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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2023-001126
Circuit Court Case No. 2022-CP-43-00355

Stanley Dale Floyd and Stephanie Floyd, ... Respondents,

v.

SSC Sumter East Operating Company, LLC
d/b/a Sumter East Health and Rehab Center;
SSC Equity Holdings, LLC; SavaSeniorCare,
LLC; SavaSeniorCare Administrative and
Consulting, LLC; SavaSeniorCare Consulting,
LLC; SMV Sumter East, LLC; and Natasha
Nadkarni, ... Appellants.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4300355

Stanley Dale Floyd et al
PLAINTIFF(S)

Ssc Sumter East Operating Company, 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:

Defendant's Motion to Compel Arbitration is DENIED.
Defendant's Motion for Stay is DENIED.
Attorney Matthew W. Christian is to prepare an order.

Plaintiff's Motion to Compel Discovery is GRANTED to the extent that the defendant must respond to plaintiff's discovery within 60 days unless the defendant appeals this court's denial of defendant's motion to compel arbitration.

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 09/08/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.



Sumter Common Pleas

Case Caption: Stanley Dale Floyd , plaintiff, et al VS Ssc Sumter East Operating Company, Llc , defendant, et al

Case Number: 2022CP4300355

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2022-09-08 14:11:27 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C.A. No.: 2022-CP-43-00355
	)	
Stanley Dale Floyd and Stephanie	)	
Floyd,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
SSC Sumter East Operating	)	
Company, LLC d/b/a Sumter East	)	
Health and Rehab Center, SSC Equity	)	
Holdings, LLC, SavaSeniorCare,	)	
LLC, SavaSeniorCare Administrative	)	
and Consulting, LLC,	)	
SavaSeniorCare Consulting, LLC,	)	
SMV Sumter East, LLC, and Natasha	)	
Nadkarni,	)	
	)	
Defendant(s).	)	
	)	

These matters came before the Court on September 7, 2022 on:

- 1) Defendants SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center and Natasha Nadkarni's Motion to Compel Arbitration;
- 2) Defendants SSC Equity Holdings, LLC, SavaSeniorCare, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC's Motion to Stay; and
- 3) Plaintiff's Motion to Compel discovery.

Present for the Defendants was Russell Hines of Clement Rivers, LLP and Matthew Christian of Christian & Christian, LLC for the Plaintiffs. With consent of all parties and at the direction of the Court, the hearing was held via WebEx.

After considering all evidence of record, memoranda, exhibits, and arguments present by counsel for the parties, the Court hereby denies Defendants SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center and Natasha Nadkarni's Motion to Compel Arbitration and Defendants SSC Equity Holdings, LLC, SavaSeniorCare, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC's Motion to Stay and grants Plaintiff's Motion to Compel discovery.

PROCEDURAL BACKGROUND

On December 7, 2021, Plaintiffs filed a Notice of Intent to File Suit pursuant to South Carolina Code §15-79-125. The parties engaged in a mediation as required by this section, and the mediation was unsuccessful. Plaintiffs have alleged in the Complaint causes of action for nursing home negligence, ordinary negligence, negligent misrepresentation, corporate negligence for the underfunding and understaffing of the nursing home, and loss of consortium for Plaintiff Stanley Dale Floyd's spouse, Stephanie Floyd. Accordingly, Plaintiff filed the Summons and Complaint on March 4, 2022 and subsequently served all Defendants. Defendants subsequently and timely filed their Answers. Thereafter, when Defendants' discovery responses were not provided timely, Plaintiff filed the Motion to Compel on August 3, 2022. Additionally, shortly after Plaintiffs filed the Motion to Compel, Defendants filed the Motion to Compel Arbitration and Motions to Stay on August 4, 2022.

FACTUAL BACKGROUND

On or about May 6, 2019, Stanley Dale Floyd (hereinafter "Dale Floyd") was admitted to SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and

Rehab Center (hereinafter “Facility”) for short-term rehabilitation after undergoing surgery on his left arm for a ruptured bicep tendon with abscess as the result of a work injury. Complaint. Near the time of admission while Dale Floyd was being transported by ambulance from the hospital to Facility, Stephanie Floyd (hereinafter “Spouse”) was presented with numerous documents to be signed and executed on behalf of Dale Floyd. Affidavit of Spouse. At the time of signing the documents, Spouse had no conservatorship, guardianship, and/or power of attorney to provide authority to act on behalf of Dale Floyd. Furthermore, there is no evidence that Dale Floyd was not competent or not able to sign any documents on his own behalf.

That further, Plaintiff Dale Floyd alleges that during his admission to Facility, that the Facility failed to provide adequate care and treatment to his arm resulting in significant infection, multiple surgeries, and loss of use of his limb and inability to work further. Complaint. Dale Floyd was discharged from the Facility on May 13, 2019 whereupon he returned to the hospital for treatment for his injuries. Complaint. That further, Plaintiffs have alleged claims against Facility Co-Defendants for underfunding and understaffing the Facility. Defendants allege that the documents signed by Spouse while Dale Floyd was in transport to the Facility included an Arbitration Agreement and a Resident Admission Agreement (hereinafter “Admission Agreement”). It is based upon these documents which Defendants pursue the above-referenced motions.

STANDARD OF REVIEW/ANALYSIS

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A.

v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007) (internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). Arbitration agreements must satisfy the basic tenets and requirements of contract law. Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844, (Ct. App. 1999). Section 2 of the Federal Arbitration Act dictates that arbitration agreements are enforceable except “upon such grounds as exist at law or equity for the revocation of any contract”. 9 U.S.C. §2. The courts, not arbitrators, are charged with deciding certain “gateway matters” including whether the parties have a valid arbitration agreement or whether the arbitration clause applies to a certain type of controversy. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 629, 667 S.E.2d 1, 5 (Ct. App. 2008). Thus, unless there is a valid, irrevocable, and enforceable contract, the Federal Arbitration Act does not even apply.

Further, the party seeking enforcement of the agreement bears the burden to prove a valid arbitration agreement exists that is enforceable, knowing, voluntary, and intentional.

See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008); Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 268, 356 S.E.2d 115, 116 (1986). "A motion to compel arbitration pursuant to the FAA is 'akin to the burden on summary judgment.'" Thomas v. Progressive Leasing, Civ. No. 17-1249, 2017 WL 4805235, at *2 (D. Md. Oct. 25, 2017)(internal quotation marks omitted) (quoting Galloway v. Santander Consumer USA, Inc., 819 F.3d 79, 85 (4th Cir. 2016)). Therefore, the burden is on the moving party to demonstrate the absence of any genuine dispute of material fact, Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970), and that the movant is "entitled to judgment [compelling arbitration] as a matter of law." Burrell v. 911 Restoration Franchise Inc., 2017 WL 5517383, at *3 (D. Md. November 17, 2017) (citing Fed. R. Civ. P. 56(a)). Further, "there is, however, no public policy – federal or state – favoring arbitration." Simmons v. Benson Hyundai, LLC, 2022 S.C. App. LEXIS 37, 22WL791174 quoting Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). "...A presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." Wilson v. Willis, 426 S.C. 326 at 339, 827 S.E.2d 167 (2019).

Because Spouse maintained no actual agency/authority to act on behalf of Dale Floyd, argument was heard as to whether Spouse was the apparent agent of Dale Floyd and/or that Dale Floyd is estopped from denying the Arbitration Agreement. However, for the reasons set forth hereinbelow, the Court does not find these arguments persuasive.

I. No Apparent Agency/Authority

Without actual agency, Defendants argue that Spouse had apparent authority/agency to enter into the Arbitration Agreement on behalf of Dale Floyd. Defendants Facility and Nadkarni Memorandum of Law in Support, pp. 10 and 21. Apparent authority is based on “representations made by the principal to the third party and reliance by the third party on those representations”. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649, S.E.2d 488, 491 (2007). Apparent authority exists when the principal is bound by the acts of its agent after the principal has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business, usages and custom, is led to believe the agent has certain authority and in turn, deals with the agent based on the assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *rev’d on other grounds*.

South Carolina law requires that to prove apparent authority, the Defendants must show “... (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party’s detriment.” Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that between the principal and the third party. Vereen v. Liberty Life Insurance, Company, 306 S.C. 423, 412 S.E.2d 425

(Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists.

In the present case, there is no evidence Dale Floyd represented to Defendants that Spouse had the authority to enter into the Arbitration Agreement on his behalf. In fact, the evidence is to the opposite. Affidavits of Spouse and Dale Floyd. Dale Floyd was not present when the Spouse signed the Arbitration Agreement as he was in an ambulance being transported to the Facility. Affidavit of Spouse. Dale Floyd was never aware that the Spouse had signed the Arbitration Agreement. Affidavits of Spouse and Dale Floyd. Dale Floyd never authorized Spouse to sign such contract or agreement, and Defendants failed to follow the agreement's own requirements to have Dale Floyd sign.

Spouse made no verbal representation that she had any authority to bind her husband. Moreover, as noted in Hodge, when the Arbitration Agreement does not merge with the Admission Agreement, as in the present case, Facility/Nadkarni cannot show that they changed their position for the worse as required to prove apparent agency. Therefore, Defendants cannot argue that any apparent authority/agency or ratification existed for Spouse to sign the Arbitration Agreement on Dale Floyd's behalf.

II. No Estoppel

Defendants argue that even if Spouse lacked authority to sign the Arbitration Agreement, the Arbitration Agreement and Admission Agreement should be construed together, or merged, and Dale Floyd should therefore be estopped to deny the Arbitration Agreement's enforceability. Facility and Natasha Nadkarni's Memorandum of Law in Support of their Motion to Compel Arbitration, pp. 10-11. Facility and Nadkarni's equitable estoppel argument is premised on its contention that the Admission Agreement

and Arbitration Agreement merged. Therefore, finding a merger is required for the Court to reach the equitable estoppel argument. Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

“Under South Carolina law, the general rule is that in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract.”

Coleman, 407 S.C. at 354, 755 S.E.2d at 454 (quoting Clutts Resort Realty, Inc. v. Down’ Round Dev., Corp., 232 S.E.2d 20, 24 (S.C. 1977)).¹ However, in Coleman the South Carolina Supreme Court found “by their own terms, the contracts between the parties indicated an intent that the common law doctrine of merger not apply.” Id. Evidence of the parties’ intent to keep the two agreements separate included language in the Admission Agreement that recognized the “separateness” of the two documents. The Court also found that the ability to disclaim the Arbitration Agreement within thirty (30) days but not the Admission Agreement “evidenced an intention that each contract remains separate.” Id. “Finally, the Court stressed that even if the language of the Admission Agreement created an ‘ambiguity as to merger, the law is clear that any ambiguity in such a clause is *construed* against drafter, in this case, [the Facility]’”. Thompson, 416 S.C. at 56-58, 784 S.E.2d at 687 (quoting Coleman, 755 at 455)(emphasis and alterations in original).

After Coleman, the South Carolina Court of Appeals considered additional cases discussing evidence of the intent to keep healthcare facility admission agreements and

¹ It should be noted that the only complete Admission Agreement contained within the submissions of Defendants was a form Admission Agreement which was not signed by the Plaintiff and which redacted the names of the facility and resident for which it would have applied. Further, the only other documents submitted in furtherance of an admission agreement included a single signature page signed by Spouse which Defendants allege was the last page of the Admission Agreement, but it did not contain the preceding pages of the signed Admission Agreement.

arbitration agreements separate. In Thompson, the Court discussed the fact that signing the arbitration agreement was not a pre-condition to admission to the facility as evidence of intent to keep the arbitration agreement and admission agreement separate. 784 S.E.2d at 685. In Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), the Court also noted the fact that the admission agreement and arbitration agreement were “separately paginated and each had its own signature page” as additional evidence of the parties’ intent to keep the agreements separate. 813 S.E.2d at 302.

Other than the date on the submitted documents, Defendants provided no evidence as to the timing of the execution of the documents nor foundations for same. However, even if the documents were executed at the same time, by the same parties, for the same purpose, and in the same course of transaction, a contrary intention exists in the present case reflecting that the documents did not merge. Much of the same evidence of the contrary intent which the courts discussed in Coleman, Thompson, and Hodge exist in the present case.

The Arbitration Agreement explicitly reflects that it is voluntary and it is undisputed that the Arbitration Agreement was not required for admission to Facility. In fact, the agreement specifically states that it is “voluntary.” Arbitration Agreement, p. 1. Additionally, the Arbitration Agreement and Admission Agreement contain separate signature pages and were separately paginated. The definition of “parties” to the Arbitration Agreement differs from the identification of the “parties bound” to the Admission Agreement. Arbitration Agreement, p. 2; Admission Agreement p. 9.

Assuming *arguendo* that the redacted, unsigned form admission agreement submitted by Defendants is the same as the Admission Agreement signed by Spouse, the pages preceding the signature page of the Admission Agreement contain additional distinctions from the Arbitration Agreement. In fact, the Admission Agreement states that it is the entire agreement and supersedes all other agreements. Admission Agreement, p. 8. Furthermore, the Admission Agreement provides the way in which it may be amended, while the Arbitration Agreement does not provide for such process. Admission Agreement, p. 8. The Admission Agreement provides that the parties may mutually agree to terminate the agreement at any time whereas the Arbitration Agreement could be revoked within thirty (30) days of signature. Admission Agreement, p. 1; Arbitration Agreement, p. 1. Additionally, the Arbitration Agreement provides that it “constitutes the entire agreement of the parties...with respect to the program is a complete and final integration thereof.” Arbitration Agreement, p. 6. The Admission Agreement defines “agreement” to be only the Admission Agreement itself and the Arbitration Agreement is not listed in the definition. Admission Agreement, p. 1. Therefore, the overwhelming evidence provides that the agreements were intended to be kept separate.

As a result, to the extent Defendants rely upon the “entirety” clause in the Admission Agreement incorporating all “exhibits,” it must be construed against Defendants and Facility/Nadkarni to the extent that statement creates ambiguity. Thompson, 784 S.E.2d at 685 (citing Coleman, 755 S.E.2d at 455-56 (holding any ambiguity in the patient’s admission agreement as to its merger with the arbitration agreement was to be construed against the healthcare facility))).

Because the agreements did not merge, Defendants' position for estoppel fails. However, even if one were to assume the documents did merge, Defendants still cannot meet their burden to prove estoppel should apply because he is not suing for claims arising under a contract for which he received any benefit. Because Dale Floyd received no benefit from the Arbitration Agreement, equitable estoppel would only apply if the documents merged, which they did not. The only agreement from which Defendants could even argue that Dale Floyd received a benefit was the Admission Agreement because he was admitted to the facility as a result of it. However, because the facility allegedly caused serious injuries and damages to Dale Floyd, he did not even benefit from being admitted. Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). As the Court further noted in Hodge, even if the Admission Agreement and Arbitration Agreement merge, because Dale Floyd is not suing for a breach of the Admission Agreement, he is not attempting to enforce that agreement and therefore, is not suing under that agreement in order to be estopped from denying his lack of signature to deny the enforceability of the Arbitration Agreement.

Dale Floyd's claims rely on general tort duties owed by Facility/Defendants, not on any provision of the Admission Agreement. Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020); Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). Dale Floyd is not trying to procure any direct benefit from the Admission Agreement while attempting to avoid any arbitration provisions contained therein. Id. As a result, not only did the agreements not merge, but Plaintiffs are not suing under the Admission Agreement or Arbitration

Agreement and rather, the claims arise out of the independent tort duty of the provider/patient relationship.

