACKGROUND

On January 10, 2006, Cooley executed a Durable Power of Attorney (the "POA") which was filed in Greenville County, SC on August 1, 2014. See Ex. 1 – POA. Cooley named daughter Deonda Weldon as her agent. Additionally, Cooley named daughter Phyllis Robin Cooley Elliott and Galloway, in that order, as substitute or successor agents if Weldon was unable, unwilling, or unavailable. Ex. 1, p. 1. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA. Ex. 1, p. 1. **Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission.** The powers expressly included the power to arbitrate (Ex. 1, p. 3, ¶ 7; p. 5, ¶ 13); the power to abandon and/or compromise claims (Ex. 1, p. 5, ¶ 13); the power to sign and execute contracts, agreements, releases, and waivers (Ex. 1, p. 7, ¶ 3); and the power to pay medical expenses (Ex. 1, p. 7, ¶ 4). The POA also stated that Ms. Cooley expressly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative." (Ex. 1, p. 8, ¶ 2).

In addition to the Durable Power of Attorney, Cooley executed a Healthcare Power of Attorney on January 10, 2006 (the "Healthcare POA"). Cooley named Elliott as her agent. See Ex. 2 – Healthcare POA. Cooley named Galloway and Weldon, in that order, as substitute or successor agents if Elliott was unable, unwilling, or unavailable. Ex. 2, p. 1. The Healthcare POA granted the power to provide a place of residence and to make arrangements at any nursing home or similar establishment. Ex. 2, p. 3, ¶ (1). Like the POA, Cooley stated within the Healthcare POA that all actions taken by the available agent shall "bind me and my estate and my personal representative." Ex. 2, p. 11, ¶ (15).

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On February 14, 2019, twenty-two (22) days before Cooley's admission to Dominion Clemson, Galloway executed the Admission Agreement on behalf of Cooley as part of the process to admit Cooley to Dominion Clemson for assisted living care. The Admission Agreement provided that Cooley was to be admitted to Dominion Clemson on March 8, 2019, for assisted living care that included accommodations, basic daily services such as meals, activities, and maintenance, and medication administration. The Admission Agreement defined "Community" as Dominion Clemson and "Resident" as Ms. Cooley. See Ex. 3 – Admission Agreement.

In the second paragraph of the Admission Agreement, Galloway stated that Weldon agreed to act as the financially responsible party and/or agreed to act as the resident's representative, accepting their respective rights and obligations as set forth in the Admission Agreement. Ex. 3, Bates # Dominion – Cooley 28. Thus, it would have appeared to Dominion Clemson that Galloway and Weldon were communicating about the Admission Agreement.

In Paragraph 13 of the Admission Agreement, bolded and titled "**AGREEMENT TO ARBITRATE**," Galloway agreed that any claim or dispute "amongst the Parties, involving an amount in excess of $15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator." Ex. 3, Bates # Dominion – Cooley 39, ¶ 13. Galloway likewise agreed that the Federal Arbitration Act "shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement." Ex. 3, Bates # Dominion – Cooley 39, ¶ 13. Further, Galloway agreed that the parties would waive the right to be awarded punitive damages. Ex. 3, Bates # Dominion – Cooley 40, ¶ 13.

Additionally, in Paragraph 14 of the Admission Agreement, bolded and titled "**LIMITATIONS OF LIABILITY PROVISION**," Galloway agreed that for any claim arising

between the parties, the parties waived the right to jury trial, that net economic damages would be offset by collateral source payments, that non-economic damages would be capped at $250,000, and that interest on unpaid fees would not be awarded. Ex. 3, Bates # Dominion – Cooley 40, ¶ 14, 15. Each of these points were numerated, spaced, and numbered in offset font from the other type in the Admission Agreement.

Likewise, Galloway agreed that the rights and obligations of the parties under the Admission Agreement "shall bind…the Parties hereto, their legal representatives, heirs, estates, successors and assigns. Ex. 3, Bates # Dominion – Cooley 42, ¶ 20(G). Galloway also agreed that should any provision of the Admission Agreement be found unenforceable, such unenforceable provisions would be severed and the remainder of the Admission Agreement would continue in full force and effect. Ex. 3, Bates # Dominion – Cooley 42, ¶ 20(F).

Importantly, Galloway agreed that "she was given the opportunity to read this Agreement before signing it." Ex. 3, Bates # Dominion – Cooley 46, ¶ 22.

Also of great importance is that Galloway agreed in the Admission Agreement that all information provided to Dominion Clemson as part of the admission process, including Cooley's "application forms, health history and medical report, personal interview and emergency information records, as applicable, is true and correct." Ex. 3, Bates # Dominion – Cooley 46, ¶ 37

Building on Galloway's representation that all information she provided to Dominion Clemson was true and correct, it appears that Galloway completed Cooley's admission process and was the appropriate, available agent pursuant to the POA based on the geographic location of Weldon and Elliott. Galloway provided information to Dominion Clemson that Weldon was in Copenhagen, Denmark and that Elliott was in Trophy Club, Texas. Ex. 4 – Emergency Contacts.

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Based on the Admission Agreement, Cooley was admitted to Dominion Clemson for assisted living in March 2019. Cooley remained at Dominion Clemson until her discharge in March 2020. In both actions, the Complaint was filed on October 13, 2021, and alleged negligence against all Defendants related to the care that Cooley received while she was a resident of Dominion Clemson. Since these claims expressly fall within the scope of the Admission Agreement that contain an arbitration provision, the Court should compel this matter to binding arbitration subject to the limitations on liability contained within the Admission Agreement.

ARGUMENT

I. Federal and State Law Favor Enforcing Arbitration.

As an initial matter, both Federal and South Carolina law favor arbitrating disputes. See O'Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997) ("The FAA embodies a strong federal policy in favor of arbitration, and, accordingly, there is a strong presumption in favor of the validity of arbitration agreements."); Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) ("Furthermore, it is the policy of this state to favor arbitration of disputes.").

For this reason, both Federal and South Carolina courts have held that any doubts over arbitrability should be resolved in favor of compelling arbitration. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 – 25 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability."); Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay,

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or a like defense to arbitrability.").

II. The Federal Arbitration Act governs Admission Agreements and compels arbitration.

Viewed through the lens of presumed enforceability outlined above, the Admission Agreement that contains an arbitration provision, by its terms and by law, are governed by the FAA, 9 U.S.C. §§ 1-16. See Ex. 3, Dominion – Cooley 39, ¶ 13; Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

Pursuant to the FAA, any written provision in "a contract evidencing a transaction involving commerce" providing that disputes be settled by arbitration is "valid, irrevocable, and enforceable." 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. The FAA provides, in pertinent part, as follows:

> The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement*.

9 U.S.C. § 4 (emphasis added). "By its terms, the act leaves no place for the exercise of discretion by a… court, but instead mandates that… courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). As discussed herein, the Admission Agreements satisfies these requirements and requires that Plaintiff's claims be compelled to arbitration.

(a) The Admission Agreement requires arbitration.

i. Galloway, as Cooley's available agent pursuant to the POA, executed a clear and valid contract that requires arbitration subject to the limitations on liability set forth therein.

As set forth in the Background section, Cooley executed a January 10, 2006, Durable

Power of Attorney that was filed in Greenville County on August 1, 2014. See Ex. 1. Through the POA, Cooley gave her available agent—here, Galloway—the broadest lawful powers available to an agent and specifically authorized Plaintiff to agree to arbitration, sign and execute contracts, agreements, waivers, and releases, and pay for medical expenses. Ex. 1, p. 3, - 7. Cooley also specifically authorized the Durable POA Agent to bind her, her estate, and her personal representative. Ex. 1, p. 8.

Galloway, presumably due to the represented geographic unavailability of Weldon and Elliott, executed the Admission Agreement. As the available agent under the POA, Galloway had the authority to do so and to bind Cooley, her estate, and her personal representative to the same based on the agent powers set forth above.

In exchange for signing the Admission Agreement, Dominion Clemson offered Cooley assisted living care, including, accommodations, basic daily services such as meals, activities, and maintenance, and medication administration Ex. 3. Even for non-signatories, admission can serve as the direct benefit which supports arbitration where the admission and arbitration are governed by the same agreement as they are in these cases. See, e.g., Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 558, 813 S.E.2d 292, 299–300 (Ct. App. 2018) ("Restated, when a signatory seeks to enforce an arbitration agreement against a nonsignatory, the doctrine prevents the nonsignatory from averring he or she is not bound to the arbitration agreement when he or she receives a direct benefit from a contract that contains an arbitration clause."). Cooley did receive the benefits of the Admission Agreement which Galloway bargained, residing at Dominion Clemson as a resident from March 2019 – March 2020.

Weldon now claims via Affidavit that she was the lawful agent under the POA and that Galloway did not have authority to act as Cooley's agent. Interestingly, Weldon does not claim in her Affidavit that she was present and available to serve as Cooley's agent at the time of

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admission. Indeed, this would cause contact information for Weldon which Galloway agreed was truthful when provided to be false.