III. Failure to Establish Foundation and Authenticity

Defendants have the burden to prove the existence of an enforceable, valid arbitration agreement. In doing so, Defendants must prove that an enforceable arbitration agreement existed in the first place. Further, in support of Defendants' position, they have submitted multiple agreements and attachments therewith for the Admission Agreement and the Arbitration Agreement. Facility and Natasha Nadkarni submit these documents as attachments to their Memorandum in Support of their Motion to Compel Arbitration. As previously noted, the complete Admission Agreement attached is simply an unsigned form agreement with the name of the facility and resident redacted. No additional evidence was offered to corroborate that this was the exact same Admission Agreement allegedly signed by Spouse.

Furthermore, Defendants have the duty to authenticate and lay the foundation for the documents. Such a requirement applies to motions to compel arbitration as well. Berry v. Spang, 433 S.C. 1; 855 S.E.2d 309 (S.C. App. 2021). As the Berry Court noted, "A party offering evidence must meet 'the requirement of authentication...as a condition precedent to admissibility.'" Id. citing Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015)(quoting Rule 901(a), SCRE). While the burden to authenticate is not high, it still, nonetheless, exists and requires that the proponent offer a satisfactory foundation from which it could be reasonably found that the evidence is authentic. Id.

Unlike the moving party in Berry, Facility and Natasha Nadkarni have failed to provide any testimony, affidavit, or other foundation for the Admission Agreement and Arbitration Agreement and failed to authenticate same. As a result, Facility and Natasha Nadkarni failed to comply with the authentication/foundation requirements to establish that an enforceable arbitration agreement and/or admission agreement was signed and executed. As a result and as an additional sustaining ground, the Defendants' Motion is denied.

IV. The Arbitration Agreement is not enforceable as to Spouse.

Like the spouse in Hodge, Spouse in the present action has claims as a result of Dale Floyd's injuries. Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). However, the agreement by its very own terms required that the Facility have Dale Floyd sign the Arbitration Agreement. Arbitration Agreement, p. 7. This section of the Arbitration Agreement required that if the resident was competent, then the resident was required to sign same. However, despite the fact that Dale Floyd was competent, Facility failed to have him sign the Arbitration Agreement. Despite knowing the requirement to have Dale Floyd sign the Arbitration Agreement and the knowledge that he was competent, Facility/Natasha Nadkarni instead had Spouse, who had no authority, sign the Arbitration Agreement on Dale Floyd's behalf. Because Dale Floyd was required to sign the Arbitration Agreement in the first place for it to be enforceable, no arbitration agreement could have existed as to Spouse as the terms of the Agreement required Dale Floyd, not Spouse, to sign.

Additionally, the explicit language of the signature page of the Arbitration Agreement provides that Spouse was signing on behalf of Dale Floyd. Spouse was not signing in her individual capacity but rather signing on behalf of Dale Floyd. In fact, under

Spouse's signature on page 9 of the Arbitration Agreement, it specifically states "signature of legal representative or family member". The signature line does not reflect that she was signing on behalf of herself individually for her own claims. Furthermore, in the paragraph above the signature line, the Arbitration Agreements states, "I am the spouse, responsible party, legal guardian, or power of attorney of the resident and have the authority to sign the agreement on his/her behalf." As a result, the Arbitration Agreement is explicitly clear that Spouse was attempting to sign on behalf of Dale Floyd, not herself for her loss of consortium claim.

Nonetheless, to the extent there is any ambiguity or other language reflecting that Spouse was signing in her individual capacity on behalf of herself for any claims that she may have for her husband, an ambiguity is created due to the language reflected hereinabove and under the signature line reflecting that Spouse was signing as "legal representative or family member." Any ambiguity must be construed against the drafting party, in this case, Facility and Natasha Nadkarni. Therefore, Spouse was not waiving her right to a jury trial and agreeing to pursue her individual claim for loss of consortium in arbitration.

Furthermore, even if spouse had waived her constitutional right to a jury trial by signing the Arbitration Agreement, there was no consideration for same. It is a basic tenet of South Carolina law that there must be mutual consideration for the agreement. Spouse would have received no benefit from the Arbitration Agreement. She was not receiving any care or treatment by the Facility and no consideration was provided for the Arbitration Agreement. As a result, for these reasons and the reasons included hereinabove reflecting that Facility/Natasha Nadkarni failed to establish the appropriate foundation and

authentication of the documents, the Arbitration Agreement is unenforceable as to Spouse's loss of consortium claims.

V. No Targeted Discovery

Defendants contend that they should be permitted to conduct targeted discovery as to the issues raised by their Motions to Compel Arbitration and Motions to Stay. Specifically, Defendants wish to conduct discovery as to factual issues necessary to prove their claims for agency and estoppel. Defendants Facility/Nadkarni's Memorandum in Support of Motion to Compel Arbitration, pp. 20-21.

The Court of Appeals addressed the same issue in Hodge, 422 S.C. 544 at 575; 813 S.E.2d 292 at 309. In Hodge, the Court found the trial court did not abuse its discretion in denying the Defendants additional discovery as to the same and/or similar issues. Id. The trial court in Hodge noted, "Because the facts material to the Court's decision are not contested, and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes the deposition of [Husband] would not provide any additional material facts that would be helpful to the Court in reaching its decision." Id. at 576. In the present case, the facts necessary to this Court's decision are not contested. Additionally, the parties have submitted all of the documents they wish the Court to consider, and Defendants have never requested the opportunity for any discovery from this Court prior to their decision to move to compel arbitration. It should further be noted that it is highly likely that the Affidavits of Dale Floyd and Spouse may bolster the Court's decision but were not necessary to the Court's decision in denying the Defendants' Motion to Compel Arbitration.

Further, as the Court in Hodge noted, the Arbitration Agreement in this case is not a prerequisite to admission, and the Arbitration Agreement and the Admission Agreement in this case did not merge. Accordingly, the signing of the Arbitration Agreement was not a healthcare decision. Id. at 578. Further, “the authority conveyed by principal to an agent to handle finances or make healthcare decisions does not encompass executing an agreement to resolve claims by arbitration, thereby, waiving the principal’s right of access to the courts and to a jury trial.” Id. at 578 quoting Thompson, 416 S.C. at 55, 784 S.E.2d at 686. As a result, such additional facts are unlikely to have any bearing on the Court’s decision and determination. Because the parties have already had the opportunity to submit all of the documents they wish to provide to the Court, Defendants had never previously requested discovery from this Court, and further, because any additional facts discovered are unlikely to have any bearing on this Court’s decision, Defendants’ request for additional discovery is denied.

**Defendants SSC Equity Holdings, LLC, SavaSeniorCare, SavaSeniorCare
Administrative and Consulting, LLC, SavaSeniorCare
Consulting, LLC, and SMV Sumter East, LLC’s Motions to Stay**

Because Defendants’ Motion to Compel Arbitration have been denied, Defendants SSC Equity Holdings, LLC, SavaSeniorCare, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC’s Motions to Stay are as a result denied as these issues are now moot.

Plaintiffs’ Motion to Compel Discovery

Plaintiffs have filed a Motion to Compel discovery as to all Defendants. Plaintiffs had previously served their First Interrogatories and First Requests for Production upon the Defendants, and those responses were collectively due no later than April 30, 2022.

Defendants have failed to file any response to the discovery requests until filing the Motion to Compel Arbitration and Motions to Stay.

Given that the Court has denied the Defendants' Motion to Compel Arbitration and Motions to Stay, the Court finds that Defendants shall provide full and complete responses to Plaintiff's First Interrogatories and First Requests for Production within sixty (60) days of the date of the hearing unless Defendants otherwise timely file and appeal on the denial of their Motions to Compel Arbitration and Motions to Stay.

IT IS SO ORDERED.

Date: _____

The Honorable Benjamin H. Culbertson
Circuit Court Judge



Sumter Common Pleas

Case Caption: Stanley Dale Floyd , plaintiff, et al VS Ssc Sumter East Operating Company, Llc , defendant, et al
Case Number: 2022CP4300355
Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2022-10-04 13:35:01 page 18 of 18

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4300355

Stanley Dale Floyd et al
PLAINTIFF(S)

Ssc Sumter East Operating Company, 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:

The defendant's Motion to Reconsider filed 10/14/2022 is DENIED.

This motion is decided on the contents of defendant's motion and plaintiff's memorandum filed 10/24/2022 in opposition to the motion without oral arguments.

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 06/05/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.



Sumter Common Pleas

Case Caption: Stanley Dale Floyd , plaintiff, et al VS Ssc Sumter East Operating Company, Llc , defendant, et al
Case Number: 2022CP4300355
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-06-05 13:45:42 page 3 of 3

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

C.A. No.: 2022-CP-43-_____

Stanley Dale Floyd and Stephanie
Floyd,)

Plaintiff,)

v.)

SSC Sumter East Operating Company,)
LLC d/b/a Sumter East Health and)
Rehab Center, SSC Equity Holdings,)
LLC, SavaSeniorCare, LLC,)
SavaSeniorCare Administrative and)
Consulting, LLC, SavaSeniorCare)
Consulting, LLC, SMV Sumter East,)
LLC, and Natasha Nadkarni,)

Defendant(s).)

SUMMONS
(Jury Trial Demanded)

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.

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: March 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C.A. No.: 2022-CP-43-_____
	)	
Stanley Dale Floyd and Stephanie	)	
Floyd,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Demanded)
v.	)	
	)	
SSC Sumter East Operating Company,	)	
LLC d/b/a Sumter East Health and	)	
Rehab Center, SSC Equity Holdings,	)	
LLC, SavaSeniorCare, LLC,	)	
SavaSeniorCare Administrative and	)	
Consulting, LLC, SavaSeniorCare	)	
Consulting, LLC, SMV Sumter East,	)	
LLC, and Natasha Nadkarni,	)	
	)	
Defendant(s).	)	
	)	

The Plaintiff would show this Honorable Court the following:

1. At all times relevant herein, Stanley Dale Floyd is and was a resident of Sumter County, South Carolina.
2. That Defendant SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center (hereinafter "Sumter East Health and Rehab") is a business organized and existing under the laws of a state other than the State of South Carolina. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for their employment of physicians, nurses, therapists, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being highly capable and highly skilled at providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Stanley Floyd. This Defendant owns

and/or leases property, advertises, maintains agents, and transacts business deriving substantial revenue therefrom in Sumter County, South Carolina, both through its individual actions and in connection with its affiliated and/or parent and/or subsidiary entities of SSC Equity Holdings, LLC, SavaSeniorCare, LLC, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC. At all times relevant herein, agents, employees, servant and apparent agents of Sumter East Health and Rehab acted on behalf of themselves and/or on behalf of Sumter East Health and Rehab. Further Sumter East Health and Rehab on behalf of itself and on behalf of SSC Equity Holdings, LLC, SavaSeniorCare, LLC, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC.

3. That Defendant SSC Equity Holdings, LLC (hereinafter “SSC Equity Holdings”) 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, and transacts business, deriving substantial revenue therefrom, in Sumter County, South Carolina, both through its individual actions and through those of its subsidiaries, affiliates, and parent companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of SSC Equity Holdings acted on behalf of themselves and/or on behalf of SSC Equity Holdings and Sumter East Health and Rehab. Defendant SSC Equity Holdings is and was a business which either, directly or indirectly, provided nursing home services in conjunction with its subsidiary, Sumter East Health and Rehab. At all times relevant herein, SSC Equity Holdings used its

position to control the management, operation, funding, and staffing at Sumter East Health and Rehab, all of which directly affected resident care such as Stanley Floyd's.

4. That Defendant SavaSeniorCare, LLC (hereinafter "Sava") is a business organized and existing under the laws of a state other than the State of South Carolina. Sava's website states "we are one of the largest providers of short-term and long-term healthcare services in the United States. Through our affiliated entities, we provide services through skilled nursing facilities in several states." The website includes Defendant Sumter East Health and Rehab as one of its facilities. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial revenue therefrom, in Sumter County, South Carolina, both through its individual actions and through those of its subsidiaries, affiliates, and parent companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of Sava acted on behalf of themselves and/or on behalf of Sava and Sumter East Health and Rehab. Defendant Sava is and was a business which either, directly or indirectly, provided nursing home services in conjunction with its subsidiary, Sumter East Health and Rehab. At all times relevant herein, SavaS used its position to control the management, operation, funding, and staffing at Sumter East Health and Rehab, all of which directly affected resident care such as Stanley Floyd's.

5. That Defendant SavaSeniorCare Administrative and Consulting, LLC (hereinafter "SSC Administrative and Consulting") 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, and transacts business, deriving substantial revenue therefrom, in Sumter County, South Carolina, both through its

individual actions and through those of its subsidiaries, affiliates, and parent companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of SSC Administrative and Consulting acted on behalf of themselves and/or on behalf of SSC Administrative and Consulting and Sumter East Health and Rehab. Defendant SSC Administrative and Consulting is and was a business which either, directly or indirectly, provided nursing home services in conjunction with its subsidiary, Sumter East Health and Rehab. At all times relevant herein, SSC Administrative and Consulting used its position to control the management, operation, funding, and staffing at Sumter East Health and Rehab, all of which directly affected resident care such as Stanley Floyd's.

6. SSC Administrative and Consulting creates home office cost reports on behalf of Defendant SSC Equity Holdings. Home office cost reports are only submitted by "chain organizations". "Chain organizations" are defined as "a group of two or more healthcare facilities, at least one healthcare facility and any other business or entity owned, leased, or through any other device controlled by **one organization**." This means SSC Equity Holdings and SSC Administrative and Consulting hold themselves out as controlling Defendant Sumter East Health and Rehab and the federal government relies on such representations. Upon information and belief, all of the Defendants involved with the ownership, management, and operation of Defendant Sumter East Health and Rehab have common ownership, share officers and directors, maintain uniform policies, and centralized finances and operations.

7. Further, Defendant SSC Administrative and Consulting submits Medicare claims for services provided at Sava's facilities pursuant to written agreements with Sava's facilities. SSC Administrative and Consulting provides "consulting" services to

Sava's skilled nursing facilities including advice on clinical process and procedures, support for rehab therapy services and operational oversight. As a result, SSC Administrative and Consulting receives a percentage of revenue generated by Sava's skilled nursing facilities. That further, SSC Administrative and Consulting operates Sava's centralized billing offices which generate and submit claims for Medicare for Sava's skilled nursing facilities. Upon information, during part of the relevant time period, Defendant SSC Administrative and Consulting employed Sava's chief executive officer, chief financial officer, senior vice president of rehabilitation services, and certain high level finance employees. The Sava entities share ownership, accountants, attorneys, officers, directors, and employees, all reflective of a joint venture controlled from the top.

8. That further, SSC Administrative and Consulting holds meetings and exchanges reports on information and all aspects of care and adverse events at facilities, including Defendant Sumter East Health and Rehab. Further, this Defendant provides feedback on policies, procedures, and remedies for adverse events that are implemented at the facility level.

9. That Defendant SavaSeniorCare Consulting, LLC (hereinafter "Sava Consulting") 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, and transacts business, deriving substantial revenue therefrom, in Sumter County, South Carolina, both through its individual actions and through those of its subsidiaries, affiliates, and parent companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of SSC Consulting acted on behalf of themselves and/or on behalf of SSC Consulting and Sumter East Health and

Rehab. Defendant SSC Consulting is and was a business which either, directly or indirectly, provided nursing home services in conjunction with its subsidiary, Sumter East Health and Rehab. At all times relevant herein, SSC Consulting used its position to control the management, operation, funding, and staffing at Sumter East Health and Rehab, all of which directly affected resident care such as Stanley Floyd's.

10. Defendant SMV Sumter East, LLC (hereinafter "SMV Sumter East") is a business incorporated in the State of South Carolina. That this Defendant has controlled and managed Sumter East Health and Rehab through management agreements, leasing agreements, purchase agreements, subleasing agreements, financing arrangements, and in other ways. That this Defendant works in conjunction with Defendant Sumter East Health and Rehab and the Co-Defendants in providing skilled nursing services to patients/residents such as Stanley Floyd. That at all times relevant herein, agents, servants, and employees of SMV Sumter East acted on behalf of themselves and on behalf of SMV Sumter East. SMV Sumter East acted on behalf of itself and Sumter East Health and Rehab. That further, Sumter East Health and Rehab acted on behalf of itself and on behalf of SMV Sumter East. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

11. That Defendant Natasha Nadkarni (hereinafter "Nadkarni") is and was the administrator of Sumter East Health and Rehab and as the administrator of the facility, Nadkarni controlled and held oversight of the daily operations of the skilled nursing facility. This Defendant is a citizen and resident of Lexington County, South Carolina and at all times relevant herein was employed by the Co-Defendants as administrator in which she used her position to exercise control and discretion over the daily operations

and/or fiscal decisions of the facility. At all times relevant herein, Nadkarni acted on behalf of herself and on behalf of Sumter East Health and Rehab, SSC Equity Holdings, LLC, SavaSeniorCare, LLC, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, and SMV Sumter East, LLC.

12. The Sava Corporate Defendants are charged with managing the day to day operations of the nursing homes and are ultimately owned and controlled by billionaires Rubin Schron and Jerry Roles. Contracts include loans, revolving credit agreements, management, consulting, and leases. Upon information and belief, Sava is organized into geographic divisions where each division has a division president who reports directly to Mr. Roles, a regional vice president for each region within the division sits below the division president, and the administrator for each facility reports to his/her vice president of operations.

13. Further, upon information and belief, Sava's Corporate Defendants control the operation at the facility through contracts that bind the facility and place undue restraints on budgets through the Amended and Restated Term Loan and Credit Facility Agreement. A revolving credit agreement was entered into by the corporate entities on behalf of Defendant Sumter East Health and Rehab. These agreements require the facility to maintain specific occupancy thresholds and maintain specific profitability index which all require routine detailed reporting related to the facility and its budget. The revolving credit agreement requires that each facility (borrowers) maintain one or more lockbox locked accounts into which all collections and cash payments are required to be deposited. These funds/receivables are swept into a central concentrated account and applied to the outstanding loan. The facility's receivables are the collateral and

guaranty for Sava's obligations under the revolving credit agreement and the line of credit is secured through accounts receivable from affiliated entities and thus the assets and receivables of Defendant Sumter East Health and Rehab are pledged as securities for the loan. That further, upon information and belief, in the loan agreement, the "Company" is defined as SavaSeniorCare and the Defendant Sava entities. The revolving lines of credit is to cover financial obligations including employee wages and is controlled by Rubin Schron. Under the loan agreement, each facility is wholly owned and controlled by Defendant SavaSeniorCare, LLC.

14. That further, upon information and belief, the Corporate Defendants other than Defendant facility control Defendant Sumter East Health and Rehab funds, share the same officers, exercise control over the property and profits derived from the facility, submit home office cost reports on behalf of the facility as the controlling organization, secured a revolving line of credit for the facility in its name using facility funds as collateral, have the same people in charge as members of the governing body, assist the facility in collecting fees owed by residents, and hire/fire/pay facility management and employee wages.

CORPORATE DISCUSSION

15. The Defendants were engaged in a joint venture in the operation of Sumter East Health and Rehab.

16. Because of the joint venture, Defendants owed a joint and independent duty to Stanley Floyd to provide the same level of care and treatment as any other reasonably prudent similar business that owns, operates, manages, and/or controls a

nursing facility would have provided under the same or similar circumstances, taking into account Stanley Floyd's known mental and physical conditions.

17. Because of their joint venture, Defendants had an independent and joint obligation to sufficiently staff Sumter East Health and Rehab to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practical physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

18. This joint obligation required Defendants to base the number of registered nurses (RNs), licensed vocational nurses/licensed practical nurses (LPNs), and certified nurse aides (CNAs) to be provided at Sumter East Health and Rehab not only upon the number of residents residing in their facility (commonly referred to as "resident census") but also on the intensity of nursing care required by the residents.

19. The term used by caregivers and health science literature to describe the intensity of nursing care required by a resident is "acuity level".

20. Acuity levels are reflected in the resident's "Resource Utilization Group" classification or "RUGs". RUGs are mutually exclusive categories that reflect the amount of resources that will be needed in order to meet the needs of a particular resident in nursing facilities. They are assigned to residents based on data derived from an assessment tool referred to as "Minimum Data Set" ("MDS").

21. An MDS is prepared for each resident of a nursing facility regardless of who is paying for their stay in the nursing facility. MDSs are required to be prepared when a resident initially arrives at the facility and periodically thereafter depending on

the course of the resident's medical progression. At a minimum, an MDS is to be prepared for every resident in a nursing facility on a quarterly basis.

22. The completion of an MDS by a nursing facility is part of the federally mandated process for clinical assessments of all residents in nursing facilities. MDSs need to be as detailed and comprehensive as possible so that they reflect all of the needs of each of the residents in the nursing facility. When done properly, an MDS provides a comprehensive assessment of each resident's functional capabilities and helps the staff of a nursing facility identify all of the health problems of each resident.

23. The information contained in an MDS is used to slot the resident into a RUG. RUGs are organized in a hierarchy from residents who will need the greatest amount of resources to residents who will need the least amount of resources during their stay at the nursing facility. Residents who will need the greatest amount of resources are assigned to higher groups in the RUG hierarchy. RUGs also determine the level of compensation a nursing facility will receive in order to provide the level of care necessary for each of their residents. Residents in higher RUGs place higher demands for care and services on the nursing facility and its staff. Providing care to residents in higher RUGs is more costly and is, therefore, reimbursed at a higher level.

24. The RUG assigned to a resident can be found in section Z of each resident's MDS.

25. The only way to determine the total acuity level and corresponding RUG of each of the residents at Sumter East Health and Rehab on any given day is by examining section Z of every MDS in effect on that day.

26. The Centers for Medicare and Medicaid Services (“CMS”) is the federal agency that is tasked with regulating all nursing facilities in this country. Through the years, CMS has sponsored multiple studies to determine the amount of time that RNs, LPNs, and CNAs in a nursing facility spend providing direct care to residents as well as other elements of resident care.

27. Because of these studies, CMS is able to set a number of hours of direct care that they expect to be provided to residents or that are needed to meet residents’ needs by RNs, LPNs, and CNAs based on the nursing facility’s total acuity level. This expectation is expressed in terms of “hours per patient day” or “HPPD”.

28. Using the information contained in the MDS’s of every resident in a nursing facility, the HPPD can be determined based on the CMS studies that are necessary for each nursing facility in the country. This is referred to as the “expected HPPD”. The studies and information can be adjusted for the HPPD per facility on a quarterly basis based on the updated MDSs that are provided to CMS.

29. Other peer reviewed staffing studies also reflect as much as, or more, necessary staffing levels than what was provided at Sumter East Health and Rehab.

30. Nursing facilities, like Sumter East Health and Rehab, are required to submit an annual “cost report” to CMS known as “CMS Form 2540-10”. The cost report is a financial report that identifies the costs and charges related to healthcare treatment and activities in a particular nursing facility.

31. Included in the costs are extensive details as to how much money the nursing facility spent on RNs, LPNs, and CNAs during that year. The cost report also reports the resident census, hours paid, and the hourly rate that the nursing facility paid

each category of direct caregivers during that year. By dividing the paid hours by the resident census, it is possible to determine how many hours the nursing facility paid for each category of direct caregivers per resident per day for the time period covered by that particular cost report. This number is referred to as the “reported HPPD”.

32. The reported HPPD is actually an inflated number due to the fact that hours paid includes sick pay and vacation pay. By removing the sick pay and vacation pay from the hours paid, the resulting HPPD would be closer to the actual HPPD provided by caregivers to residents in nursing facilities.

33. The actual HPPD for any given nursing facility can be determined by examining the data the nursing facilities use to track the number of hours their employees work. This information is easily accessed through reports that are commonly referred to as “Time Detail Reports”, “Punch Detail Data Reports”, or some other similarly named report depending on the time keeping system used by the particular nursing facility. This information can reveal the actual HPPD for any period of time including a year, a quarter, a month, or even a day.

34. Nursing facilities like Sumter East Health and Rehab previously reported their staffing levels for a two-week period to CMS for the two weeks prior to the inspection by the local state agency in the Form 671. In South Carolina, it is South Carolina Department of Health and Environmental Control. This information is frequently used to give the facility its rating in the five-star rating system given by CMS. Frequently, nursing facilities like Sumter East Health and Rehab inflate their staffing during this two-week period prior to their inspection to reflect inflated staffing numbers and to improve their five-star rating with CMS. Typically, the staffing numbers for the

two-week period prior to the inspection are higher than the staffing numbers reflected in the cost report submitted to Medicare for the rest of the year.

35. Presently, nursing facilities like Sumter East Health and Rehab report their staffing levels to CMS in the form of Payroll Based Journal (PBJ).

36. According to CMS studies in 2019, the Nursing Home Defendants failed to provide the level of staffing necessary to meet the needs of their residents. In the PBJ which was submitted to the government and which was used for the five-star rating system (a number which is expected to be above the actual staffing numbers for the remainder of the year), Sumter East Health and Rehab reported during the relevant time in 2019 that it was staffing RNs at 0.45 HPPD. However, based on the census and acuity at the facility, CMS studies expected the facility to staff RNs at 1.0406 HPPD. Therefore, Sumter East Health and Rehab, by its own representation, was staffing RNs at more than eleven percent (11%) less than the expected staffing requirements for RNs by CMS for Sumter East Health and Rehab. That further, Cost Report information submitted by the facility reflects even lower levels of RN staffing for the relevant year by way of RN time being staffed at .290462 HPPD, reflecting understaffing of at least twenty-one percent (21%). The same data also reflects significant CNA understaffing of at least seven percent (7%) or more.

37. Additionally, whenever more accurate staffing information is made available to Plaintiff by way of employee timecards, the percentage of understaffing will likely be increased significantly. Further, when using multiple other current peer reviewed studies, the percentage of understaffing also significantly increases.

38. Because RN staffing is typically the most expensive element of staffing at a nursing facility like Sumter East Health and Rehab, the Defendants realized a significant savings of money in 2019 due to their understaffing.

39. Plaintiff alleges that Defendants jointly exercised control over the operation and management of Sumter East Health and Rehab prior to and during Stanley Floyd's period of residency therein, including but not limited to, the creation, setting, funding, and/or implementation of budgets; the monitoring of resident acuity levels; the monitoring of staffing levels; control over resident admissions and discharges; and control over the number of hours of direct care provided to the residents by RNs, LPNs, and CNAs. Plaintiff alleges that each of these managerial and operational functions had a direct impact on the amount and quality of care delivered to Stanley Floyd while he resided at Sumter East Health and Rehab and were taken in furtherance of the operational and managerial objectives.

40. Plaintiff alleges that Defendants engaged in the systematic process of ensuring Sumter East Health and Rehab maintained the highest acuity levels possible while failing to provide sufficient and qualified staff to meet the individual needs of the residents during Stanley Floyd's period of residency therein.

41. Plaintiff alleges that understaffing, although quite profitable for the Defendants, directly resulted in their failure to provide the necessary and basic services Stanley Floyd needed in order to prevent him from suffering injuries, skin and tissue breakdown, and infection.

42. Because of their joint venture, Defendants had a joint obligation to sufficiently fund Sumter East Health and Rehab to ensure that each of their residents

received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with their residents' comprehensive assessments and plans of care.

43. This joint obligation required Defendants to sufficiently fund Sumter East Health and Rehab so that there would be enough staff and resources in order to meet the needs of their residents.

44. Sumter East Health and Rehab was totally dependent on Defendants' generosity in their decision-making process as to whether they would allow them to keep the money they were earning.

45. The cost reports mentioned include information regarding transactions with what are referred to as "related parties". CMS considers a party to be "related" to a nursing facility when the nursing facility "to a significant extent is associated or affiliated with or...is controlled by the organization furnishing the services, facilities, or supplies." 42 C.F.R. §413.17(b)(1).

46. Federal law requires nursing facilities to disclose information on related parties that meet the following criteria:

- a. Anyone with direct or indirect ownership in the nursing facility of 5% or more;
- b. Officers, directors, and partners;
- c. Managing employees; and
- d. Anyone who is an "additional disclosable party" which is defined as any person or entity who:
 - 1) exercises operation, financial, or managerial control over the nursing facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the nursing facility;

2) leases or subleases real property to the nursing facility, or owns a whole or part interest of 5% or more of the total property value of the nursing facility; or

3) provides management services, administrative services, clinical consulting services, accounting services, or financial services to the nursing facility.

(See 24 U.S.C. §1320a-3)

47. By definition, the Nursing Home Defendants other than Sumter East Health and Rehab are among a group of corporations that would be considered “related parties” of Sumter East Health and Rehab.

48. Cost reports submitted by or on behalf of Sumter East Health and Rehab reveal excessive payments to related parties during the relevant time period with regard to related party/home office costs in the amount of \$622,976.00 according to CMS. This payment and other related party payments amounted to additional unnecessary large profits for the related party Defendants and siphoned money from the facility that was necessary for resident care.

49. Sumter East Health and Rehab could not have continued doing business except for the continual influx of substantial amount of cash from Defendants. See *Cupples Coiled Pipe, Inc. v. Esco Supply Co.*, 591 S.W.2d 615, 618 (Tex. Civ. App. 1979) writ refused NRE (May 14, 1980).

50. Plaintiff alleges that while holding Sumter East Health and Rehab out to Plaintiff and other members of the public as providing excellent care, Defendants and their related parties extracted considerable profits through the management and operation of Sumter East Health and Rehab by overpaying Defendants herein and other related parties from funds which should have been utilized instead to hire, train, and retain a

sufficient number of qualified staff to meet the needs of all of their residents including Stanley Floyd.

51. Plaintiff alleges that this siphoning left Sumter East Health and Rehab with insufficient cash to provide sufficient and qualified staff to meet the individual needs of the residents in their facility during Stanley Floyd's period of residency therein.

52. Plaintiff alleges that throughout 2019, Defendants through their operational, budgetary, consultation, and managerial decisions and actions provided grossly inadequate funding as measured by the nature and magnitude of the corporate undertaking of ensuring that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with each resident's comprehensive assessments and plans of care including those of Stanley Floyd.

53. In other words, Defendants' actions in 2019 resulted in an underfunded and understaffed nursing home during Stanley Floyd's residency. This is further reflected in the fact that Sumter Health and Rehab was rated as a below average facility by CMS.

54. That further, at no point did Defendants ever advise Stanley Floyd and his family that there was insufficient staff at the facilities to provide the necessary care for Stanley Floyd.

55. Plaintiff alleges that this underfunding and corresponding understaffing, although profitable for Defendants and their related parties, directly resulted in their failure to provide the necessary and basic services to Stanley Floyd that he needed in order to prevent him from sustaining injuries.

CLINICAL DISCUSSION

56. Stanley Floyd was admitted to Sumter East Health and Rehab on or about May 6, 2019 for short-term rehabilitation after undergoing surgery on his left arm for a ruptured bicep tendon with abscess as a result of a work injury.