Galloway now claims that via Affidavit that she did not know what she was signing, did not know the Admission Agreement contained an arbitration provision, did not understand what she was signing, and was under stress. Interestingly, Galloway ***does not*** claim in her Affidavit that she was mentally incompetent at the time of execution or that she did not sign the Admission Agreement. All terms now at issue were contained in the Admission Agreement under capitalized and bolded titles, putting Galloway on notice. Likewise, Galloway agreed that she had been provided time to read the Admission Agreement. Ex. 3, Dominion – Clemson 46, ¶ 22. Finally, the admission agreement was signed twenty-two (22) days prior to admission on March 8, 2019. Ex. 3, p. 1. This was not a take-it-or-leave-it proposition. Galloway had time to study her decision and survey options for her mother's placement twenty-two days later.

Just as any other competent adult entering a contract, Cooley, through the actions of her available agent Galloway, is bound by the terms of the Admission Agreement including the arbitration clause in paragraph 13. See J.B. Colt Co. v. Britt, 129 S.C. 226, 123 S.E. 845, 847 (1924) (a person who enters a valid contract is, "of course, bound by the terms and conditions thereof"); Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) ("A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it."); Maw v. McAlister, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969) ("The duty on the part of one who signs a written instrument to exercise reasonable care to protect himself requires that he read the contract which he signs….").

ii. Plaintiff's claims in both lawsuits are encompassed within the scope of the Admission Agreement.

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Not only was a valid Admission Agreement executed, but the Estate's claims also are squarely governed by the arbitration provision in paragraph 13. Paragraph 13 of the Admission Agreement states that "any claim or dispute" as long as it is in "excess of $15,000" that arises out of the Admission Agreement "shall be determined by arbitration in South Carolina" Ex. 4, p. 12, ¶ 13. "Any claim or dispute" includes the negligence allegations against all Defendants and wrongful death claims alleged in 2021-CP-39-01128 and Plaintiff's survival action in 2021-CP-39-01127.

Specifically as to the survival claims in 2021-CP-39-01127, Cooley's Estate is bound by the Admission Agreement because a survival action is a product of Cooley's alleged conscious pain and suffering. See Rutland v. S.C. Dep't of Trans., 390 S.C. 78, 83, 700 S.E.2d 451, 454 (Ct. App. 2010), aff'd as modified sub nom. Rutland v. S.C. Dep't of Transp., 400 S.C. 209, 734 S.E.2d 142 (2012) ("The test of a survival action in South Carolina is whether the decedent suffered conscious pain and suffering.").

As to the wrongful death claims in 2021-CP-39-01128, Galloway as Cooley's available agent, had the authority under the POA to obligate Cooley's wrongful death beneficiaries to arbitration because South Carolina's Wrongful Death Statute is a derivative action. See S.C. Code Ann. § 15-51-10 (The South Carolina Wrongful Death Act requires, as a condition of any suit, that the decedent herself, had she lived, could have "maintain[ed] an action and recover[ed] damages."); Estate of Stokes v. Pee Dee Family Physicians, LLP, 389 S.C. 343, 347 (2010) ("[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." (cataloguing cases)); Rish v. Seaboard Air Line Ry., 90 S.E. 704, 704-05 (S.C. 1916) ("The [Wrongful Death Act] gives a right of action where none existed before, and limited the right of recovery to those cases in which the party injured would have been entitled to recover

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if death had not ensued.")

Although the case law in South Carolina has not directly addressed the issue at hand, the court has not been hesitant to prohibit wrongful death actions in which the decedent had in some way barred herself from pursuing the underlying cause of action. In Price v. Richmond & D.R. Co., 33 S.C. 556, 12 S.E. 413 (1889), the court determined that a release executed by the decedent prior to his death prevented a wrongful death action brought by the decedent's wife. The Court's decision was premised upon the limiting language of the wrongful death statute. The Price Court held that if the defendant in some way deprived himself of the right to pursue a cause of action, "his administrator is, likewise, [also] barred of his right of action." Id. at 560, 12 S.E. at 413. Furthermore, the court in Reed v. Northeastern R. Co., 37 S.C. 42, 16 S.E. 289 (1892) affirmed the Price holding and found that "[a]nything that would have defeated [the decedent's] recovery would defeat that in behalf of his family in case he failed to survive." Reed at 53, 16 S.E. at 291.

In Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988), the South Carolina District Court interpreted the Wrongful Death statute, and held that a survivor cannot bring an action under the wrongful death statute to recover for the same wrong sued upon earlier by the decedent, if the personal injury statute of limitations has expired, but the specific wrongful death limitations period has not expired. This clearly establishes that Wrongful Death cause of action is wholly derivative. The District Court, sitting in diversity, examined the issue as the highest court of South Carolina would if confronted with the same situation. It then traced the history of wrongful death claims starting with Lord Campbell's Act. It further held that the same defenses that would have been available to use against the decedent, had he lived, were also available against those asserting the wrongful death claim.

Based on the legal nature of a wrongful death claim, the South Carolina Supreme Court has found that where a decedent or her agent executes an arbitration agreement in connection with

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the decedent's admission to a nursing home, wrongful death actions brought by the personal representative can be subject to binding arbitration. Dean, 408 S.C. 371, 759 S.E.2d 727 at n. 3. District Courts in South Carolina interpreting Dean have found that statutory beneficiaries are subject to arbitration. See, e.g., THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185, at *3 (D.S.C. Mar. 19, 2015) ("Additionally, the South Carolina Supreme Court made clear in Dean that, under South Carolina law, an arbitral agreement is still indeed binding on a decedent's estate for a claim in wrongful death.")

It follows logically that Galloway's execution of the Arbitration Agreement as Cooley's attorney-in-fact defeated Plaintiff's ability as the personal representative to later disavow her actions, as she is attempting. Because the execution of the Arbitration Agreement lawfully bound Cooley to arbitrate actions arising from Dominion Clemson's alleged negligence, it also controls the availability of the wrongful death action to her heirs.

Because Galloway signed the Arbitration Agreement in her legal capacity on behalf of Cooley - and not in her own capacity - she had every right to exercise her mother's option and authority to bind her heirs to the decision to defer a wrongful death claim to arbitration. Courts across the country hold this premise true. See Diversicare Leasing Corp. v. Hubbard, 189 So.3d 24 (Ala. 2015) (holding that "an arbitration agreement that binds the nursing-home resident also binds the resident's representative"), citing Entrekin v. Internal Medicine Associates of Dothan, P.A., 689 F.3d 1248, 1259 (11th Cir. 2012). The court in Diversicare further held that personal representatives of estates of deceased nursing home residents who properly signed arbitration agreements on behalf of residents "were bound to arbitrate the wrongful-death claims" of the resident's estates. Id. at 28, 30; see also Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661 (Ala. 2004) (holding that personal representatives of nursing home residents were bound by arbitration provisions contained in admission contracts, arbitration provision was not

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unconscionable, and not a contract of adhesion); Owens v. Coosa Valley Heath Care, Inc., 890 So.2d 983 (Ala. 2004) (holding that arbitration agreement bound both resident and representative); Estate of Eckstein ex rel. Luckey v. Life Care Centers of America, Inc., 623 F. Supp. 2d 1235 (E.D. Wash. 2009) (holding that claims for neglect, corporate negligence, and wrongful death were subject to arbitration based on arbitration agreement signed by resident's attorney-in-fact that was binding on the estate); Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (Fla. 2013) (arbitration agreement covered wrongful death claims, and estate and statutory heirs were bound by the arbitration agreement).

Plaintiff's argument that an Estate and Personal Representative cannot be bound to an arbitration agreement ignores the clear language of the Arbitration Agreement and the practicalities of arbitration agreements in the long term care context. "[T]o hold otherwise would eviscerate a long term care provider's contractual rights when presented with a wrongful death claim of a resident, the very claim anticipated by the Agreement." Estate of Eckstein, 623 F. Supp. at 1239. See also Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 420 (Ind. Ct. App. 2004) (holding the estate's wrongful death claim was subject to arbitration because "regardless of whether [the personal representative], was privy to the contract containing the arbitration clause, the Estate's survival and wrongful death claims arose out of [Defendant's] alleged negligent treatment of [the resident]").

The wrongful death statute clearly derivative. A claim under it only arises if there is a wrongful act that would have been actionable by the decedent, if he had not died. Likewise, if a wrongdoer dies, a wrongful death action survives against the personal representative subject to actions taken by – or not taken by – the decedent during his lifetime.

Plaintiff's argument – taken to its logical end - would mean that the personal representative of an estate is personally liable for a decedent's wrongdoing, and that he - along with the other

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heirs - must personally pay any resulting award. Such an outcome cannot be brooked, and such a ruling cannot stand and must be reversed.

Execution of a nursing home arbitration agreement by a party with the capacity to contract on behalf of the decedent binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement.

Plaintiff's on Boyle v. United States, 948 F. Supp. 2d 570 (D.S.C. 2012) is wholly misplaced. This case is cited only by name, and not citation, in the trial court order. Boyle does not appear to mention the issue of whether a wrongful death claim can be subject to arbitration. The Boyle Court's holding has no relevance to the issue of whether a decedent can submit wrongful death claims to arbitration. And the fact remains that the wrongful death claim is patently derivative – there would be no claim but for an injury to the decedent.

(b) Defendants have not waived their right to compel arbitration.