57. That the hospital transfer form from McLeod Health on May 6, 2019 reflects that Stanley Floyd had a surgical wound to his left upper arm with dressing that is wet to dry with wound packed with saline soaked gauze and wrapped with Kerlex. That further, the hospital discharge summary, which was in Sumter East Health and Rehab's possession, reflected that the orthopaedist had recommended continued daily packing, dressing changes, and elevation of the left arm and elbow.

58. That upon admission to Sumter East Health and Rehab, the care plan for Stanley Floyd reflected that staff was to monitor the dressing to ensure that it remained intact and was adhering and that "nurse to check the dressing and to change BID or PRN."

59. That further, the care plan reflected that staff was to "observe site for redness, swelling, increasing drainage, pain (specify other). Nurse will watch for any change in condition of skin and report to MD as needed."

60. That the MDS which was submitted to Medicare under the penalty of perjury on May 7, 2019 and May 13, 2019 did not reflect that Stanley Floyd had a surgical wound and further did not reflect that any surgical wound care was being provided to Stanley Floyd during his admission to Sumter East Health and Rehab.

61. That during Stanley Floyd's admission to the facility, staff administered to him oxycodone every six hours for pain. That despite receiving the scheduled pain

medication, there were multiple times when Stanley Floyd was in pain. On multiple occasions, staff noted that the pain medication was ineffective.

62. Further, nurse's notes on May 10, 2019, May 11, 2019, and May 12, 2019 reflect that Stanley Floyd had edema to his left arm and left hand.

63. That further, the only skin inspection completed by staff was dated May 7, 2019 and signed on May 8, 2019 and did not reflect the surgical wound.

64. That the records further do not reflect that any dressing changes occurred at the facility until May 13, 2019, the date Stanley Floyd was intended for discharge home.

65. The progress notes of May 13, 2019 reflect that "new dressing applied, areas continued to drain thick green liquid. Dressing change was extremely pain, med. Percocet given prior to leaving."

66. That further, on May 13, 2019, William Culclasure, P.A. assessed and saw Stanley Floyd at Sumter East Health and Rehab. The note from Mr. Culclasure reflected, among other things, that "Pt found in room with caregiver awaiting discharge. Hospital gown found to be saturated on entirety of left side with fluid that further investigation found to be pus. Caregiver states that the wound drained similarly several days ago; this was not reported to me....Both I and my staff made him aware of our concern for his wellbeing and our grave concerns over his leaving the facility in his present state. Pt adamant that he leave and simply follow up with his orthopedist in Florence tomorrow. I understand he was able to leave the facility by POV to Florence for care." That further, this note reflects that "wound to left arm shows area of induration anteriorly, medially there is a deep wound that appears open to muscle, wound hard to visualize as pt refuses

through exam. There are several punctate lesion on chest wall that are draining copious amounts of yellow green fluid. Caregiver states several other areas drained several days ago.” Further, this note reflects that “This pt is not stable for discharge. He is in need of a resumption of antibiotics (stopped on last discharge from hospital) and possibly surgical intervention. Both he and his wife were advised of this. He is made aware that failure to get prompt intervention carries grave danger to include loss of limb and death.”

67. As a result of Stanley Floyd’s condition, he went immediately to McLeod Regional Medical Center where he was admitted to the hospital. It was determined that he had multiple areas of abscesses involving and around the surgical site. It was determined that he was infected and underwent multiple antibiotic IV treatments, surgeries, wound vac placement, wound care, and other care related to his condition. He was discharged on June 15, 2019 to home healthcare.

68. That Stanley Floyd continued to receive long-term care, treatment, and undergo multiple medical procedures, hospitalizations, and surgeries as a result of his injuries from the Defendants’ substandard care and neglect.

69. As a direct and proximate result of the Defendants’ acts and/or omissions, Stanley Floyd suffered the following injuries and damages:

- a. Wound care treatment, IV antibiotics, and other treatments;
- b. Pleural effusions;
- c. Dehydration;
- d. Total shoulder arthroplasty;
- e. Home healthcare;
- f. Loss of range of motion;

- g. Loss of use of limb;
- h. Complications resulting from the infection and medications used to treat same;
- i. Lost wages and loss of income;
- j. Loss of earning capacity;
- k. Permanent impairment;
- l. Scarring and disfigurement;
- m. Decreased levels of cognition, health, and consciousness;
- n. Great pain, suffering, fear, stress and anxiety;
- o. Loss of enjoyment of life;
- p. Loss of dignity;
- q. Undergone multiple surgeries, medical procedures, and hospitalizations which otherwise he would not have to undergo;
- r. Medical expenses; and
- s. In such and further ways as discovery and trial shall prove.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

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

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

- a. In failing to properly treat, evaluate, and take diagnostic measures at the appropriate times to care for Stanley Floyd;
- b. In failing to timely and appropriately change wound dressings;

- c. In failing to timely obtain appropriate and necessary consultations by specialists and/or other qualified physicians for the care, evaluation, and treatment of Stanley Floyd;
- d. In failing to timely and properly communicate about the care, symptoms, and treatment of Stanley Floyd among the treating and referring physicians and related medical staff;
- e. In failing to provide proper wound care;
- f. In failing to provide adequate fluids, hydration, and to prevent dehydration;
- g. In failing to properly and timely address and treat skin breakdown to prevent pressure ulcers or the worsening thereof;
- h. In failing to timely turn and reposition Stanley Floyd;
- i. In conducting fraudulent charting and in failing to have and maintain an accurate and truthful chart;
- j. In failing to timely transfer Stanley Floyd to a hospital;
- k. In negligently hiring, retaining, and supervising staff at the Defendants' facility;
- l. In failing to provide adequate staffing, adequately paid and adequately trained staff at their facilities to care for residents such as Stanley Floyd, and with full knowledge of such inadequate staff and practices which put patients such as Stanley Floyd at risk;
- m. In failing to provide proper, comprehensive, and timely assessments and evaluations outlining all factors for Stanley Floyd;

- n. In failing to properly design, adhere to or modify an appropriate care plan;
- o. In failing to timely and appropriately implement intervention in a patient/resident with obvious decline;
- p. In failing to timely and properly assess and reassess Stanley Floyd;
- q. In allowing LPNs to conduct out of scope assessments;
- r. In failing to timely and adequate inform and update medical staff such as physicians and physician assistants/nurse practitioners of Stanley Floyd's condition;
- s. In failing to properly monitor, evaluate and treat Stanley Floyd's skin conditions, pressure injuries, and skin wounds and in failing to timely notify the physicians and family about such wounds/injuries;
- t. In failing to properly assess and appreciate the severity of the wounds;
- u. In failing to have and implement appropriate infection control to prevent the spread of infection;
- v. In failing to have and/or implement adequate and effective policies, procedures, staff and equipment to adequately monitor, supervise and treat Stanley Floyd;
- w. In failing to follow and comply with Defendants' own policies and procedures directed at the care and treatment of the patients;

- x. In failing to properly staff, fund, operate and manage the facility to the extent that resident care was affected and caused injuries to Stanley Floyd;
- y. In negligently administering and operating the Defendants' nursing home;
- z. In failing to comply with the applicable State, and Federal Statutes and Regulations designed to protect persons such as Stanley Floyd;
- aa. In failing to adequately provide care as a reasonable and prudent nursing home would do under the same or similar circumstances; and
- bb. In such other and further ways as Discovery and Trial shall prove.

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

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

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

74. 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 turn and reposition Stanley Floyd;
- b. In failing to change Stanley Floyd's wound dressing and keep him clean;
- c. In failing to provide adequate fluids; and

- d. 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.

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

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

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

77. Prior to, around the time of Stanley Floyd's admission to the Defendants' facility, and at the time of Stanley Floyd's sustained injuries at Defendants' facility, agents of the facility made untrue statements to Stanley Floyd and to his family and/or representatives about the quality of care that Stanley Floyd would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Stanley Floyd, his/her family and/or representatives and upon which they did rely.

78. The Defendants represented to Stanley Floyd and to family and/or representatives that she would receive appropriate care within the professional standards of care, that the facility had adequate staffing and adequate funding, that Stanley Floyd would be carefully monitored, that Stanley Floyd would receive adequate nutrition, hydration, therapies, and preventative interventions, that Stanley Floyd would be safe and secure, and that problems or insufficiencies that Defendants' facility may have had in the past had been corrected.

79. These statements were untrue and were intended to be relied upon by Stanley Floyd and his/her family and/or representatives and upon them they did rely in choosing to admit Stanley Floyd to the facility.

80. 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 Stanley Floyd and in failing to meet these representations for Stanley Floyd.

81. As a direct and proximate result of these Defendants' misrepresentations, Stanley Floyd suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Corporate Negligence as to All Defendants)

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

83. The Defendants were negligent, careless, grossly negligent, reckless, willful, wanton, and intentional in their failure to provide Sumter East Health and Rehab with adequate and proper management, funding, staffing, and supplies necessary to provide for the appropriate care for residents such as Stanley Floyd and provide care within the standard of care.

84. That these Defendants, especially those other than Sumter East Health and Rehab, exercised sufficient control over Sumter East Health and Rehab and divested Sumter East Health and Rehab of the necessary monies, finances, staff, and supplies 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 Sumter East Health and Rehab.

85. That Defendants other than Sumter East Health and Rehab did this through a complex corporate scheme whereby such funds were divested from Sumter East Health and Rehab which were necessary for resident/patient care and were siphoned from the facility through a central cash management system where the income for the facility was swept up into a central account for the corporate Defendants, whereby other monies from Sumter East Health and Rehab were siphoned from the facility through exorbitant rent, exorbitant management fees, and other exorbitant monies taken by the corporate Defendants from Sumter East Health and Rehab. That these monies were divested from the facility with the full knowledge that such money was necessary for resident care.

86. 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 FIFTH CAUSE OF ACTION
(Loss of Consortium)

87. Plaintiffs restate and re-allege each and every paragraph pled herein as if repeated verbatim.

88. As a direct and proximate result of Stanley Floyd's injuries and damages and the acts and/or omissions of the Defendants as stated hereinabove, Plaintiff Stephanie Floyd has and will in the future continue to suffer the loss of Stanley Floyd's aid, comfort, society, services, love, affection, and consortium.

89. As a result, Plaintiff is entitled to an award of actual, special and punitive damages in an amount to be determined by a jury.

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: March 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2021-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	DEFENDANT SSC SUMTER EAST
EAST HEALTH AND REHAB CENTER,	)	OPERATING COMPANY, LLC D/B/A
SSC EQUITY HOLDINGS, LLC,	)	SUMTER EAST HEALTH AND REHAB
SAVASENIORCARE, LLC,	)	CENTER'S ANSWER TO PLAINTIFF'S
SAVASENIORCARE	)	COMPLAINT
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	
	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center (hereinafter referred to as “this Defendant” or the “Facility”), subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. Responding to the initial allegations set forth in Paragraph 2 of the Complaint, this Defendant asserts that it is a Delaware limited liability company operating within the state of South Carolina and that it is the sole licensee of the Facility, which provides skilled nursing care to patients.

The allegation regarding how this business “holds itself out” calls for legal conclusions and require no response.

The allegation regarding this Defendant’s ownership, leasing, advertising, maintaining agents, and transacting business calls for legal conclusions and requires no response. To the extent a response is required, that allegation is denied as written and strict proof is demanded thereof. This Defendant further asserts that this Defendant solely manages, operates and oversees the Facility.

The allegation regarding agents, employees, servants and apparent agents calls for legal conclusions and require no response. To the extent a response is required, that allegation is denied and strict proof is demanded thereof.

The final allegation is unintelligible as drafted and requires no response.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Plaintiffs’ Complaint are directed at parties other than this Defendant and/or call for legal conclusions, and therefore require no response. To the extent those allegations are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied. By way of further answering, this Defendant would affirmatively assert that it did not act in concert with any of the

other named Defendants or as agent of any of the other named Defendants and that this Defendant solely manages, operates, and oversees the facility.

5. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. Further responding, this Defendant denies Plaintiffs' improper conflation of the "Sava Corporate Defendants" and affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants and that this Defendant solely manages, operates, and oversees the Facility. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

6. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

7. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof.

8. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied.

9. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants and that this Defendant solely

manages, operates, and oversees the Facility. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

10. To the extent the allegations set forth in Paragraphs 45, 46, 47 and 48 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied.

11. This Defendant denies the allegations set forth in Paragraphs 49, 50, 51, 52 and 53 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants and that this Defendant solely manages, operates, and oversees the Facility. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. Responding to the allegations set forth in Paragraphs 56, 57, 58 and 59 of the Complaint, regarding Mr. Floyd's admission, this Defendant craves reference to the nursing home chart, admissions agreements and the medical records of Mr. Floyd and denies any allegations inconsistent with same. To the extent those allegations assert or imply liability as to this Defendant, they are denied.

15. This Defendant denies the allegations set forth in Paragraph 60 of Plaintiffs' Complaint as stated and demands strict proof thereof.

16. Responding to the allegations set forth in Paragraphs 61, 62, 63, 64, 65, 66 and 67 of the Complaint, regarding Mr. Floyd's admission, this Defendant craves reference to the nursing home chart, admissions agreements and the medical records of Mr. Floyd and denies any allegations inconsistent with same. To the extent those allegations assert or imply liability as to this Defendant, they are denied.

17. This Defendant denies the allegations set forth in Paragraph 68 of Plaintiffs' Complaint as stated and demands strict proof thereof.

18. This Defendant denies the allegations set forth in Paragraph 69 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof.

19. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

20. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof.

21. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

22. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof.

23. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

24. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof.

25. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof.

27. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

28. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof.

29. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. This Court lacks jurisdiction over this matter because Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

31. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

32. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

40. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

41. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

42. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant SSC Sumter East
Operating Company, LLC d/b/a Sumter East Health
and Rehab Center*

Charleston, South Carolina

Dated: April 18, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2021-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT SMV SUMTER EAST,
SSC EQUITY HOLDINGS, LLC,	)	LLC'S ANSWER TO PLAINTIFFS'
SAVASENIORCARE, LLC,	)	COMPLAINT
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SMV Sumter East, LLC (hereinafter referred to as “this Defendant”) subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

4. This Defendant denies the allegations set forth in Paragraph 10 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations call for legal conclusions, no response is required. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

5. The allegations set forth in Paragraph 11 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

6. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

7. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

9. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

11. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr.

Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

15. To the extent the allegations set forth in Paragraphs 68 and 69 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent

those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. The Plaintiff has failed to state a cause of action for which relief can be granted as required by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant asserts that it has never been a licensed operator of a skilled nursing facility and has never provided resident care. Defendant hereby retains its right to move to dismiss this case at the appropriate time.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant SMV Sumter East, LLC

Charleston, South Carolina

Dated: April 18, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2021-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT SSC EQUITY HOLDINGS,
SSC EQUITY HOLDINGS, LLC,	)	LLC'S ANSWER TO PLAINTIFFS'
SAVASENIORCARE, LLC,	)	COMPLAINT
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SSC Equity Holdings, LLC (hereinafter referred to as “this Defendant”) subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraph 2 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

4. This Defendant admits the allegations set forth in Paragraph 3 regarding this Defendant's organization. This Defendant denies the remaining allegations set forth in Paragraph 5 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations call for legal conclusions, no response is required. This Defendant affirmatively asserts that it has never been an operator of a skilled nursing facility and never provided care or treatment to Stanley Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

5. The allegations set forth in Paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

6. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

7. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof. This Defendant has never been a

licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

9. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

11. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never

been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

15. To the extent the allegations set forth in Paragraphs 68 and 69 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent

those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. The Plaintiff has failed to state a cause of action for which relief can be granted as required by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant asserts that it has never been a licensed operator of a skilled nursing facility and has never provided resident care. Defendant hereby retains its right to move to dismiss this case at the appropriate time.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

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P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant SSC Equity Holdings,
LLC*

Charleston, South Carolina

Dated: April 22, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2021-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	
SSC EQUITY HOLDINGS, LLC,	)	DEFENDANT SAVASENIORCARE, LLC'S
SAVASENIORCARE, LLC,	)	ANSWER TO PLAINTIFFS' COMPLAINT
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SavaSeniorCare, LLC (hereinafter referred to as “this Defendant”) subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraphs 2 and 3 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

4. This Defendant admits the allegations set forth in Paragraph 4 regarding this Defendant's organization. This Defendant denies the remaining allegations set forth in Paragraph 4 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations call for legal conclusions, no response is required. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

5. The allegations set forth in Paragraphs 5, 6, 7, 8, 9, 10 and 11 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

6. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

7. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof. This Defendant has never been a

licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

9. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

11. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never

been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

15. To the extent the allegations set forth in Paragraphs 68 and 69 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent

those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. The Plaintiff has failed to state a cause of action for which relief can be granted as required by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant asserts that it has never been a licensed operator of a skilled nursing facility and has never provided resident care. Defendant hereby retains its right to move to dismiss this case at the appropriate time.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

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P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant SavaSeniorCare, LLC

Charleston, South Carolina

Dated: April 22, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2021-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT SAVASENIORCARE
SSC EQUITY HOLDINGS, LLC,	)	ADMINISTRATIVE AND CONSULTING,
SAVASENIORCARE, LLC,	)	LLC'S ANSWER TO PLAINTIFFS'
SAVASENIORCARE	)	COMPLAINT
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SavaSeniorCare Administrative and Consulting, LLC (hereinafter referred to as “this Defendant”) subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraphs 2, 3 and 4 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

4. This Defendant admits the allegations set forth in Paragraph 5 regarding this Defendant's organization. This Defendant denies the remaining allegations set forth in Paragraph 5 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations call for legal conclusions, no response is required. This Defendant provides certain back-office and consulting services to the skilled long-term care facility known as Sumter East Health and Rehabilitation Center pursuant to a contract, however, none of these services were related to the facts and circumstances alleged by the Plaintiff in the Complaint. This Defendant affirmatively asserts that it has never been an operator of a skilled nursing facility and never provided care or treatment to Stanley Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

5. The allegations set forth in Paragraphs 6, 7, 8, 9, 10 and 11 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

6. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

7. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

9. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

11. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

15. To the extent the allegations set forth in Paragraphs 68 and 69 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. The Plaintiff has failed to state a cause of action for which relief can be granted as required by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant asserts that it has never been a licensed operator of a skilled nursing facility and has never provided resident care. Defendant hereby retains its right to move to dismiss this case at the appropriate time.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant SavaSeniorCare

Administrative and Consulting, LLC

Charleston, South Carolina

Dated: April 22, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT NATASHA NADKARNI'S
SSC EQUITY HOLDINGS, LLC,	)	ANSWER TO THE PLAINTIFFS'
SAVASENIORCARE, LLC,	)	COMPLAINT
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKARNI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant Natasha Nadkarni (hereinafter referred to as “this Defendant”), subject to and without waiving her objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Plaintiffs' Complaint are directed at parties other than this Defendant and/or call for legal conclusions, and therefore require no response.

4. Responding to the allegations set forth in Paragraph 11 of Plaintiffs' Complaint, this Defendant admits that she is the Administrator at Sumter East, and was in that position during Mr. Floyd's residency. The remaining allegations concerning this Defendant's citizenship, residency, control, oversight, and agency call for legal conclusions and require no response.

5. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd.

6. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

7. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof.

8. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly

regarding this Defendant or assert or imply liability as to this Defendant, they are denied. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd.

9. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that she did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd.

11. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

12. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

13. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore

denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd.

14. This Defendant denies the allegations set forth in Paragraph 68 of Plaintiffs' Complaint as stated and demands strict proof thereof.

15. This Defendant denies the allegations set forth in Paragraph 69 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a

valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Mr. Floyd were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant Natasha Nadkarni

Charleston, South Carolina

Dated: May 2, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT SAVASENIORCARE
SSC EQUITY HOLDINGS, LLC,	)	CONSULTING, LLC'S ANSWER TO
SAVASENIORCARE, LLC,	)	PLAINTIFF'S COMPLAINT
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SavaSeniorCare Consulting, LLC (hereinafter referred to as “this Defendant”) subject to and without waiving its objections to the jurisdiction of this Court or without waiving any rights to compel arbitration or have any and all claims dismissed, responds to the allegations set forth in Plaintiffs’ Complaint as follows:

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

2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. The allegations set forth in Paragraphs 2, 3, 4, 5, 6, 7 and 8 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

4. This Defendant admits the allegations set forth in Paragraph 9 regarding this Defendant's organization. This Defendant denies the remaining allegations set forth in Paragraph 9 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations call for legal conclusions, no response is required. This Defendant provided certain consulting services to the skilled long-term care facility known as Sumter East Health and Rehabilitation Center pursuant to a contract, however, none of these services were related to the facts and circumstances alleged by the Plaintiff in the Complaint. This Defendant affirmatively asserts that it has never been an operator of a skilled nursing facility and never provided care or treatment to Stanley Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. This Defendant further asserts that it has ceased operations.

5. The allegations set forth in Paragraphs 10 and 11 of Plaintiffs' Complaint are directed at parties other than this Defendant, and therefore require no response.

6. To the extent the allegations set forth in Paragraphs 12, 13 and 14 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

7. This Defendant denies the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraphs 16, 17 and 18 of Plaintiffs' Complaint as stated and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

9. To the extent the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

10. This Defendant denies the allegations set forth in Paragraphs 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint and demands strict proof thereof. Further responding, this Defendant affirmatively asserts that it did not act in concert with any of the other named Defendants or as agent of any of the other named Defendants. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

11. To the extent the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50, 51, 52 and 53 of Plaintiffs' Complaint call for legal conclusions or are not directed specifically toward this Defendant, no response is required. To the extent the allegations of these Paragraphs extend beyond legal conclusions or are indirectly regarding this Defendant or assert or imply liability as to this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

12. This Defendant denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint as stated and demands strict proof thereof.

13. This Defendant denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

14. This Defendant is without knowledge or information sufficient to respond to the allegations set forth in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67, and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind.

15. To the extent the allegations set forth in Paragraphs 68 and 69 of Plaintiffs' Complaint are directed at this Defendant, they are denied and strict proof is demanded thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Floyd. This Defendant further denies any interaction or relationship with the Plaintiff of any kind. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

16. In answering the allegations set forth in Paragraph 70 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

17. This Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

18. In answering the allegations set forth in Paragraph 73 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

19. This Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiffs' Complaint, including all subparts, and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

20. In answering the allegations set forth in Paragraph 76 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

21. This Defendant denies the allegations set forth in Paragraphs 77, 78, 79, 80 and 81 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

22. In answering the allegations set forth in Paragraph 82 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

23. This Defendant denies the allegations set forth in Paragraphs 83, 84, 85 and 86 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

24. In answering the allegations set forth in Paragraph 87 of Plaintiffs' Complaint, this Defendant would restate its answers set forth in the above Paragraphs as if stated verbatim herein.

25. This Defendant denies the allegations set forth in Paragraphs 88 and 89 of Plaintiffs' Complaint and demands strict proof thereof. To the extent those allegations are directed at parties other than this Defendant and/or call for legal conclusions, no response is required.

26. This Defendant denies that Plaintiffs' Prayer for Judgment and demands strict proof thereof.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. This Court lacks jurisdiction over this matter because, upon information and belief, Plaintiffs' claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the Plaintiff and Facility Defendant, and therefore this matter should be dismissed pursuant to Rule 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. The Plaintiff has failed to state a cause of action for which relief can be granted as required by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant asserts that it has never been a licensed operator of a skilled nursing facility and has never provided resident care. Defendant hereby retains its right to move to dismiss this case at the appropriate time.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This action must be stayed until the validity of the Plaintiffs' arbitration agreement is determined by the appropriate court.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. A claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and Defendant would further assert the protections and defenses set forth in S.C. Code Ann. §§ 15-32-510, 15-32-520, 15-32-530, 15-32-540 et. seq.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. The Defendant would affirmatively assert the defenses of intervening and superseding negligence of third parties not a party to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. Defendant would assert that some, or all, of the state and federal laws cited by the Plaintiff do not created a standard of care applicable to Plaintiffs' claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

37. The Defendant would allege, upon information and belief, that some of the injuries or damages sustained by Gladys Cannon were due to, caused and occasioned by a natural disease process over which Defendant had no control and, as such, Defendant please such a natural disease process as a complete or partial part to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

38. Some or all of the Plaintiffs' claims are barred by the applicable statute of limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

39. This Defendant would assert the election of remedies of an affirmative defense in this matter.

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

CLEMENT RIVERS, LLP

By: /s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 76650

T. Ashton Phillips, III

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P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

tgandy@ycrlaw.com; aphillips@ycrlaw.com

Attorneys for the Defendant

SavaSeniorCare Consulting, LLC

Charleston, South Carolina

Dated: August 3, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	DEFENDANTS SSC SUMTER EAST
EAST HEALTH AND REHAB CENTER,	)	OPERATING COMPANY, LLC D/B/A
SSC EQUITY HOLDINGS, LLC,	)	SUMTER EAST HEALTH AND REHAB
SAVASENIORCARE, LLC,	)	CENTER AND NATASHA NADKARNI'S
SAVASENIORCARE	)	MOTION TO COMPEL ARBITRATION
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendants, SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center (hereinafter referred to as “these Defendants” or the “Facility”) and Natasha Nadkarni, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelling this matter to arbitration, or, alternatively, staying the action pending arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiffs have sued these Defendants pursuant to Mr. Stanley Floyd’s residency at the Facility. However, prior to being admitted to the Facility, Mr. Floyd entered into an Arbitration

Agreement with the Facility. (See Arbitration Agreement attached as **Exhibit A**). The Arbitration Agreement was signed on behalf of Mr. Floyd by Mrs. Stephanie Floyd - his wife, power of attorney, and a Plaintiff in this action. See Ex. A. Mrs. Floyd identified herself as Mr. Floyd's "spouse, responsible party, legal guardian or power of attorney" in the Arbitration Agreement, and she asserted that she had "the authority to sign the agreement on his/her behalf". Id. Indeed, Mr. Floyd had previously executed a valid Power of Attorney that appointed Mrs. Floyd as his POA. (See Power of Attorney attached as **Exhibit B**).

The parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not apply; rather, arbitration would be governed by the Federal Arbitration Act ("FAA"), because the services and reimbursement thereof to be provided to Mr. Floyd upon his admission to the facility involved interstate commerce. In accordance with the terms of this agreement, these Defendants respectfully request that this matter be compelled to arbitration. Alternatively, these Defendants request that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the FAA.

This Motion and Petition are supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

[signature block on the following page]

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendants SSC Sumter East
Operating Company, LLC d/b/a Sumter East Health
and Rehab Center and Natasha Nadkarni*

Charleston, South Carolina

Dated: August 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	DEFENDANT SAVASENIORCARE
SSC EQUITY HOLDINGS, LLC,	)	ADMINISTRATIVE AND CONSULTING,
SAVASENIORCARE, LLC,	)	LLC'S MOTION TO STAY
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SavaSeniorCare Administrative and Consulting, LLC (hereinafter referred to as “this Defendant”), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant SSC Sumter East Operating Company, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiffs’ claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any

motions or discovery filed or served by Plaintiffs until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
James D. Gandy, III
SC State Bar ID No.: 11925
T. Ashton Phillips, III
SC State Bar ID No.: 104227
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com
*Attorneys for the Defendant SavaSeniorCare
Administrative and Consulting, LLC*

Charleston, South Carolina

Dated: August 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	
SSC EQUITY HOLDINGS, LLC,	)	DEFENDANT SSC EQUITY HOLDINGS,
SAVASENIORCARE, LLC,	)	LLC'S MOTION TO STAY
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SSC Equity Holdings, LLC (hereinafter referred to as “this Defendant”), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant SSC Sumter East Operating Company, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiffs’ claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any

motions or discovery filed or served by Plaintiffs until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

T. Ashton Phillips, III

SC State Bar ID No.: 104227

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant SSC Equity Holdings,
LLC*

Charleston, South Carolina

Dated: August 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	
SSC EQUITY HOLDINGS, LLC,	)	DEFENDANT SAVASENIORCARE, LLC'S
SAVASENIORCARE, LLC,	)	MOTION TO STAY
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	
	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SavaSeniorCare, LLC (hereinafter referred to as “this Defendant”), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant SSC Sumter East Operating Company, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiffs’ claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any

motions or discovery filed or served by Plaintiffs until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

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P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant SavaSeniorCare, LLC

Charleston, South Carolina

Dated: August 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	
COMPANY, LLC D/B/A SUMTER	)	
EAST HEALTH AND REHAB CENTER,	)	
SSC EQUITY HOLDINGS, LLC,	)	DEFENDANT SMV SUMTER EAST,
SAVASENIORCARE, LLC,	)	LLC'S MOTION TO STAY
SAVASENIORCARE	)	
ADMINISTRATIVE AND	)	
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	
	)	

TO: MATTHEW W. CHRISTIAN, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, SMV Sumter East, LLC (hereinafter referred to as “this Defendant”), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant SSC Sumter East Operating Company, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiffs’ claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any

motions or discovery filed or served by Plaintiffs until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
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SC State Bar ID No.: 11925
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P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com
Attorneys for the Defendant SMV Sumter East, LLC

Charleston, South Carolina

Dated: August 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C.A. No.: 2022-CP-43-00355
	)	
Stanley Dale Floyd and Stephanie Floyd,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM
	)	IN OPPOSITION TO
v.	)	DEFENDANTS SSC SUMTER EAST
	)	OPERATING COMPANY, LLC D/B/A
	)	SUMTER EAST HEALTH AND
SSC Sumter East Operating Company,	)	REHAB AND NATASHA
LLC d/b/a Sumter East Health and	)	NADKARNI'S MOTION TO COMPEL
Rehab Center, SSC Equity Holdings,	)	ARBITRATION AND IN OPPOSITION
LLC, SavaSeniorCare, LLC,	)	TO DEFENDANTS
SavaSeniorCare Administrative and	)	SAVASENIORCARE
Consulting, LLC, SavaSeniorCare	)	ADMINISTRATIVE AND
Consulting, LLC, SMV Sumter East,	)	CONSULTING, LLC, SMV SUMTER
LLC, and Natasha Nadkarni,	)	EAST, LLC, AND SSC EQUITY
	)	HOLDINGS, LLC'S MOTIONS TO
Defendant(s).	)	STAY
	)	

This case involves Stanley Dale Floyd (hereinafter "Dale Floyd")'s claim involving nursing home negligence and corporate negligence resulting in serious injuries. That further, this case involves a claim by Dale Floyd's wife, Stephanie Floyd (hereinafter "Wife"), for loss of consortium resulting from Dale Floyd's injuries.