Plaintiff filed the Complaints against Defendants on October 13, 2021. After the Complaint was received, the undersigned and Plaintiff's Counsel corresponded via e-mail to discuss a 30-day extension for the responsive pleading between November 19 - 23, 2021. The e-mail correspondence between the parties is attached hereto as Exhibit 5. In Exhibit 5, Plaintiff's Counsel agreed to a 30-day extension on November 23, 2021, for the Answer. That same day, the undersigned informed plaintiff's counsel through e-mail that Defendants were aware of an arbitration provision in the admission agreement but were only familiar with a healthcare power of attorney at that time and asked for an extension for filing a responsive pleading, including a motion to dismiss or compel arbitration. See Ex. 5. The undersigned stated that he was continuing to investigate the enforceability of the arbitration agreement. Plaintiff's counsel agreed to the request and stated that he did not believe the arbitration agreement was "enforceable for several

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reasons." Plaintiff's counsel did not address the undersigned's point about whether a durable power of attorney existed. Ex. 5.

Defendants timely filed their Answers to Plaintiff's Complaint on December 21, 2021, expressly raising the arbitration provision within the Resident Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff. The Certificate of Service for Defendants' Answer and discovery requests to Plaintiff is attached hereto as Exhibit 6. In Defendants' First Set of Requests for Production to Plaintiff, Defendants specifically requested "[a]ll powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time" in Request for Production No. 21, which is attached hereto as Exhibit 7.

Over four (4) months later, Plaintiff responded to Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff on April 25, 2022. A copy of the Certificate of Service of attached hereto as Exhibit 8. Plaintiff's response to Defendants' Request for Production No. 21 states, "See Healthcare Power of Attorney and Durable Power of Attorney for Earline Cooley." which is attached hereto as Exhibit 9.

The undersigned counsel emailed plaintiff's counsel on June 9, 2022, apologizing for a delayed response due to being ill with coronavirus and informed Plaintiff's Counsel that the Defendants searched Plaintiff's county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. The undersigned then stated that after reviewing Plaintiff's Responses to Defendants' First Set of Requests for Production Defendants, the undersigned became aware of the Plaintiff's durable power of attorney and planned to move to compel arbitration pursuant to the admission agreement. Ex. 10. Defendants

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filed the Motion to Compel Arbitration and Protective Order from Discovery at the earliest possibility on June 9, 2022. Since filing the Motion to Compel Arbitration and Protective Order from Discovery all discovery in this matter has ceased pending the Court's ruling on the above-mentioned motions.

As stated *supra*, both Federal and South Carolina law favor arbitrating disputes and there is not set rule as to what constitutes waiver of arbitration. See O'Neil; Liberty Builders. Even though there is no set rule regarding waiver, generally the factors South Carolina courts consider are:

> whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others. Thus, a party may waive its right to compel arbitration if a substantial length of time transpires between the commencement of the action and the commencement of the motion to compel arbitration. What is a substantial length of time varies from one case to the next, depending on the extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (S.C. Ct. App. 2007).

Plaintiff cites to the recent U.S. Supreme Court decision, Morgan, in her memorandum. See Plt's Mem. Opp. Page 6. Plaintiff states that the Court held that the prejudice requirement "was not appropriate in determining waiver…" and that "the prejudice requirement, no longer exists." Id. This is a misrepresentation of the Court's holding in Morgan. In Morgan, the Supreme Court granted *certiorari* "to resolve the split over whether federal courts may adopt an arbitration-specific waiver rule demanding a showing of prejudice." Morgan v. Sundance. Inc., 212 L. Ed.

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2d 753, 142 S. Ct. 1708, 1709 (2022). The Supreme Court stated that "a court must hold a party to its arbitration contract just as the court would to any other kind." Morgan, 142 S. Ct. 1708 at 1713. The Supreme Court held that prejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration under the FAA. Id. at 1714 (stating that the Supreme Court's "sole holding today is that it may not make up a new procedural rule based on the FAA's policy favoring arbitration.").

In addition to Morgan, Plaintiff cites four (4) South Carolina cases regarding waiver. As stated *supra*, Plaintiff is correct in stating that nursing homes can waive arbitration rights. However, South Carolina courts have focused considerably on whether a substantial length of time has commenced in litigation, whether excessive discovery has taken place, and if the Plaintiff was prejudiced in the delay seeking arbitration. See Rhodes.

Plaintiff states in her memorandum that the South Carolina Court of Appeals held in Liberty "that the party moving to compel arbitration waived their right after filing initial pleadings and responding to discovery. See Plt's Mem. Opp. Page 7. Again, this is not a clear representation of the court's holding. In Liberty, the parties filed initial pleadings, conducted discovery, and were on the brink of trial before a motion to stay in favor of arbitration was filed; a timeframe of over 2.5 years. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. Ct. App. 1999). The Court of Appeals stated "Liberty's decision to file suit, participate in pretrial discovery, and engage in procedural maneuvering for ***two and one-half years*** is sufficient to support the trial court's finding of waiver. Liberty, 521 S.E.2d 749 at 754 (emphasis added).

Plaintiff's memorandum also cites Johnson, stating "the South Carolina Supreme Court held that the defendant nursing home waived its right to compel arbitration after, among other things, answering the Complaint, seeking limited discovery issues, serving discover, and waiting approximately ten (10) months to file the motion to compel arbitration…" See Plt's Mem. Opp.

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Page 7. Plaintiff does not mention that prior to the filing of the Complaint, the parties in Johnson spent over a year and a half in litigation regarding a temporary restraining order and appointing a guardian *ad litem* and during that time the nursing home failed to exercise its arbitration provision. See Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 788 S.E.2d 216 (S.C. 2016). The South Carolina Supreme Court specifically stated in its analysis in Johnson that the plaintiff indicted they "intended to purse a defense of waiver" two months after the Complaint was filed and despite this information and acknowledgement from the defense a motion to compel arbitration was not filed for another eight (8) months, "all while appearing in court and conducting discovery." Johnson, 788 S.E.2d 216 at 219.

Finally, Plaintiff relies on Flexon in her memorandum in opposition and states that "the South Carolina Court of Appeals recognized and affirmed the order that the party moving for arbitration waived its right to arbitration by engaging in discovery without reservation or limitation. See Plt's Mem. Opp. Page 7. The Flexon holding is far more complex because it involved several defendants, including a former and subsequent parent company. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (S.C. Ct. App. 2015). In Flexon, a breach of contract action was filed in May 2009 against numerous defendants. Flexon, 776 S.E.2d 397 at 400. Two (2) months later, one of the defendants, a former subsidiary of one of the co-defendants, filed a motion to compel arbitration and a hearing was held on the matter where a non-moving co-defendant spoke supporting the motion and indicated that he would file his own motion to compel. Id.

In June 2010, the non-moving co-defendant filed his own motion to compel and subsequently the circuit court ruled on the initial motion to compel; denying it not based on time but because of a lack of interstate commerce language and that the parties agreed to litigate the matter in South Carolina. Id. at 401. The initial motion was appealed, upheld, and the second

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motion to compel was withdrawn without prejudice. Id. The parties then undertook depositions and after the depositions took place, a renewed motion to compel was filed. Id. The South Carolina Court of Appeals focused on the co-defendant articulating to the court during the initial hearing that he would file a motion to compel, and that motion to compel was not filed for seven (7) months after it's co-defendant's initial motion to compel, and that the parties continued with discovery and depositions after the second motion to compel withdrawn. The Court of Appeals ultimately held that the co-defendant failed to take "the steps necessary to protect its own interests in a timely manner." Id. at 406.

Defendants have moved swiftly to protect its interests in a timely manner. As detailed above, Defendants specifically requested from Plaintiff information regarding power of attorney documentation in December 2021. See Ex. 7. Defendants did not receive any documentation from Plaintiff, for over four (4) months, until April 2022 when Plaintiff produced her discovery responses. See Ex. 9. After receiving Plaintiff's discovery responses, the parties began corresponding regarding the scheduling of depositions. Unlike Flexon, no depositions were ever taken in this matter. Defendants specifically requested a stay in discovery pending the outcome of its Motion to Compel.

The defendants in Liberty, waited over 2.5 years to file a motion to compel, all while conducting discovery and appearing before the court regarding other matters. The defendants in Johnson went through a lengthy temporary restraining order and guardian *ad litem* process before the Complaint was filed and then waited an *additional year* after the Complaint was filed to compel arbitration. In stark contrast to those cases, Plaintiff's Counsel was aware of the arbitration provision in the admission agreement before Defendants' filed their Answer on December 21, 2021 and knew that the undersigned was seeking information on any applicable durable powers of attorney.

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Defendants informed Plaintiff less than six (6) weeks after receiving Plaintiff's document production, that produced a tangible durable power of attorney for the first time in litigation, that it would be moving to compel arbitration. Additionally, during those six (6) weeks from Plaintiff's document production to Defendant's filing a Motion to Compel, the undersigned was ill with coronavirus and yet was still able to file Defendants' Motion to Compel Arbitration months faster than any of the defendants did in Liberty, Johnson, and Flexon.