Dale Floyd was admitted to the Defendants' facility at SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center (hereinafter "Facility") on or about May 6, 2019 for skilled nursing services and rehabilitation after undergoing surgery on a work-related injury to his left arm. Discharge orders from the hospital required that Facility was to continue daily packing of Dale Floyd's wound with daily dressing changes and elevation of the left arm and elbow. That further, Facility's care plan for Dale Floyd reflected that the staff was to monitor the dressing to ensure that

it remained intact and adhering, and that the “nurse to check the dressing and to change BID or PRN.”

Additionally, the care plan required staff to observe the site for redness, swelling, increased drainage, and pain and to watch for any change in the condition in his skin and report to the physician as needed. That despite these orders and interventions, during Dale Floyd’s admission, he suffered with significant pain and developed redness, drainage, and swelling to his left arm and hand which went untreated and unreported to a physician. That further, Facility staff failed to perform any dressing changes until the day of Dale Floyd’s discharge at which time the arm was significantly infected. As a result, Dale Floyd was transferred immediately to McLeod Regional Medical Center where he was admitted to the hospital, and multiple areas of abscesses were found requiring multiple surgeries, IV antibiotic treatments, wound vac placement, and wound care. That Stanley Dale Floyd continues to treat for his injuries with multiple specialists, has lost the use of his arm, and has been unable to return to work as a result of the Defendants’ substandard negligent care.

That in addition to the clinical neglect, the Defendants were also negligent by having nurses conduct out of scope assessments, understaffing the Facility, underfunding the Facility, and having employees engage in fraudulent charting. As a result of the underfunding and understaffing, Plaintiffs have alleged corporate negligence as well as the clinical negligence which Plaintiffs allege was directly caused by the parent, management, and affiliated companies of the Facility, all of which owned, controlled, directed, managed, and affected resident care at the Facility.

As a result of Dale Floyd's injuries and Wife's loss of consortium, they filed a Notice of Intent to File Suit against Defendants on December 7, 2021 and subsequently served the Defendants. The parties engaged in the mandatory pre-suit mediation on February 24, 2022. That mediation was unsuccessful.

Dale Floyd and Wife then filed the subsequent Complaint alleging clinical negligence, corporate negligence, ordinary negligence, negligent misrepresentation, and loss of consortium on March 4, 2022 and served the Defendants. Defendants answered on May 2, 2022 and filed these underlying motions on August 4, 2022. In response to Defendants' motions, Plaintiffs submit this Memorandum in Opposition together with the attached exhibits. Affidavits of Plaintiffs Dale Floyd and Wife are attached hereto as Exhibit A.

BRIEF SUMMARY OF ARGUMENTS

- I. The Arbitration Agreements are unenforceable because Wife had no Authority to sign for Dale Floyd.**
- II. The non-moving corporate Defendants have not moved to compel arbitration because they are non-signatories. A stay is not necessary for those Defendants who are not bound by the alleged Arbitration Agreement.**

ARGUMENT

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). It is well established that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application

to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007) (internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). Arbitration agreements must satisfy the basic tenets and requirements of contract law. Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844, (Ct. App. 1999). Section 2 of the Federal Arbitration Act dictates that arbitration agreements are enforceable except “upon such grounds as exist at law or equity for the revocation of any contract”. 9 U.S.C. §2. The courts, not arbitrators, are charged with deciding certain “gateway matters” including whether the parties have a valid arbitration agreement or whether the arbitration clause applies to a certain type of controversy. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 629, 667 S.E.2d 1, 5 (Ct. App. 2008). Thus, unless there is a valid, irrevocable, and enforceable contract, the Federal Arbitration Act does not even apply.

Further, the party seeking enforcement of the agreement bears the burden to prove a valid arbitration agreement exists that is enforceable, knowing, voluntary, and intentional. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008); Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 268, 356 S.E.2d 115, 116 (1986). "A motion to compel arbitration pursuant to the FAA is 'akin to the burden on summary

judgment.” Thomas v. Progressive Leasing, Civ. No. 17-1249, 2017 WL 4805235, at *2 (D. Md. Oct. 25, 2017)(internal quotation marks omitted) (quoting Galloway v. Santander Consumer USA, Inc., 819 F.3d 79, 85 (4th Cir. 2016)). Therefore, the burden is on the moving party to demonstrate the absence of any genuine dispute of material fact, Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970), and that the movant is “entitled to judgment [compelling arbitration] as a matter of law.” Burrell v. 911 Restoration Franchise Inc., 2017 WL 5517383, at *3 (D. Md. November 17, 2017) (citing Fed. R. Civ. P. 56(a)). Further, “there is, however, no public policy – federal or state – favoring arbitration.” Simmons v. Benson Hyundai, LLC, 2022 S.C. App. LEXIS 37, 22WL791174 quoting Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). The arbitration agreement at issue in this particular case with Facility is not valid to begin with and Defendants cannot meet their burden of proof. Therefore, the inquiry should go no further as to Facility.

I. The Arbitration Agreements are unenforceable because Wife had no Authority to sign for Dale Floyd.

The alleged Arbitration Agreement which Defendants purport was signed in this case was allegedly signed by Wife and not by Dale Floyd. See Arbitration Agreement attached hereto as Exhibit B, p. 9. Defendants expressly misrepresent in their brief to the Court that Spouse was power of attorney on behalf of Dale Floyd. See Defendants’ SSC Sumter East Operating Company, LLC Motion to Compel Arbitration, page 2. In fact, Defendants specifically incorrectly state that “...Mr. Floyd had previously executed a valid Power of Attorney that appointed Mrs. Floyd as his POA.” Defendants’ SSC Sumter East Operating Company, LLC Motion to Compel Arbitration, page 2. However, the Arbitration Agreement was signed by Wife on **May 6, 2019**. The Power of Attorney

which was executed by Dale Floyd in favor of Wife was subsequently not executed until **October 29, 2020**, nearly a year and a half after the Arbitration Agreement was signed. See Power of Attorney attached at Exhibit C and Affidavits of Plaintiffs at Exhibit A. Wife who allegedly signed the Arbitration Agreement lacked authority to execute any Arbitration Agreement or Waiver of Jury Trial on Dale Floyd's behalf. The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. Charleston Registry v. Young Clement, 598 S.E.2d 717, 359 S.C. 635, 642 (Ct. App. 2004). In the present, neither actual nor apparent authority exists for Wife.

It is clear that Wife did not, nor anyone else, have the authority to bind Dale Floyd, and as a result, this inquiry should end. However, issues which may be raised by Defendants in an effort to deny the parties a jury trial which will be discussed below.

A. No Actual Agency/Authority

Prior to Dale Floyd's admission to Facility and while Dale Floyd was being transported by ambulance to Facility, Wife was required to sign documents presented to her by Defendants. Supposedly and as alleged by Defendants, one of those groups of documents was what Defendants purport to be the Arbitration Agreement. Arbitration Agreement could not be required for admission by law and by its own express terms. 42 C.F.R. §489.30; 42 C.F.R. §447.15; 42 U.S.C. §1396r(c)(5)(A)(iii); Arbitration Agreement pp. 1-2. As a result and in addition to other differences in the agreements, the documents do not merge.

Despite the express provision of the Arbitration Agreement requiring Dale Floyd to sign, Defendants never requested or had Dale Floyd sign the agreement. Arbitration

Agreement, p. 7. At page 7 of the Arbitration Agreement, the Arbitration Agreement clearly required Dale Floyd's signature where it states:

If resident is competent, complete this section:

Signature of Resident _____ Date: _____
(Sign where resident is mentally competent to consent to this Agreement under State law)

Signature of Representative _____ Date: _____
(Sign where mentally competent resident is unable to physically execute the Agreement and authorizes a Representative to sign Agreement on the resident's behalf)

Instead, Defendants allegedly requested Wife to sign the agreement under the section that states, "If resident is adjudged incompetent, complete this section", despite the fact that Dale Floyd was completely competent and had not been adjudged to be incompetent.

If resident is adjudged incompetent, complete this section:

I am the spouse, responsible party, legal guardian or power of attorney of the resident and have the authority to sign the agreement on his/her behalf. In signing this Agreement, the Legal Representative or Family Member binds both the Resident and themselves individually.

Stephanie Floyd _____ Date: 5/6/19
 Signature of Legal Representative or Family Member

Katelyn Hodges _____ Date: 5/6/19
 Signature of Facility Witness One

Signature of Facility Witness Two _____ Date: _____

Katelyn Hodges _____ Date: 5/6/19
 Signature of Facility Representative

Defendants had the opportunity to have Dale Floyd sign the Arbitration Agreement, but chose not to do so, and instead, had a party which they were aware had no authority to allegedly sign the Arbitration Agreement.

B. No Apparent Agency/Authority

Without actual agency, Defendants must argue the Wife had apparent authority/agency to enter into the Arbitration Agreement on behalf of Dale Floyd. Apparent authority is based on “representations made by the principal to the third party and reliance by the third party on those representations”. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649, S.E.2d 488, 491 (2007). Apparent authority exists when the principal is bound by the acts of its agent after the principal has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business, usages and custom, is led to believe the agent has certain authority and in turn, deals with the agent based on the assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *rev’d on other grounds*.

South Carolina law requires that to prove apparent authority, the Defendants must show “... (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party’s detriment.” Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is

not on the relationship between the principal and the agent but that between the principal and the third party. Vereen v. Liberty Life Insurance, Company, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists.

In the present case, there is no evidence Dale Floyd represented to Defendants that the Wife had the authority to enter into the Arbitration Agreement on his behalf. In fact, the evidence is to the opposite. Dale Floyd was not present when the Wife signed the Arbitration Agreement as he was in an ambulance being transported to the Facility. Dale Floyd was never aware that the Wife had signed the Arbitration Agreement. Dale Floyd never authorized the Wife to sign such contract or agreement and Defendants failed to follow the agreement's own requirements to have Dale Floyd sign.

Wife made no representation that she had any authority to bind her husband. Moreover, as noted in Hodge, when the Arbitration Agreement does not merge with the Admission Agreement, as in the present case, the facility cannot show that it changed its position for the worse as required to prove apparent agency. Therefore, Defendants cannot argue that any apparent authority/agency existed for the Wife to sign the Arbitration Agreement on Dale Floyd's behalf.

C. No Equitable Estoppel

Defendants' argument would have to rely upon the mistaken assumption that the Arbitration Agreement merged with the Admission Agreement. The basis of Defendants' equitable estoppel argument would be that since Dale Floyd was admitted to the facility and obtained nursing home services as a resident, he (through his Wife) may not refuse to arbitrate claims or proceed to jury trial based on Defendants' negligent care. However,

South Carolina Appellate Courts have rejected this argument at least four (4) separate times in the last seven (7) years. The cases established two important principles. First, there is nothing inconsistent about receiving nursing home services while challenging the formation of an optional, distinct arbitration contract. Second, since Plaintiffs' claims are not grounded in, or even dependent upon, the Admission Agreement, equitable estoppel would not apply here even if the Admission Agreement and the Arbitration Agreement were a single, merged contract.

Equitable estoppel elements require that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted upon by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 35 S.C. 76, 84 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position and reliance of the conduct of the party to be estopped. Id. Defendants' argument fails because it does not cite or attempt to apply any of these required elements. Whether Dale Floyd is bound to the Arbitration Agreement is a matter of state law and Defendants overlook the governing standard for this argument. See Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 630-31 n. 5 (2009).

It should be noted that the Defendants' entire argument and reliance would be based upon a federal district court case from 2011 that has been overturned multiple times by South Carolina Appellate Courts. See Defendants' brief p. 6, *et seq.* citing THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (DSC 2011). Further, the Defendants would also have to ignore Coleman v. Mariner Healthcare, Inc.,

407 S.C. 346, 755 S.E.2d 450 (2014). The South Carolina Supreme Court in Coleman specifically held that the Adult Healthcare Consent Act covers **only** “healthcare” decisions and, while that term extends to “placement or removal from a facility”, it does not cover “an **optional** method for dispute resolution”. Coleman, 407 S.C. at 354, 755 S.E.2d at 454. The Arbitration Agreement explicitly and unambiguously states that the arbitration provision contained within it is “voluntary”. As a result, Wife lacked the authority to even consider possible arbitration for Dale Floyd because she did not have a power of attorney and the Adult Healthcare Consent Act authority could not extend to an optional dispute resolution provision as directly held by the South Carolina Supreme Court in Coleman.

Furthermore, the Arbitration Agreement did not merge with the Admission Agreement. Defendants would have to ignore the fact that in Coleman, the admissions agreement contained language explicitly merging the arbitration agreement into the admissions agreement and including it as part of the same agreement. Furthermore, merger does not apply if there is “**anything** indicating a contrary intention”. Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (quoting Clutts, 268 S.C. at 88, 232 S.E.2d at 24)(emphasis added). Thus, executed agreements relating to the same general subject matter will not be viewed as a single or merged agreement if either the language or the circumstances even **hint** that the parties intended the writings to be distinct and separate agreements. Three nursing homes have previously attempted but failed to meet these requirements and South Carolina Appellate Courts have never applied merger to nursing home admission and arbitration agreements. See generally Coleman, Thompson and Hodge.

Further, South Carolina Appellate Courts have held that merger does not occur if the arbitration agreement has inconsistent terms with the admission agreement. Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 201). Coleman, Thompson, and Hodge all cite multiple examples of inconsistent terms between optional dispute resolution agreements and admission agreements that would reflect that the agreements are intended to be separate and do not merge. These examples include having an “entire agreement” provision in the admission agreement, having different laws governing the different provisions of the agreements, being able to terminate one agreement and not another, and multiple other factors which evidence inconsistencies between the agreements. See Coleman, Thompson and Hodge.

It is expected that many of these very same inconsistencies exist in the agreement at issue in the present case. The Admission Agreement in the present case has not been provided to Plaintiffs or produced in any way. However, it likely states that it shall be interpreted in accordance with the laws of the State of South Carolina while the optional arbitration clause states that it is governed by the Federal Arbitration Act. Further, the fact that the arbitration provision in the Arbitration Agreement was optional and the Admission Agreement was required for admission reflects further inconsistencies. Additionally, the Arbitration Agreement can be separately revoked within thirty (30) days of the execution of the agreement but the Admission Agreement would not be revoked by simply revoking the Arbitration Agreement.

Finally, because by the explicit language of Arbitration Agreement reflecting that it was optional, voluntary, and freely entered into prevents such provisions from merging

with the Admission Agreement when the explicit language reflects that these provisions are not required for admission.

As a result, the Arbitration Agreement when examined with the Admission Agreement has the same factors South Carolina Courts have repeatedly cited in the past to find that such agreements were not intended to merge into one. Moreover, any uncertainty about these issues must be resolved in Plaintiff's favor. As the Coleman court stated, to the extent a merger is a presumption, it is an easily rebuttable one because "anything indicating a contrary intention" means a court will not apply merger. Coleman at 355.

Finally, Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020) is an important case to the current situation because the South Carolina Supreme Court discussed how rare equitable estoppel should be applied. More importantly, the Weaver court rejected estoppel even when the arbitration agreement was included within the admission contract. Weaver, 431 S.C. at 229-30 (citing Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019)). As the Weaver court noted, the resident's claims were not grounded upon the admission agreement and the facility's duties arose from common law, that suing the facility for negligence did not amount to an exploitation of the admission agreement for the resident's benefit that is required to invoke estoppel. None of Plaintiff's claims arise from or are dependent upon duties imposed by the Admission Agreement and therefore, the Defendants cannot claim estoppel based on this contention either. Other South Carolina judges have also refused to enforce arbitration agreements even when they were part of the admissions agreements (see Exhibit D and E,

Boozer and Testerman Orders) and multiple courts continue to reject Equitable Estoppel (see Exhibits F and G, Orders in Rudd and Owens).