In accordance with Rhodes, Plaintiff fails to show that a substantial length of time transpired between the commencement of the action and the motion to compel arbitration. Six (6) weeks from discovery of the durable power of attorney to filing the Motion to Compel Arbitration and Stay Pending Discovery hardly stacks up to the years of delay in the cases discussed *supra* that Plaintiff relies on to show the Defendants waived its right to compel arbitration. Rhodes also requires this Court to consider whether the party requesting arbitration engaged in extensive discovery prior to moving to compel. Unlike Liberty, Johnson, or Flexon, no additional discovery has taken place in this matter since Defendants filed their motion to compel. Only initial discovery responses have been produced and no witnesses in this matter has been deposed. Plaintiff has flatly failed to prove that extensive discovery was conducted prior to Defendants filing its motion. Finally, Plaintiff relies on Morgan to claim that the prejudice requirement no longer exists. While this is not how the U.S. Supreme Court articulated it's holding, the Plaintiff has still failed to show any procedural preference to arbitration in this matter. Plaintiff has been unable to produce any evidence showing substantial delay, extensive discovery, or procedural prejudice by Defendants and therefore has failed to prove that the Defendants waived its right to compel arbitration.

III. All Defendants have the right to join in Dominion Clemson's request for arbitration pursuant to the Admission Agreement.

The court in Pearson v. Hilton Head Hosp., 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct.

App. 2012), relying on International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000), held that "well-established common law principles dictate that in an appropriate case a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." These include principles such as incorporation by reference, assumption, agency, veil piercing/alter ego, and equitable estoppel. International Paper, Id. Further, "[i]t does not follow . . . that under the [FAA] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision." Id. at 416.

Pearson cited and relied upon the South Carolina District Court's opinion in Goer v. Jasco Indus., Inc., 395 F. Supp. 2d 308, 314 n.9 (D.S.C. 2005), which held that "equitable estoppel allows a non-signatory to compel arbitration . . . when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory." The court also held that "application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise, arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration is effectively thwarted." Id. at 295; see also, J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-321 (4th Cir. 1988).

In S.C. Pub. Serv. Authority v. Great Western Coal, et al., the plaintiff contracted with Great Western Coal for the provision of coal. 312 S.C. 559, 437 S.E.2d 22 (Ct. App. 1993). The contract contained an arbitration clause. The plaintiff later brought suit against Great Western Coal, its president, and another employee, alleging that they had increased coal prices while lowering quality. Id. at 561, 437 S.E.2d at 23 – 24. Defendant president, a non-signatory to the contract, filed a motion to dismiss and compel arbitration. Id. at 561, 437 S.E.2d at 24. The trial

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judge denied defendant president's motion because he did not sign the contract in his individual capacity, and defendant president appealed. Id. at 563, 437 S.E.2d at 24 – 25.

The Court of Appeals reasoned that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration." Id. at 563, 437 S.E.2d at 24 - 25, citing Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990). The Court of Appeals further reasoned that "when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated." Id. The Court of Appeals therefore, concluded, that the defendant president was seeking arbitration and held that the trial judge erred in denying the same simply because the defendant president did not sign the contract. Id.

Looking to (1) the language of the Admission Agreement, (2) the claims Plaintiff has raised against Defendants, and (3) applying this law, it is abundantly clear that any claims against Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC are substantially intertwined with Plaintiff's pending claims against White Oak Estates, the other signatory to the Arbitration Agreement.

In fact, in Plaintiff's Complaint, she has alleged that Cooley was a resident at Dominion Clemson, and that the actions of remaining Defendants "directly affected resident care such as that of Earline Cooley," and that the parties were engaged in a "joint enterprise." Complaint, ¶ 36. Plaintiff thereafter refers to all Defendants as simply "Defendants" within the remaining allegations. See Complaint.

Plaintiff's own allegations of the substantially interdependent and concerted alleged misconduct of Defendants, through which Plaintiff alleges joint liability for those alleged wrongs, compels the construction of the Arbitration Agreement to be equally enforceable by all Defendants. To hold otherwise would gut the established federal policy in favor of arbitration and

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result in inconsistent and unfair results of multiple proceedings in different forums, and a waste of judicial and party resources.

Plaintiff cannot avoid the Admission and Arbitration Agreements' provisions by naming non-signatories. Likewise, she cannot rely on the relationship created between Cooley and Dominion Clemson when the Agreements benefit her and repudiate those Agreements when they work to her alleged disadvantage. All Defendants thus are entitled to seek enforcement of the Agreements, and the trial court erred in holding otherwise.

IV. If not ordered to arbitrate, the FAA at a minimum requires that these actions be stayed while the parties submit to binding arbitration.

Should the Court elect not to compel arbitration with these two actions while the parties submit to binding arbitration, Defendants would alternatively request that these proceedings be stayed pending completion of arbitration. The FAA requires a stay under the following circumstances:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of action until such arbitration has been had in accordance with the terms of the agreement[.]
>
> 9 U.S.C. § 3.

Accordingly, Defendants respectfully request that the Court stay all judicial proceedings pending arbitration in accordance with the arbitration clause. See Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (holding "the FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties" (internal citation omitted)); 9 U.S.C. § 3.

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V. Defendants are Entitled to Protection from Responding to Plaintiff's Written Discovery.

On February 22, 2022, Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") served its responses to Plaintiff's First Interrogatories and Requests for Production. See Plaintiff's Motion to Compel at Ex. A. As indicated in the responses, these responses included the production of over 400 pages of documents.

On March 1, 2022, Plaintiff mailed the undersigned counsel a discovery consult letter in response to Dominion Clemson's discovery responses. See Plaintiff's Motion to Compel at Ex. B.

Also on March 1, 2022, Defendant Dominion Senior Living, LLC ("Dominion Senior Living") served its responses to Plaintiff's First Interrogatories and Requests for Production. See Plaintiff's Motion to Compel at Ex. A. Dominion Senior Living's discovery responses have not been the subject of a discovery consult correspondence and, therefore, cannot be at issue in Plaintiff's Motion to Compel.

By email exchange dated June 9, 2022, the undersigned advised Plaintiff's counsel that the undersigned was:

> …not aware of you serving discovery on any of the other three defendants [Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC]. I had assumed that was because you were aware they had no connection to this matter. (They do not, and discovery responses on behalf of Dominion Clemson (Rogg 29) and Dominion Senior Living (Rogg 20) confirm that.) Those three entities have common ownership but have nothing to do with operation of senior living facilities.

Ex. 10. Plaintiff's counsel did not respond on this point and has not attached discovery requests on behalf of Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC to Plaintiff's Motion to Compel. Without having access to the alleged discovery requests at dispute—a point which the undersigned raised over four (4) months ago, the undersigned cannot respond to a motion to compel responses to the same.

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As to Dominion Clemson's discovery responses which are subject to Plaintiff's March 1, 2022 discovery consultation letter, Dominion Clemson's position on each discovery request is briefly stated as follows:

Interrogatory #7 and # 15: Plaintiff seeks the identification of all employees who provided care to Cooley at Dominion Clemson, including the employees' title, employment status, and last known contact information. Dominion Clemson has objected on the grounds that the interrogatories are overly broad, vague and unduly burdensome. Cooley was a resident at Dominion Clemson from March 2019 – March 2020. To identify each employee who provided care 24 hours a day for over a year would be an enormous task and is not tailored to relevant evidence concerning the claims in this case. Nonetheless, Dominion Clemson responses referred Plaintiff to the identification of twelve employees of Dominion Clemson known to have been involved with or otherwise have information pursuant to the claims. Dominion Clemson likewise referred Plaintiff to any other providers identified in the medical records.

Request # 19: Plaintiff requests proposed and actual budgets for the years of Plaintiff's residency (2019 and 2020) as well as the two years preceding her residency. Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Dominion Clemson likewise objected on the basis that the documents sought contained confidential and proprietary business information. Dominion Clemson maintains that budgeting information from preceding years makes this request overly broad and lack relevancy. Preceding budgets have no impact on the present litigation.

Request # 21, 22, 23: Plaintiff requests timecards, schedules, punch detail reports, work schedules, sign-in sheets, timesheets, and numbers of available hours for the entire term of Cooley's year-long residency. Due to the fact that these requests sought shift-by-shift information for nearly a year, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. While staffing information for particular dates of alleged events or injuries might be relevant, the burden imposed by gathering this information for each and every shift of a one-year residency is too great given the lack of relevancy.

Request # 25: Plaintiff requests all information related to staff training for the years of Plaintiff's residency (2019 and 2020) as well as the two years preceding her residency. Despite Plaintiff's allegations being limited, Plaintiff did not make any attempt to limit the training topics sought by this Request. As such, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Again, the sheer burden imposed to gather any and all training information over a four-year course is not justified by the any purported relevancy.

Request # 36: Plaintiff initially requested all personnel files of former employees who

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> provided care to Cooley as well as former and current department heads. Again, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence, given the volume of persons at issue as well the request for personnel files of persons not involved with Cooley's care.

Nonetheless, Plaintiff's counsel and the undersigned participated in a discovery consultation phone conference on April 22, 2022. As a result of that phone conference, Plaintiff and Dominion Clemson agreed to compromise the outstanding issues as outlined in counsel's April 29, 2022 – May 2, 2022 email exchange attached as Exhibit 11. Dominion Clemson stands on its original objections to each of the discovery requests at issue but believes that the compromise reached by the parties was a workable solution.