As the Court in Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019), noted, Plaintiffs in this case would have to be seeking a remedy for breach of contract based upon the Admission Agreement for the Defendants to even begin their argument. Plaintiffs' claims against Defendants arise in tort under a provider/patient relationship. As the Wilson Court further noted, "Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly." Id. at 345. The Court further noted that it is more properly viewed as a shield "to prevent injustice than a sword to compel arbitration." Id. at 345 quoting Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 71 A.3d 849, 852 (N.J. 2013). In the present case, for the reasons stated above, arbitration should not be compelled through estoppel either.

D. Dale Floyd was not a Third-Party Beneficiary of any Alleged Agreement Between Defendants and Wife

Defendants may argue as a fallback position that Wife entered into an Arbitration Agreement with the Facility and Plaintiff is bound to the Arbitration Agreement since Dale Floyd was allegedly a third-party beneficiary. The cases that Defendants may rely upon include a 2008 Mississippi case and the 2011 Federal District Court case previously mentioned, Wiggins, which has been clearly overruled by the South Carolina Appellate Courts. However, South Carolina courts have expressly rejected attempts to use the third-party beneficiary argument in this manner. Thompson, 416 S.C. at 56-58, 784 S.E.2d at 687; See also Hodge, 422 S.C. at 574, 813 S.E.2d at 308.

Defendants' third-party beneficiary argument fails for multiple reasons which our courts have already discussed. First, there can only be a third-party beneficiary to the

arbitration agreement if, in fact, a valid contract exists. Thompson, 416 S.C. at 56-58, 784 S.E.2d at 687. As in Thompson, because Wife was not authorized to execute the Arbitration Agreement on Dale Floyd's behalf, Dale Floyd could not be the third-party beneficiary of the alleged agreement. Second, as to the Arbitration Agreement between Defendants and Wife in her individual capacity, "a third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless a third-party is attempting to enforce the contract containing the arbitration agreement". Id. As the Thompson court noted, Wife is not attempting to enforce the Arbitration Agreement on behalf of Dale Floyd. Rather, she and Dale Floyd have asserted tort claims against Defendants arising out of patient/provider relationship. Id.

Thirdly, the third-party beneficiary must in some way assent to the contract containing the arbitration clause to be a third-party beneficiary. Dale Floyd did not in any way assent to the Arbitration Agreement and Defendants intentionally chose not to have him sign despite an express requirement to do so. See Thompson, 416 S.C. at 56-58, 784 S.E.2d at 687 citing Drury v. Assisted Living Concepts, Inc., 245 Or. App. 217, 262 P.3d 1162, 1166 n. 5 (2011). Further, because there was no merger of the Arbitration Agreement with the Admission Agreement, no third-party beneficiary argument can be supported.

II. The non-moving corporate Defendants have no moved to compel arbitration because they are non-signatories. A stay is not necessary for those Defendants who are not bound by the alleged Arbitration Agreement.

While the Arbitration Agreement is not enforceable for the above reasons, if the Court found it to be enforceable, either all Defendants should be ordered to arbitration or Plaintiffs should be able to go forward with the case against the other Defendants and

dismiss the Facility. There is no justification for a stay. All Defendants are all related entities¹ and have a significant relationship in the ownership, operation, and management of the Facility, derive significant economic benefits from its revenue. With similar reasoning, in Hawthorne v. Fundamental, et al., a Pennsylvania case, nursing home Defendants moved to compel arbitration. With regards to the corporate related entities, the Court noted that the “Plaintiff essentially alleges that each Defendant may be held accountable under theories of ownership and control, agency, joint venture, and integrated enterprise. Specifically, it is averred that Defendants collectively managed the (1) operation, (2) planning, and (3) quality control of the facility which include control over the quality of care provided. The Court further went on to note that the related entities were parent companies and/or related entities to the facility in compelling arbitration on behalf the corporate entities as well. See Hawthorne at Exhibit H.

Parent companies have been forced to arbitrate under a valid enforceable contract even though the parent companies were not a party to the agreement when the subsidiary was a party to the agreement under a theory of equitable estoppel. Int’l Paper Co. v. Schwebedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416 (4th Cir. 2000) quoting J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988)(citing Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753, 757 (11 Cir. 1993)). Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012). In fact, the alleged Arbitration Agreement purports to include all Defendants as it defines the parties to include “the facility, any parent or subsidiary of the facility, and company affiliated with the facility....” Clearly, the agreement contemplates all Defendants.

¹ Related entity is an industry term that means entities have common ownership, management, and control.

Further, as other South Carolina Circuit Courts have held, corporate Defendants should be included in the arbitration proceeding if a valid and enforceable arbitration agreement were to be found by the Court:

Further, the Court finds that the Corporate NHC Defendants were intended beneficiaries of the Arbitration Agreement; therefore, the order compelling arbitration of the Survival Action shall also apply to the Corporate NHC Defendants as the allegations against those defendants are based on the same facts and are inherently inseparable from the claims made against NHC-Mauldin. *See Int'l Paper Co. v. Schwabedissen Maschenen & Anlagen GMBH*, 206 F.3d 411, 417 (4th Cir. 2000); *see also Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (S.C. Ct. App. 2012).

See Young v. NHC at Exhibit I.

Furthermore, Plaintiffs' claims against the moving parties are based on a theory of unified operation and control. Each is said to have participated in exactly the same wrongful conduct. Agency law extends the right to enforce an arbitration award against agents, sister corporations, subsidiaries, and parent/ownership entities of a contracting party "where the interest of such parties are directly related to, if not congruent with, those of a signatory." Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1112 (1993)(citing Isidor Paiwonsky Associates, Inc. v. Sharp Properties, 998 F.2d 145, 155 (3d Cir. 1993)). Under all accounts advanced by Plaintiffs, each of the moving parties is a parent entity, agent, or employee of the Facility that shares a congruent interest. Plaintiffs thus presumptively would be able to enforce any judgment from the proceedings against these Defendants, and in turn, each can rely on the principles of agent law and the broad scope of the FAA to compel and participate in the Arbitration Agreement. Cf. Id. ("Where the parties to such a clause unmistakably intend to arbitrate all controversies, which might arise between them, their agreement should be applied to

claims against agents or entities related to the signatories,”). Sharp Properties, 998 F.2d at 155. (“Applying Barrowclough [v. Kidder, Peabody & Co.], 752 F.2d 923 (3d Cir.1985)’s logic here because Bared’s and ARI’s interests are directly related if not in fact congruent, it can fairly be assumed that within the arbitration proceedings ARI advanced arguments protective of Bared’s interests. There is, therefore, no reason to conclude that the Federal Arbitration Act’s overarching policy favoring the enforcement of arbitration awards does not apply to this case.” As such, the Defendants moving for a stay should either be compelled to arbitration or compelled to move forward in Court.

CONCLUSION

In summary, there is no authority for Wife to have signed the alleged Arbitration Agreement and as such, it is unenforceable under nearly every appellate nursing home case in this state addressing these issues. However, should the Court determine that the Arbitration Agreement is valid as to claims against the Facility, then Plaintiffs’ claims against the remaining Defendants should proceed on one forum or another, and there is no basis for any stay.

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

Greenville, South Carolina
Date: September 2, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C.A. No.: 2022-CP-43-00355
	)	
Stanley Dale Floyd and Stephanie	)	
Floyd,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	STANLEY DALE FLOYD
	)	
v.	)	
	)	
SSC Sumter East Operating Company,	)	
LLC d/b/a Sumter East Health and	)	
Rehab Center, SSC Equity Holdings,	)	
LLC, SavaSeniorCare, LLC,	)	
SavaSeniorCare Administrative and	)	
Consulting, LLC, SavaSeniorCare	)	
Consulting, LLC, SMV Sumter East,	)	
LLC, and Natasha Nadkarni,	)	
	)	
Defendant(s)	)	

PERSONALLY appeared before me, the undersigned, who being duly sworn, hereby states and attests that the following is true and correct under penalties of perjury:

1. At the time of my admission to Sumter East Health and Rehab Center, my wife, Stephanie Floyd, had no authority to act on my behalf and did not possess any power of attorney, conservatorship, guardianship, or any other authority to sign any legal paperwork or transact other business on my behalf.
2. That further, I saw no admissions paperwork and no arbitration paperwork at any point in time from the facility.
3. That I was never made aware that my wife had signed or executed any paperwork at the facility, and I was never aware that my wife may have signed an arbitration agreement.



4. Had I been aware of the existence of an arbitration agreement, I would have refused to sign same.

5. My wife had no authority to execute an arbitration agreement on my behalf.

6. I never made any representations or acted in any way which would have allowed any third parties to believe that my wife had the authority to sign an arbitration agreement on my behalf.

Date: 09-02-2022

Stanley Dale Floyd
Stanley Dale Floyd

SWORN to and subscribed before me this

2 day of September, 2022

Susan W. Suroch

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 7/13/2032

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C.A. No.: 2022-CP-43-00355
	)	
Stanley Dale Floyd and Stephanie	)	
Floyd,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	STEPHANIE FLOYD
	)	
v.	)	
	)	
SSC Sumter East Operating Company,	)	
LLC d/b/a Sumter East Health and	)	
Rehab Center, SSC Equity Holdings,	)	
LLC, SavaSeniorCare, LLC,	)	
SavaSeniorCare Administrative and	)	
Consulting, LLC, SavaSeniorCare	)	
Consulting, LLC, SMV Sumter East,	)	
LLC, and Natasha Nadkarni,	)	
	)	
Defendant(s).	)	

PERSONALLY appeared before me, the undersigned, who being duly sworn, hereby states and attests that the following is true and correct under penalties of perjury:

1. I was unaware that I had signed an arbitration agreement at the time of my husband's admission to Sumter East Health and Rehab.
2. No arbitration agreement was ever explained to me, and any paperwork was presented to me in such a fashion that I was led to believe that all of the paperwork I signed was required and necessary for my husband to be admitted to the facility.
3. That the paperwork was presented to me in a hurried fashion. I was required to sign under stressful circumstances.
4. That at the time I signed any paperwork which presumably includes an allege arbitration agreement, my husband, Stanley Dale Floyd, was in an ambulance being transported from the hospital to the Defendants' nursing home facility.

5. That I had arrived at the facility ahead of the ambulance and was asked to sign the paperwork before my husband's arrival.

6. As such, Stanley Dale Floyd, my husband was unaware that I had signed any admission paperwork or any arbitration agreement.

7. That at the time that the Arbitration Agreement was signed, I possessed no guardianship, conservatorship, power of attorney or any other authority to sign an arbitration agreement on behalf of my husband.

Date: 09-02-2022

Stephanie Floyd
Stephanie Floyd

SWORN to and subscribed before me this

2 day of September, 2022

Susan W. Suroch

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 7/13/2032

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
STANLEY DALE FLOYD AND	)	CASE NO. 2022-CP-43-00355
STEPHANIE FLOYD,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
SSC SUMTER EAST OPERATING	)	DEFENDANTS SSC SUMTER EAST
COMPANY, LLC D/B/A SUMTER	)	OPERATING COMPANY, LLC D/B/A
EAST HEALTH AND REHAB CENTER,	)	SUMTER EAST HEALTH AND REHAB
SSC EQUITY HOLDINGS, LLC,	)	CENTER AND NATASHA NADKARNI'S
SAVASENIORCARE, LLC,	)	MEMORANDUM OF LAW IN SUPPORT
SAVASENIORCARE	)	OF THEIR MOTION TO COMPEL
ADMINISTRATIVE AND	)	ARBITRATION
CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING,	)	
LLC, SMV SUMTER EAST, LLC, AND	)	
NATASHA NADKAMI,	)	
	)	
DEFENDANTS.	)	

TO: MATTHEW W. CHRISTIAN, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

Defendants SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center (the “Facility”¹) and Natasha Nadkarni (“Ms. Nadkarni”) (collectively, the Facility and Ms. Nadkarni are referred to as these “Defendants”) hereby submit this Memorandum in Support of their Motion to Compel Arbitration, pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1, *et seq.*, and South Carolina Rules of Civil Procedure 12(b)(1) and (6).

¹ The Facility is a skilled nursing facility in Sumter County.

BACKGROUND

With the help of his wife, Stephanie², Stanley was admitted as a resident of the Facility on May 1, 2019. Stephanie handled the paperwork in conjunction with Stanley's admission, and in so doing, Stephanie signed an Admission Agreement³ and an Arbitration Agreement⁴ on Stanley's behalf, and they were duly countersigned by the Facility's representative, Katelyn Hodges.

Based on the Admission Agreement and pursuant to the terms thereof, Stanley was admitted to the Facility, and during his month-long residency, Stanley received and accepted direct benefits, including room and board and nursing, personal, and custodial care. Plaintiffs had not challenged the validity of any agreement until now, and indeed, even now, Plaintiffs do not assert that the Admission Agreement is invalid or that Stanley entered the Facility unwillingly or without consent.

Stephanie represented to the Facility that she was authorized to admit her husband and to execute all documents she signed on his behalf, including the Arbitration Agreement, on which she signed her name, "Stephanie Floyd," on the line corresponding to the "Signature of Legal Representative or Family Member," thereby expressly attesting as follows:

I am the spouse, responsible party, legal guardian or power of attorney of the resident ***and have the authority to sign the agreement on his/her behalf***. In signing this Agreement, the Legal Representative

² "Stephanie" refers to Plaintiff Stephanie Floyd, and "Stanley" refers to Plaintiff Stanley Dale Floyd. Collectively, Stephanie and Stanley are referred to as "Plaintiffs."

³ The "Admission Agreement" refers to the instrument entitled Resident Admission Agreement. Presently, the Facility is unable to locate a complete copy of the Admission Agreement, but is in possession of the signatures pages bearing Stephanie's signature on the Admission Agreement and a number of exhibits thereto. These pages, together with a blank copy of the Admission Agreement form (minus exhibit forms), are attached hereto as **Exhibit 1**.

⁴ The "Arbitration Agreement" refers to the instrument entitled Dispute Resolution Program, pursuant to which the "Parties" (which, as defined therein, unquestionably include Plaintiffs and these Defendants) agree to forego litigation and, instead, resolve all "Disputes" (which, as defined therein, unquestionably include Plaintiffs' claims against these Defendants in this action) through the various steps of alternative dispute resolution culminating in binding arbitration. A copy of the Arbitration Agreement is attached hereto as **Exhibit 2**.

or Family Member binds both the Resident and themselves individually.

Ex. 2 (emphasis added).

Alleging that these Defendants are liable for damages because of deficient care/treatment Stanley received during his residency at the Facility, Plaintiffs commenced this action in this Court on March 4, 2022. (Summons & Compl.) Plaintiffs' claims against these Defendants fall squarely within the scope of the Arbitration Agreement. **Ex. 2**⁵. The Court should stay this litigation and compel Plaintiffs' claims against these Defendants to arbitration.