However, the undersigned received for the first time the Durable Power of Attorney in May 2022. At that point, Dominion Clemson had no choice but to cease participating in written discovery so as not to create an argument that it waived the right to enforce arbitration once the undersigned was aware of an applicable Durable Power of Attorney. The undersigned informed Plaintiff's counsel of the same on June 9, 2022. Indeed, the undersigned concern in continuing to participate in discovery was warranted as Plaintiff now asserts a waiver argument based on participation in litigation. See Plaintiff's Memorandum in Opposition to Motion to Compel Arbitration, p. 6 – 10.

For the reasons set forth in previous arguments, the appropriate next step is for the parties to submit to arbitration as clearly stated in the Admission Agreement. Defendants, therefore, are entitled to an order from this Court that Defendants are not required to respond further to Plaintiff's discovery requests pursuant to Rule 26(c), SCRCP.

CONCLUSION

Debra Galloway, as Earline Cooley's legally authorized and available agent, freely bound Cooley, her estate, her personal representative, her heirs, and her beneficiaries to arbitrate any

claims against Defendants. Defendants, therefore, respectfully request that this Court dismiss this case, compel arbitration pursuant to the Admission Agreement, Rule 12(b)(1), (2), (3) and (6), SCRCP, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and case law and that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the Federal Arbitration Act. Defendants further respectfully request that this Court protect Defendants from further participating in written discovery considering that arbitration is the next appropriate step for Plaintiff's claims.

s/Joshua T. Thompson
Joshua T. Thompson, Esq. (SC Bar #79137)
Ayla G. Luers Connor, Esq. (SC Bar # 103057)
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aconnor@btblawfirm.com

Attorneys for Defendants

October 19, 2022

Spartanburg, South Carolina

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Emergency Contacts

Medical POA Debra Galloway Relationship daughter

Address 304 East 2nd Ave, Easley SC Email/Phone: 864. 230. 1736

Financial POA Deonda Weldon Relationship daughter

Address: Copenhagen, Denmark Email/Phone: 864.640.9818

Closest Relative Debra Galloway Relationship daughter

Address: 304 East 2nd Ave Email/Phone: 864. 230. 1736
Easley, SC 29640

Additional Contacts:

Robin Elliott - 864. 380. 7700 daughter
Trophy Club, Texas

DEFENDANTS' MEMORANDUM - EXHIBIT 5

ELECTRONICALLY FILED - 2022 Oct 19 4:17 PM - PICKENS - COMMON PLEAS - CASE#2021CP3901128

From: Josh Thompson
To: Matt Christian
Cc: Amanda Weatherford
Subject: RE: Weldon (Cooley) v. Dominion - Answer and Discovery Responses
Date: Tuesday, November 23, 2021 11:09:09 AM
Attachments: image001.png

Thank you, Matt. I hope you enjoy your Thanksgiving as well.

From: Matt Christian <mchristian@cclawfirm.com>
Sent: Tuesday, November 23, 2021 11:08 AM
To: Josh Thompson <jthompson@btblawfirm.com>
Cc: Amanda Weatherford <aweatherford@cclawfirm.com>
Subject: RE: Weldon (Cooley) v. Dominion - Answer and Discovery Responses

Josh,

I normally do not grant extensions for defense attorneys to file motions to dismiss or motions to compel arbitration. I agree that the arbitration agreement is not enforceable for several reasons.

However, given the fact that it is Thanksgiving week, I'll make an exception this time especially with the note that you intend to recommend not pursuing arbitration.

Enjoy your Thanksgiving.

Best,

Matt Christian

Attorney at Law
Christian and Christian, LLC
1007 E. Washington St.
Greenville, SC 29601

www.cclawfirm.com
864-232-7363
864-370-3731 (Fax)

Please note my new email address as **mchristian@cclawfirm.com**

Information contained in this message is intended for the use of the individual or entity named above and may contain legally privileged and/or confidential information.

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Please note, that for organizational reasons, the personal email address of the sender is not available for matters subject to a deadline. Please send matters subject to a deadline exclusively via regular mail or fax.

From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Tuesday, November 23, 2021 11:00 AM
To: Matt Christian <mchristian@cclawfirm.com>
Cc: Amanda Weatherford <aweatherford@cclawfirm.com>
Subject: RE: Weldon (Cooley) v. Dominion - Answer and Discovery Responses

Matt,

I appreciate your response. I will not serve discovery until I file my responsive pleading. Also, I am not aware of service being contested. My understanding is that service was appropriate.

My only question is whether the extension is limited to "an Answer." At this time, I am still investigating the claim. I am aware that there is an arbitration provision in the admission agreement, but my best knowledge is that it was signed by a daughter pursuant to a health care power of attorney and not a durable power of attorney, in which case I would very strongly recommend to my client not to pursue arbitration. I however have not had time to confirm that and chase down the records from Pickens. May the extension apply to filing a responsive pleading, which I believe at this time will be an answer?

Thank you,

Josh

From: Matt Christian <mchristian@cclawfirm.com>
Sent: Tuesday, November 23, 2021 9:46 AM
To: Josh Thompson <jthompson@btblawfirm.com>
Cc: Amanda Weatherford <aweatherford@cclawfirm.com>
Subject: RE: Weldon (Cooley) v. Dominion - Answer and Discovery Responses

Josh,

I apologize for the delay. Somehow I missed the first email.

I am agreeable to a 30 day extension to file/serve an Answer to the Complaint as long as Discovery is not served prior to the Answer and service is not contested. I am also agreeable to a 30 day extension on discovery responses.

Thanks,

Matt Christian

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Attorney at Law
Christian and Christian, LLC
1007 E. Washington St.
Greenville, SC 29601

www.cclawfirm.com
864-232-7363
864-370-3731 (Fax)

Please note my new email address as **mchristian@cclawfirm.com**

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Please note, that for organizational reasons, the personal email address of the sender is not available for matters subject to a deadline. Please send matters subject to a deadline exclusively via regular mail or fax.

From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Tuesday, November 23, 2021 8:45 AM
To: Matt Christian <mchristian@cclawfirm.com>
Cc: Amanda Weatherford <aweatherford@cclawfirm.com>
Subject: RE: Weldon (Cooley) v. Dominion - Answer and Discovery Responses

Matt,

I hope you are doing well. Is the request for extension below acceptable to you? Defendants' responsive pleading is due tomorrow.

Thank you for your consideration.

Josh

From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Friday, November 19, 2021 2:53 PM
To: Matt Christian <mchristian@cclawfirm.com>
Subject: Weldon (Cooley) v. Dominion - Answer and Discovery Responses

Matt,

I hope you are doing well. Perry and I have been asked to represent the Defendants in the above-described matter. I understand that Defendants must file a response to Plaintiff's complaint by

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November 24, 2021 and must respond to Plaintiff's initial discovery requests by December 9, 2021.

Would you please provide Defendants with a 30-day extension of both deadlines? If so, I believe that would place Defendants' responsive pleadings due on December 24, 2021 and Defendants' discovery responses due on January 8, 2021.

Thank you for your consideration.

Josh

Joshua T. Thompson
101 W. St. John St., Ste. 300
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BOULIER THOMPSON & BARNES,LLC
ATTORNEYS AT LAW

Total Control Panel Login

To: mchristian@cclawfirm.com
From: jthompson@btblawfirm.com

Message Score: 50
My Spam Blocking Level: High

Block this sender
Block btblawfirm.com

High (60): Pass
Medium (75): Pass
Low (90): Pass

This message was delivered because the content filter score did not exceed your filter level.

Total Control Panel Login

To: mchristian@cclawfirm.com
From: jthompson@btblawfirm.com

Message Score: 35
My Spam Blocking Level: High

Block this sender
Block btblawfirm.com

High (60): Pass
Medium (75): Pass
Low (90): Pass

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DEFENDANTS' MEMORANDUM - EXHIBIT 6

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC Defendant.	)	**CERTIFICATE OF SERVICE** **C.A. Number: 2021-CP-39-01127** **2021-CP-39-01128**

I, the undersigned paralegal in the Law Offices of Boulier Thompson & Barnes, LLC, attorneys for Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC Dominion Group, LLC and Dominion Clemson, II, LLC, do hereby certify that I have caused a copy of the hereinbelow listed pleadings to be emailed to the AIS email address for counsel of all parties in this matter on the 21st day of December, 2021, as follows:

PLEADING: 1) Defendant's First Set of Interrogatories to Plaintiff; and

2) Defendant's First Set of Requests for Production to Plaintiff

SERVED: ***(Via E-Mail: mchristian@cclawfirm.com)***
Matthew W. Christian
Christian & Christian
Post Office Box 332
Greenville, SC 29602

By: Julie Wallace
Julie Wallace

ELECTRONICALLY FILED - 2022 Oct 19 4:17 PM - PICKENS - COMMON PLEAS - CASE#2021CP3901128

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiff, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC Defendant.	**DEFENDANT DOMINION CLEMSON, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF** **C.A. Number: 2021-CP-39-01127** **2021-CP-39-01128**

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, requests that Plaintiff produce and permit this Defendant to inspect, copy and photograph the documents described below. It is requested that the inspection be made at the offices of this Defendant's attorneys at 10:00 a.m., or at such time as may otherwise be agreed upon by the parties, on the 30th day after service hereof. In responding to these requests to produce, it is requested that Plaintiff utilize the following:

DEFINITIONS and INSTRUCTIONS

A. In responding to these requests to produce, please furnish all information in the possession of Plaintiff, her officers, agents and employees, and her attorneys and investigators for her attorneys.

B. If Plaintiff cannot fully respond to the following requests to produce in full after

exercising due diligence to secure the information to do so, please respond to the extent possible specifying Plaintiff's inability to answer the remainder and state whatever information or knowledge they have concerning the unanswered portion.

C. Each request to produce is considered continuing, and if Plaintiff obtains information which renders her answers, or one of them incomplete or inaccurate, they are obligated to serve amended responses on this Defendant.

D. Insofar as may be applicable, and except as otherwise indicated, the term "document" or "documents" shall refer to any and all writings and recorded materials, of any kind whatsoever, that is or has been in the possession, control or custody of Plaintiff or of which Plaintiff has knowledge, whether originals or copies, including but not limited to contracts, documents, notes, rough drafts, interoffice memoranda, memoranda for the files, letters, research materials, correspondence, logs, diaries, forms, bank statements, card files, books of account, journals, ledgers, invoices, blueprints, diagrams, drawings, computer print-outs or tapes, reports, surveys, statistical computations, studies, pictures, maps, graphs, charts, minutes, manuals, pamphlets, electronically stored information, and books of any nature or kind whatsoever; and all other materials handwritten, printed, typed, mimeographed, photocopied or otherwise reproduced; and slides or motion pictures, television tapes; all mechanical tape records or other written or printed matter or tangible things on which words or phrases are affixed.

E. The term "you" or "your" as used herein refers to the party to whom these requests to produce are directed, and the agents, servants, officers, directors, employees, attorneys or other representatives of the party.

F. If in answering these requests to produce, it is necessary to refer to or identify any document you feel is privileged in any manner, or if any document is requested which Plaintiff

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feels is privileged, please give the following information so that the court can make a determination fair to both parties as to whether the document is privileged:

(1) Date of the document;

(2) Identify the preparer thereof, the addressee thereof and all copy recipients thereof or distributes thereof;

(3) State the general subject matter thereof;

(4) State the nature of the privilege you claim with respect to the document; and

(5) State whether or not you will agree to an ***en camera*** review of the document to determine whether it is privileged or not.

DOCUMENTS REQUESTED

1. All medical records, x-rays, or other medical information of any nature and kind whatsoever in Plaintiff's possession or control which relate to Earline Cooley in any way;

2. All documents used to answer and/or identified in Plaintiff's answers to these Defendant's First Set of Interrogatories to Plaintiff;

3. All letters, reports, or other writings in possession of Plaintiff or her counsel from any experts involved in this case in any way;

4. All statements of any witnesses or other persons claiming to have knowledge of any issue in this case;

5. Plaintiff's state and federal income tax returns and W-2 statements for the last seven (7) years;

6. Earline Cooley's state and federal income tax returns and W-2 statements for the last seven (7) years;

7. All medical bills which Plaintiff contends relate to the injuries claimed and/or alleged in this action;

8. All documentation of all payments made by collateral sources on the medical bills referenced in Request No. 7.

9. All correspondence, documents, or other tangible things which relate to any issue in this case;

10. All documents or other tangible things you intend to offer as exhibits upon the trial of this case;

11. A complete copy of all records or any other file materials relating to Plaintiff which are in the possession of any individual or entity identified in answer to Interrogatory No. 6;

12. All reports or any other written materials generated in connection with this case by any expert identified by Plaintiff in Plaintiff's answers to these Defendant's First Set of Interrogatories;

13. All photographs, plats, sketches, notes, other prepared documents, video recordings, and audio recordings identified in response to Interrogatory No. 2;

14. All records supporting the damages itemized in response to these Defendant's Interrogatory No. 4;

15. All documents that support the allegations of negligence set forth in Plaintiff's Complaint filed in this matter;

16. All documents supporting Plaintiff's allegation that "Defendant Dominion Senior Living used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profits over resident care" as set forth in Paragraph 4 of Plaintiff's Complaints;

17. All documents supporting Plaintiff's allegation that "Defendant Dominion Management used its corporate position to direct and affect the funding, staffing, and resident care

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at the facility in such as a way that it maximized profits over resident care" as set forth in Paragraph 5 of Plaintiff's Complaints;

18. All documents supporting Plaintiff's allegation that "Defendant Dominion Group used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profits over resident care" as set forth in Paragraph 6 of Plaintiff's Complaints;

19. All documents supporting Plaintiff's allegation that "Defendant Dominion Clemson II, LLC used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profits over resident care" as set forth in Paragraph 7 of Plaintiff's Complaints;

20. All documents provided to and reviewed by Aubrey Holmes, MSN-Ed, BSN, RN as referenced in Paragraph 3 of Ms. Holmes' Affidavit filed in this matter;

21. All powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time;

22. All diaries, journals, correspondence, electronic correspondence, notes, internet postings, social media postings, social media messaging, texts, or other writings maintained by or in the control of Plaintiff and/or Earline Cooley regarding the events and injuries described in Plaintiff's Complaint filed in this matter;

23. A copy of Earline Cooley's Medicare card, if applicable;

24. All audio and/or video recordings authored or compiled by Plaintiff, Earline Cooley, or anyone else acting on their behalf regarding the events and injuries described in Plaintiff's Complaint filed in this matter;

25. All photographs, images, or videos, in whatever format maintained, in the

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possession of Plaintiff, her counsel, or other persons acting on behalf of Plaintiff and/or Earline Cooley which allegedly depict the injuries or conditions at issue in this matter;

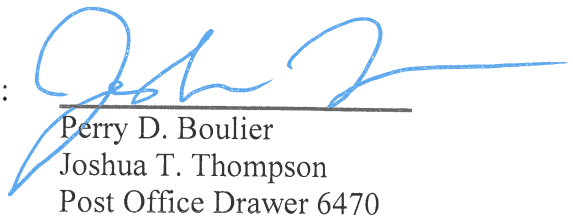
26. All documents which relate to any issue in this matter and which were received by Plaintiff or her counsel in response to any subpoena, authorization for release of records, freedom of information act request, or other method of document request;

27. All documents which relate to any application for and/or grant of disability benefits to Earline Cooley by the Social Security Administration;

28. All documentation concerning liens asserted on any potential recovery in this matter by Medicare, Medicaid, or any other entity and/or insurer; and

29. All documents or other tangible things in your possession or control not otherwise produced in response to the above requests which you claim relate to any issue in this case.

BOULIER THOMPSON & BARNES, LLC

By: 

Perry D. Boulier
Joshua T. Thompson
Post Office Drawer 6470
Spartanburg, SC 29304
(864) 606-9610

Attorneys for Defendants.

December 21, 2021

Spartanburg, South Carolina

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DEFENDANTS' MEMORANDUM - EXHIBIT 8

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley, Plaintiffs, v. Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC, Defendant.	)	**CERTIFICATE OF SERVICE BY MAILING**

This is to certify that the undersigned did cause Plaintiff's Answers to Defendant Dominion Clemson, LLC's First Set of Interrogatories and Plaintiff's Responses to Defendant Dominion Clemson, LLC's First Set of Requests for Production to be served on the Defendant(s) by mailing a copy of the same in an envelope addressed as shown below and by depositing same in the United States Mail, proper postage affixed thereto, on the 25 day of April, 2022.

Joshua T. Thompson
Boulier Thompson & Barnes, P.A.
PO Box 6470
Spartanburg, SC 29304

CHRISTIAN & CHRISTIAN
Attorneys At Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Amanda Weatherford, Paralegal to
Matthew W. Christian

Greenville, South Carolina
Date: April 25, 2022

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DEFENDANTS' MEMORANDUM - EXHIBIT 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
	)	
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S RESPONSES TO DEFENDANT DOMINION CLEMSON, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION**
	)	
v.	)	
	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
	)	
Defendant(s).	)	

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedures, Plaintiff responds to Defendant's Requests for Production as follows:

REQUESTS

1. All medical records, x-rays, or other medical information of any nature and kind whatsoever in Plaintiff's possession or control which relate to Earline Cooley in any way;

RESPONSE: See the medical records and bills produced herewith.

2. All documents used to answer and/or identified in Plaintiff's answers to the Defendant's First Set of Interrogatories to Plaintiff;

RESPONSE: See the medical records, medical bills, and SC DHEC documents.

3. All letters, reports, or other writings in possession of Plaintiff or her counsel from any experts involved in this case in any way;

RESPONSE: At this time, Plaintiff has not retained an expert for use at the trial of this case. Should same be later identified, Plaintiff will supplement the requested information. Plaintiff would, however, inform Defendant that any medical provider identified herein or upon review of Plaintiff's medical records and any expert identified by another party may be called as an expert regarding the injuries sustained by the Plaintiff.

4. All statements of any witnesses or other person claiming to have knowledge of any issue in this case;

RESPONSE: See the medical records.

5. Plaintiff's state and federal income tax returns and W-2 statements for the last seven (7) years;

RESPONSE: Plaintiff objects to this request as it is vague, overly broad, burdensome, and would not tend to lead to relevant evidence.

6. Earline Cooley's state and federal income tax returns and W-2 statements for the last seven (7) years;

RESPONSE: Plaintiff objects to this request as it is vague, overly broad, burdensome, and would not tend to lead to relevant evidence.

7. All medical bills which Plaintiff contends relate to the injuries claimed and/or alleged in this action;

RESPONSE: See the medical bills produced herewith.

8. All documentation of all payments made by collateral sources on the medical bills referenced in Request No. 7;

RESPONSE: Plaintiff objects to this interrogatory, as it pertains to collateral sources which are not admissible and would not tend to lead to relevant evidence.

9. All correspondence, documents, or other tangible things which relate to any issue in this case;

RESPONSE: Plaintiff objects to this request as it is overly broad, vague, unduly burdensome seeks information that will not lead to admissible evidence and seeks

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information subject to attorney work product privilege and/or attorney/client privilege. Subject to and without waiving said objections, see the documents produced herewith.

10. All documents or other tangible things you intend to offer as exhibits upon the trial of this case;

RESPONSE: Plaintiff objects as this Interrogatory seeks the strategy and mental thoughts of counsel. Subject to and without waiving said objection, Plaintiff reserves the right to supplement.

11. A complete copy of all records or any other file materials relating to Plaintiff which are in the possession of any individual or entity identified in answer to Interrogatory No. 6;

RESPONSE: See response to Request #3.

12. All reports or any other written materials generated in connection with this case by any expert identified by Plaintiff in Plaintiff's answers to these Defendant's First Set of Interrogatories;

RESPONSE: See response to Request #3.

13. All photographs, plats, sketches, notes, other prepared document, video recordings, and audio recordings identified in Interrogatory No. 2;

RESPONSE: See the medical records, medical bills, and SC DHEC documents.

14. All records supporting the damages itemized in response to these Defendant's Interrogatory No. 4;

RESPONSE: See the medical bills.

15. All documents that support the allegations of negligence set forth in Plaintiff's Complaint filed in this matter.

RESPONSE: Plaintiff objects to this request as it is overly broad, vague, unduly burdensome seeks information that will not lead to admissible evidence and seeks

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information subject to attorney work product privilege and/or attorney/client privilege. Subject to and without waiving said objections, see the documents produced herewith.

16. All documents supporting Plaintiff's allegation that "Defendant Dominion Senior Living used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profits over resident care: as set forth in Paragraph 4 in Plaintiff's Complaints;

RESPONSE: Plaintiff objects to this Request as it is vague, overly broad, unduly burdensome, and seeks information protected by attorney-client privilege, work product doctrine, and seeks the mental impressions and thoughts of counsel. Subject to and without waiving said objections, Plaintiff would refer Defendant to all documents produced herewith, publicly available documents/information, and documents produced by Defendants.

17. All documents supporting Plaintiff's allegation that "Defendant Dominion Management used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that maximized profits over resident care" as set forth in Paragraph 5 of Plaintiff's Complaints;

RESPONSE: Plaintiff objects to this Request as it is vague, overly broad, unduly burdensome, and seeks information protected by attorney-client privilege, work product doctrine, and seeks the mental impressions and thoughts of counsel. Subject to and without waiving said objections, Plaintiff would refer Defendant to all documents produced herewith, publicly available documents/information, and documents produced by Defendants.

18. All documents supporting Plaintiff's allegation that "Defendant Dominion Group used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profits over resident care" as set forth in Paragraph 6 of Plaintiff's Complaints;

RESPONSE: Plaintiff objects to this Request as it is vague, overly broad, unduly burdensome, and seeks information protected by attorney-client privilege, work product doctrine, and seeks the mental impressions and thoughts of counsel. Subject to and without waiving said objections, Plaintiff would refer Defendant to

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all documents produced herewith, publicly available documents/information, and documents produced by Defendants.

19. All documents supporting Plaintiff's allegation that "Defendant Dominion Clemson II, LLC used it corporation position to direct and affect the funding, staffing, and resident care at the facility in such as a way that it maximized profit over resident care" as set forth in Paragraph 7 of Plaintiff's Complaints;

RESPONSE: Plaintiff objects to this Request as it is vague, overly broad, unduly burdensome, and seeks information protected by attorney-client privilege, work product doctrine, and seeks the mental impressions and thoughts of counsel. Subject to and without waiving said objections, Plaintiff would refer Defendant to all documents produced herewith, publicly available documents/information, and documents produced by Defendants.

20. All documents provided to and reviewed by Aubrey Holmes, MSN-Ed, BSN, RN as referenced in Paragraph 3 of Ms. Holmes' Affidavit filed in this matter;

RESPONSE: See the medical records of Dominion Senior Living, Baptist Easley Hospital, Foothills Presbyterian Community, Pickens County EMS, and Kindred at Home which are produced herewith.

21. All powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time;

RESPONSE: See the Healthcare Power of Attorney and Durable Power of Attorney for Earline Cooley.

22. All diaries, journals, correspondence, electronic correspondence, notes, internet postings, social media postings, social media messaging, texts, or other writings maintained by or in the control of Plaintiff and/or Earline Cooley regarding the events and injuries described in Plaintiff's Complaint filed in this matter;

RESPONSE: To the best of Plaintiff's recollection, she is not in possession of any documents responsive to this request.

23. A copy of Earline Cooley's Medicare card, if applicable;

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RESPONSE: Plaintiff objects to this interrogatory, as it pertains to collateral sources which are not admissible and would not tend to lead to relevant evidence. Subject to and without waiving said objection, Plaintiff has placed Medicare on notice and will provide Defendant with a copy of any conditional payment amount if/when settlement is reached.

24. All audio and/or video records authored or complied by Plaintiff, Earline Cooley, or anyone else acting on their behalf regarding the events and injuries described in Plaintiff's Complaint filed in this matter;

RESPONSE: To be supplemented.

25. All photographs, images, or videos, in whatever format maintained, in the possession of Plaintiff, her counsel ,or other person acting on behalf of Plaintiff and/or Earline Cooley which allegedly depict the injuries or conditions at issue in this matter;

RESPONSE: To be supplemented.

26. All documents which relate to any issue in this matter and which were received by Plaintiff or her counsel in response to any subpoena, authorization for release of records, freedom of information act request, or other method of document request;

RESPONSE: See the medical records, medical bills, and SC DHEC documents.

27. All documents which relate to any application for and/or grant of disability benefits for Earline Cooley by the Social Security Administration;

RESPONSE: Plaintiff objects to this interrogatory, as it pertains to collateral sources which are not admissible and would not tend to lead to relevant evidence.

28. All documentation concerning liens asserted on any potential recover in this matter by Medicare, Medicaid, or any other entity and/or insurer; and

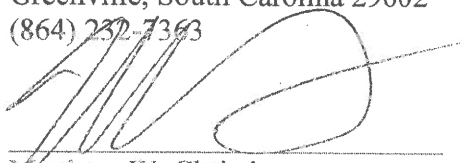
RESPONSE: Plaintiff objects to this interrogatory, as it pertains to collateral sources which are not admissible and would not tend to lead to relevant evidence. Subject to and without waiving said objection, Plaintiff has placed Medicare on notice and will provide Defendant with a copy of any conditional payment amount if/when settlement is reached.

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29. All documents or other tangible things in your possession or control not otherwise produced in response to the above requests which you claim relate to any issue in this case.

RESPONSE: Plaintiff objects to this request as it is overly broad, vague, unduly burdensome seeks information that will not lead to admissible evidence and seeks information subject to attorney work product privilege and/or attorney/client privilege. Subject to and without waiving said objections, see the documents produced herewith.

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: 4-22, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C.A. No.: 2021-CP-39-01127 & 2021-CP-39-01128
Deonda Weldon, Individually and as Personal Representative of the Estate of Earline Cooley,	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE BY MAILING**
v.	)	
Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC,	)	
Defendant.	)	

This is to certify that the undersigned did cause Plaintiff's Answers to Defendant Dominion Clemson, LLC's First Set of Interrogatories and Plaintiff's Responses to Defendant Dominion Clemson, LLC's First Set of Requests for Production to be served on the Defendant(s) by mailing a copy of the same in an envelope addressed as shown below and by depositing same in the United States Mail, proper postage affixed thereto, on the 25 day of April, 2022.

Joshua T. Thompson
Boulier Thompson & Barnes, P.A.
PO Box 6470
Spartanburg, SC 29304

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CHRISTIAN & CHRISTIAN
Attorneys At Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

Amanda Weatherford, Paralegal to
Matthew W. Christian

Greenville, South Carolina
Date: April 25, 2022

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DEFENDANTS' MEMORANDUM - EXHIBIT 10

ELECTRONICALLY FILED - 2022 Oct 19 4:17 PM - PICKENS - COMMON PLEAS - CASE#2021CP3901128

From: Matt Christian
To: Josh Thompson; Amanda Venable
Cc: Ayla Luers Connor; Jenna Bynum; Julie Wallace
Subject: RE: Estate of Earline Cooley v. Dominion Clemson, LLC
Date: Thursday, June 9, 2022 10:15:59 AM
Attachments: image002.png

Josh,

I don't believe it should be enforceable.

Matt Christian

Attorney at Law
Christian and Christian, LLC
1007 E. Washington St.
Greenville, SC 29601

864-232-7363
864-370-3731 (Fax)

www.cclawfirm.com

From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Thursday, June 9, 2022 8:40 AM
To: Matt Christian <mchristian@cclawfirm.com>; Amanda Venable <avenable@cclawfirm.com>
Cc: Ayla Luers Connor <aconnor@btblawfirm.com>; Jenna Bynum <jbynum@btblawfirm.com>; Julie Wallace <jwallace@btblawfirm.com>
Subject: RE: Estate of Earline Cooley v. Dominion Clemson, LLC

Matt,

I apologize for the delay in response. I have had COVID for a second time and have been at home feeling quite similar to having the flu. I am coming out of it now but not released from quarantine.

In close review of Plaintiff's discovery production which we received early last month, we noticed a Durable Power of Attorney that was signed in 2006 and filed in 2014. Though we had previously searched the databases in Pickens County (the last known county of residence), it appears this document was filed in Greenville County. Having had time to review it and discuss it with my clients, I have been instructed to move to compel arbitration pursuant to the arbitration provision found within the admission agreement.

Given what our decisional courts have said on waiver, it would be imprudent of me to participate in any further discovery at this point, armed with knowledge of the Durable POA and a good faith argument to compel arbitration. Therefore, part of my motion to compel arbitration will include a request for a stay from discovery until the motion to compel arbitration is decided.

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I do note however that before I was aware of this durable POA and the good faith arbitration argument, I responded to discovery served on Dominion Senior Living by letter dated March 1, 2022. I made document production for that entity, above and beyond what I made when responding to discovery for Dominion Clemson on February 22, 2022. I am not aware of you serving discovery on any of the other three defendants. I had assumed that was because you were aware they had no connection to this matter. (They do not, and discovery responses on behalf of Dominion Clemson (Rogg 29) and Dominion Senior Living (Rogg 20) confirm that.) Those three entities have common ownership but have nothing to do with operation of senior living facilities.

I know this is not likely your desired path for this matter, but I am happy to move as swiftly as I can with arbitration should you agree to it. Likewise, my clients remain willing to discuss informal resolution.

I will be attending depositions all day today virtually from quarantine, but please do not hesitate to reach out if you want to discuss. I will be happy to share with you why I believe the arbitration provision is enforceable and also discuss facilitating resolution talks in the interim if that desirable.

Thank you,

Josh

Joshua T. Thompson
101 W. St. John St., Ste. 300
Spartanburg, SC 29306
PO Box 6470
Spartanburg, SC 29304
864-606-9710
jthompson@btblawfirm.com
www.btblawfirm.com

BOULIER THOMPSON
& BARNES,LLC
ATTORNEYS AT LAW

From: Matt Christian <mchristian@cclawfirm.com>
Sent: Friday, May 20, 2022 4:24 PM
To: Josh Thompson <jthompson@btblawfirm.com>; Amanda Venable <avenable@cclawfirm.com>
Subject: RE: Estate of Earline Cooley v. Dominion Clemson, LLC

Josh,

I plan on doing the depos in person. I can do Lindsey Daugherty on July 12th and Krista Turpin on July 14th. I'll review the file and if it looks like I can do Ms. Turpin on the same day as Daugherty I'll let you know and we can knock them out on the same day. Amanda will secure a location and a court reporter in Pickens County and hopefully in the Clemson area.

We will ask Ms. Galloway for dates for depos and if she can do the 14th I'll let you know. I'll be in California on the June 30th.

Also, after reviewing the file, it appears that we never received discovery responses for any entity other than the facility. Please let us know when we can expect to receive those responses. Those responses will also be necessary to resolve our motion.

Let me know if you have any questions or concerns.

Thanks,

Matt Christian

Attorney at Law
Christian and Christian, LLC
1007 E. Washington St.
Greenville, SC 29601

864-232-7363
864-370-3731 (Fax)

www.cclawfirm.com

From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Friday, May 20, 2022 2:06 PM
To: Amanda Venable <avenable@cclawfirm.com>
Cc: Matt Christian <mchristian@cclawfirm.com>
Subject: RE: Estate of Earline Cooley v. Dominion Clemson, LLC

Matt:

Lindsey Daugherty, Krista Turpin, and I can be available on June 30th, July 12th, or July 14th for their depositions. Lindsey travels back and forth to Orlando each week for work, so virtual would be best. If they need to be in person, they would need to be in the Clemson area. Please confirm a date/time/location, and please let me know if Ms. Weldon and Ms. Galloway can be available on one of the left over dates. I can do them both in the same day.

Thank you,

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Josh

From: Amanda Venable <avenable@cclawfirm.com>
Sent: Tuesday, May 17, 2022 4:49 PM
To: Josh Thompson <jthompson@btblawfirm.com>
Cc: Matt Christian <mchristian@cclawfirm.com>
Subject: Estate of Earline Cooley v. Dominion Clemson, LLC

Mr. Thompson:

Please find attached correspondence from Mr. Christian in this matter.

CHRISTIAN & CHRISTIAN
ATTORNEYS AT LAW

Amanda Venable
Paralegal to Matthew W. Christian

Christian & Christian, LLC
P.O. Box 332
Greenville, SC 29602
p: 864.232.7363 | f: 864.370.3731
www.cclawfirm.com

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Total Control Panel Login

To: mchristian@cclawfirm.com Remove this sender from my allow list

From: jthompson@btblawfirm.com

You received this message because the sender is on your allow list.

Total Control Panel Login

To: mchristian@cclawfirm.com Remove this sender from my allow list

From: jthompson@btblawfirm.com

You received this message because the sender is on your allow list.

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ELECTRONICALLY FILED - 2022 Oct 19 4:17 PM - PICKENS - COMMON PLEAS - CASE#2021CP3901128

From: Matt Christian
To: Josh Thompson
Cc: Amanda Weatherford; Jenna Bynum; Julie Wallace
Subject: RE: Cooley/Weldon v. Dominion - Discovery Dispute/Motion to Compel
Date: Monday, May 2, 2022 4:11:09 PM
Attachments: image001.png

Josh,

Thanks for the email below.

I am fine with a Confidentiality Order for the budget materials and personnel files. I usually suggest using the Federal District Court form order for that.

Also, please provide us with dates for the two witnesses we requested. I would like to go ahead and get those on the calendar.

Thanks,

Matt Christian

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From: Josh Thompson <jthompson@btblawfirm.com>
Sent: Friday, April 29, 2022 2:37 PM
To: Matt Christian <mchristian@cclawfirm.com>
Cc: Amanda Weatherford <aweatherford@cclawfirm.com>; Jenna Bynum <jbynum@btblawfirm.com>; Julie Wallace <jwallace@btblawfirm.com>
Subject: Cooley/Weldon v. Dominion - Discovery Dispute/Motion to Compel

Matt:

Based on our call last Friday, I have been working with my clients to see if we can resolve the discovery dispute and motion to compel. As promised during that call, I am emailing you to let you know where I am:

- Roggs #7/15 –My notes reflect that we discussed me producing a report containing the names and last known contact information for any former employees working at the facility during

the last six months of Ms. Cooley's residency. The facility does not have the ability to produce such a report but doesn't object to it. I have a request in to the next level up to see if this report can be generated. I am waiting to hear back. If not, I will try to come up with another proposal.

- Rogg #27 – I should have the document retention policy in place at the time and the one in place by the end of next week.
- RFP # 19 – My notes reflect that we discussed me producing projected and actual budgets for 2019 and 2020, the years of Ms. Cooley's residency. We also discussed that we could agree upon the federal confidentiality order without reading room provisions and that you would not object to these being produced pursuant to that order. I am waiting to hear back on this request but have advocated for production of what we have available.
- RFP # 21, 22, 23 – My notes reflect that we discussed me producing work schedules and reports of actual time worked on the days of Ms. Cooley's falls referenced in the Complaint. As to # 23, you added that you would also be looking for a report that showed the actual people working, not just the "available hours." Unfortunately, the facility no longer is in possession of work schedules from the time period of the falls alleged in the complaint. I am working with HR to see what kind of report we may can generate showing actual hours worked and who worked them. I will give you an update as soon as I can.
- RFP # 25 – My notes reflect that we discussed me producing training materials related to assessments, ADLs, changes in conditions, falls, and care planning from 2018, 2019, 2020. There is no objection to this, and we will produce what we can. My facility is in the process of gathering the records it has, and I should have those by the end of next week.
- RFP # 36 – My notes reflect that we discussed me producing the personnel files of the Executive Director, Assistant Executive Director, and the Wellness Directors (the nurses) during Ms. Cooley's residency. There is no objection to this, and we will produce what we have. My facility is in the process of gathering the records it has, and I should have those by the end of next week.

I will update you on the open items as soon as I can and see if we can resolve this matter. Should we go ahead and work on a Confidentiality Order draft to try and lay the groundwork for a resolution?

Thank you,

Josh

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