ARGUMENT

I. STATE AND FEDERAL POLICY FAVORS ARBITRATION.

There is a strong presumption in favor of the validity of arbitration agreements because of the federal and state policy favoring arbitration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir. 1997); *see also Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) ("The policy of the United States and this State is to favor arbitration of disputes."). "This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration." *Towles*, 338 S.C. at 34, 524 S.E.2d at 842. Therefore, "any doubts concerning the scope of arbitrable issues should

⁵ Without question, Plaintiffs' claims against these Defendants are within the scope of the Arbitration Agreement. *See Ex. 2 pp. 2–3* (providing that, subject to a threshold amount in controversy of at least \$50,000, "Dispute" includes "any claim or dispute"). But even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration" *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered."). And without question, the Arbitration Agreement covers Ms. Nadkarni as an "officer[], director[], manager[], employee[], or agent[] [of the Facility] acting in such capacity," **Ex. 2 p. 2**, as Plaintiffs allege her to be liable as the administrator of the Facility. (Compl. ¶ 11.)

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.” *Id.* at 41, 524 S.E.2d at 846 (internal quotations and citations omitted).

II. THE FAA GOVERNS THE ARBITRATION AGREEMENT.

The Arbitration Agreement is governed by the FAA. For one reason, the Arbitration Agreement expressly states that the FAA applies. **Ex. 2 p. 5**. This must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020) (“We first consider whether the FAA applies. We hold it does, for two reasons. First, the [subject contract] provides the parties ‘specifically agree that this transaction involves interstate commerce.’ We must enforce this agreement like any other contract term.”) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (finding the FAA applied because the parties had agreed the subject contract involved interstate commerce)).

Moreover, and in any event, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363; *see also Allied–Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause). Our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

III. THE FAA REQUIRES ARBITRATION AGREEMENTS TO BE PLACED ON EQUAL FOOTING WITH ALL OTHER CONTRACTS UNDER SOUTH CAROLINA LAW.

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”⁶ and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] 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) (emphasis added); *see also* 9 U.S.C. § 4 (“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.*”) (emphasis added).

While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*” *Concepcion* at 339 (emphasis added); *see also* *Allied–Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the

⁶ *Allied–Bruce*, 513 U.S. at 270.

revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted).⁷

IV. THE ARBITRATION AGREEMENT IS VALID ON ITS FACE.

The Arbitration Agreement is valid on its face. In other words, there is nothing within the four corners of the instrument itself that calls its validity into question. It bears Stephanie’s signature on behalf of Stanley, along with Stephanie’s express representation that she is authorized to sign for Stanley.⁸ It is countersigned by the Facility’s representative. It is duly supported by consideration and sets forth all necessary terms, containing, as it does, the parties’ mutual promises to submit a certain defined scope of disputes to binding arbitration.⁹ To require more just because an agreement

⁷ To be clear, what the FAA requires is for arbitration agreements to be placed on *at least* equal footing with all other contracts under state law. Thus, the FAA prohibits arbitration agreements from being singled out for *disfavored* treatment relative to other contracts, but it does not prohibit the *avored* treatment of arbitration agreements relative to other contracts.

⁸ By virtue of her signature, Stephanie is “presumed to have read, understood, and assented to [the] terms” of the Arbitration Agreement, *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”), including, of course, the express representation therein of her authority to act on Stanley’s behalf. Moreover, there is an implied covenant of good faith and fair dealing in every contract, *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) (“There exists in every contract an implied covenant of good faith and fair dealing.”), and Stephanie is no less bound by this covenant than the Facility.

⁹ The parties’ mutual promises to arbitrate constitute sufficient consideration. *O’Neil*, 115 F.3d at 275 (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”) (citing *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“[T]he exchange of promises qualified as consideration.”); *see also Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) (“Mutual promises also constitute a good consideration.”)).

to arbitrate is in issue would violate the FAA's requirement that such agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

Moreover, the Arbitration Agreement is not unconscionable. For an agreement to be deemed unconscionable, there must be both (1) an absence of meaningful choice on the part of one party due to one-sided contract provisions and (2) terms that are so oppressive no reasonable person would make them and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). Neither is the case here.

The party alleging that the enforcement of a contract would be unconscionable bears the burden of proving both prongs of the definition. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000); accord *Marzulli v. Tenet S.C., Inc.*, No. 2015-002363, 2018 WL 1531507, at *3 (S.C. Ct. App. Mar. 28, 2018). Thus, Plaintiffs would bear the burden here.

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Simpson*, 373 S.C. 14, 25, 644 S.E.2d 663, 669. Meaningful choice refers specifically to the bargaining process involved in entering into the Arbitration Agreement. On the first page, the Arbitration Agreement provides that it may be accepted or rejected and clearly states that it is "VOLUNTARY." **Ex. 2 p. 1**. And on two occasions, once on the first page and again on the page immediately preceding the signature pages, the Arbitration Agreement expressly states in bold, all caps print:

**BY AGREEING TO HAVE ALL DISAGREEMENTS
RESOLVED THROUGH THE DISPUTE RESOLUTION
PROGRAM, THE PARTIES AGREE TO WAIVE THE RIGHT
TO A JUDGE OR A JURY TRIAL. THE ARBITRATOR'S
DECISION IS FINAL AND BINDING, AND CANNOT BE
APPEALED TO ANY STATE OR FEDERAL COURT,
UNLESS PROVIDED FOR STATE OR FEDERAL LAW.**

Ex. 2 pp. 1, 6.

By signing the Arbitration Agreement and the Admission Agreement, Stephanie, acting on behalf of Stanley, represented that she understood and assented to their terms. *Gibson*, 426 S.C. at 352, 827 S.E.2d at 181 (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”). Indeed, she was given the option of entering into the Arbitration Agreement—or *not*—and she freely and voluntarily made the decision to do so. The Arbitration Agreement by its plain language was not a precondition of admission to the Facility and simply could not have been an adhesion or “take it or leave it” contract. Stephanie had the option not to enter into the Arbitration Agreement on behalf of her husband and herself, yet she voluntarily did so, voluntarily did not retract her agreement thereto, and Stanley stayed at the Facility and received direct benefits therefrom.

The fact that the Facility is a commercial entity is also not sufficient grounds, standing alone, to prove the absence of a meaningful choice. While disparity in bargaining power and relative sophistication are factors to be considered under *Simpson*, the fact that the Facility drafted this agreement and presented it to Stanley’s representative, i.e., Stephanie, for consideration cannot justify a finding of unconscionability. See *Munoz*, 343 S.C. 531, 542 S.E.2d at 365 n. 5 (“[I]nequality of bargaining power alone will not invalidate an arbitration agreement.”).

Nonetheless, even if Plaintiffs could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiffs must still show that the “terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, this Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.”

Id. at 25, 644 S.E.2d at 668. The Arbitration Agreement provides that the arbitration proceeding shall follow the rules and procedures of the National Arbitration Forum or the Judicial Arbitration and Mediation Service. **Ex. 2 p. 4.** It expressly empowers and requires the arbitrator(s) to enforce its terms. **Ex. 2. p. 5.** It provides that there will be one arbitrator if the parties agree on the arbitrator, but if they cannot agree on the arbitrator, each party will select one arbitrator, and the two arbitrators selected by the parties will then select a third, with the decision of the majority of the arbitrators to be controlling. **Ex. 2 p. 4.** The Arbitration Agreement further provides that the Facility will pay 90% of the fees charged by the arbitrator(s) with the parties bearing their own attorney fees. **Ex. 2 pp. 4–5.**

It can only be said that the Arbitration Agreement allows for complete mutuality of remedies. Neither party is given an advantage by its terms. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration, something that, again, is expressly favored as a matter of both state and federal policy. And there is nothing about the Arbitration Agreement that would suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker.

V. THE ARBITRATION AGREEMENT IS VALID AND ENFORCEABLE, OR, ALTERNATIVELY, PLAINTIFF SHOULD BE ESTOPPED TO DENY ITS ENFORCEABILITY.

A. The Plain Language of the Agreement Binds Plaintiffs—or at least Stephanie, who clearly signed the Arbitration Agreement not only on behalf of Stanley but also on her own behalf.

Stephanie represented to the Facility’s staff and admissions personnel that she was her husband’s representative with the authority to sign documents on his behalf and to bind Stanley—and herself—pursuant to those documents. Clearly, at least Stephanie is bound by the Arbitration Agreement, which she signed for herself. Moreover, it was clearly Stephanie’s intention to bind not only herself but also Stanley according to the terms of the Admission Agreement and Arbitration Agreement, and Stanley evinced no intentions or directions to the contrary.

This Court faced facts similar to the ones at the bar in *Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC, et al.*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018). (See decision, attached hereto as **Exhibit 3.**) In *Price*, the plaintiff was the wife of a skilled nursing home resident at a skilled nursing facility in Inman, South Carolina. The wife executed a number of documents on her husband’s behalf upon the latter’s admission to the facility, including an admissions agreement and arbitration agreement identical to the agreements in the case at bar. See **Ex. 3**, p. 2-3 (emphasis added). The court determined that “the terms of the Arbitration Agreement clearly apply to the instant dispute[,]” in that it was the intent of the wife to bind her husband (and herself, as personal representative) according to the terms of the Admission and Arbitration Agreement. **Ex. 3**, p. 5.

B. The Arbitration Agreement and the Admission Agreement Merged and Must be Considered Together as Once Contract, and Stanley having effectively embraced and directly received benefits under the Admission Agreement, Plaintiffs Should Be Estopped to Deny the enforceability of the Arbitration Agreement merged therewith.

The Admission Agreement and the Arbitration Agreement should be construed together (i.e., merged) and, Stanley having effectively embraced and directly benefitted from the Admission Agreement, Plaintiffs should be equitably estopped to deny the enforceability of the Arbitration Agreement merged therewith.

1. Merger

Courts in South Carolina construe contemporaneous instruments together; if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). “[A]bsent evidence indicating a contrary intention, when instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will generally consider and construe them together on the theory that the instruments are effectively one instrument or contract.” *Id.*, see also *Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (holding that promissory notes and a mortgage agreement executed contemporaneously on the same date, must be construed together). And even when instruments are entered into by the same parties at different times but relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties. See *Plaza Development Services v. Joe Hardin Builder, Inc.*, 294 S.C. 430, 365 S.E.2d 231 (Ct. App. 1988); accord *Cafe Associates, Ltd v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

Indeed, in *Coleman v. Mariner Health Care, Inc.*, even though our Supreme Court found against merger on the particular facts of the case, it nonetheless confirmed the validity of the general proposition of law on which the *Coleman* appellants based their merger/equitable estoppel argument in the very context of nursing home admission agreements and arbitration agreements. 407 S.C. 346, 354–355, 755 S.E.2d 450, 455 (2014) (“Appellants’ equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. . . . Here, the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.”).

The *McCutcheon* Court analyzed facts almost identical to this case and determined that the arbitration agreement and admissions agreement had merged for purposes of equitable estoppel. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011WL6318575. Courts have cited to *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admission agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al.*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC, et al.*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* decisions attached as **Exhibits 4** and **5**.)

The Admission Agreement and the Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.¹⁰ They

¹⁰ To be clear, *Coleman* unequivocally answers the question of whether the Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether

should be considered merged, i.e., they should be considered and construed together as effectively one contract.

2. Equitable Estoppel of Merged Agreement

“South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel.” *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). “Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” *Int'l Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). “A nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)); see also *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290–297, 733 S.E.2d 597, 601–605 (Ct. App. 2012) (applying the direct benefits test as set forth in *International Paper Co.* to reverse the circuit court’s denial of a motion to compel arbitration); *Wilson*, 426 S.C. at 339–345, 827 S.E.2d at 174–177 (2019) (favorably discussing the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson*, 400 S.C. 281, 733 S.E.2d 597, and under which the Facility contends Plaintiff is estopped to deny the enforceability of the Arbitration Agreement here, where Stanley received direct benefits (in the form of his admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration

the presumption of merger is rebutted—are no different from the instant agreements), “the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

Agreement merged); *see also id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added).

Because of the doctrine of merger explained above, this legal principle is properly applied in this case. The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” *S. Ill. Beverage, Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001) (citing *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the federal District Court in *Jackson v. Iris.com*:

It is an axiomatic rule of contract law that a party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.

. . .

[W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).¹¹

The key to determining when direct benefits estoppel may be applied is whether the contractual benefits flowing to the nonsignatory, i.e., the party to be estopped, are direct or indirect. See *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause while at the same time denying that the arbitration clause is enforceable.

In the present case, Stanley embraced all aspects of the Admission Agreement with the Facility. It would be manifestly inequitable to permit a party to claim the other is liable in tort

¹¹ See also *THI of S.C. at Columbia, LLC v. Wiggins*, C/A No. 3:11–888–CMC, 2011 WL 4089435, at *6 (D.S.C. Sept.13, 2011) (“Hall’s care was the essential purpose of the Contract. Thus, Hall was an intended third-party beneficiary of the Contract which was signed by Wiggins in her capacity as an immediate family member. It follows that Hall was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remains binding on his estate.”); accord *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. 7:13-CV-2929-BHH, 2014 WL 6863550, at *4 (D.S.C. Oct. 31, 2014), report and recommendation adopted, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

based upon a contractual relationship, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. In other words, Plaintiffs cannot “have it both ways” by relying upon certain terms of the Admission Agreement they like and repudiating the Arbitration Agreement insofar as it does not suit them.

Plaintiffs’ allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiffs cannot assert claims against these Defendants based upon certain terms of the Admission Agreement while repudiating the Arbitration Agreement, and should be prevented from doing so pursuant to the doctrine of equitable estoppel. Moreover, as evidenced above, numerous courts have held that where a plaintiff receives the benefits of the contract—which Stanley certainly did—the non-signatory is estopped from denying an arbitration agreement merely because he did not sign the contract under which he received all of the benefits.

3. *Coleman, Thompson, and Hodge are Distinguishable*

To the extent Plaintiffs rely on *Coleman*, 407 S.C. 346, 755 S.E.2d 450, *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), in opposing the instant motion, such reliance is misplaced, as there are material distinctions between the facts of this case and those that controlled (and/or were not addressed in) *Coleman, Thompson, and Hodge*.

The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”¹² as indeed the Admission Agreement and the Arbitration Agreement were here,¹³ there is evidence to upset

¹² *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

¹³ As the *Coleman* Court expressly observes regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the

the *presumption in favor of merger*, i.e., the presumption that the contracting parties intended the instruments to be construed together as effectively one contract. This is a question of the parties' intention. *Id.* at 355, 755 S.E.2d at 455 ("in the absence of anything indicating a contrary *intention* . . .") (emphasis added). "[I]n attempting to ascertain th[e] [parties'] intention," the Court "endeavor[s] to determine the situation of the parties, as well as their purposes, at the time the contract was entered into." *Klutts*, 268 S.C. at 89, 232 S.E.2d at 25.

For the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties' intention was contrary to merger. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation."). No such inference can be drawn here. Indeed, it does not even make sense that the parties would have intended the Admission Agreement and the Arbitration Agreement not to merge.

While it is true that the Arbitration Agreement is unnecessary to the Admission Agreement,¹⁴ the converse is not true: The Admission Agreement is indeed necessary to the Arbitration Agreement. So yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would

question of whether the presumption of merger is rebutted—are no different from the instant agreements), "the documents were [indeed] executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*" 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

¹⁴ **Ex. 2 p. 1** ("YOUR PARTICIPATION IN [THE DISPUTE RESOLUTION PROGRAM] IS VOLUNTARY . . .").

have even arisen to begin with. But that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the unique circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction.

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission; whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of Stanley's relationship with the Facility: the Admission Agreement setting forth the terms of his admission, the Arbitration Agreement providing for arbitration of disputes arising out of his admission.

Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement). Unlike the Admission Agreement, however, which is capable of making sense either standing alone or, alternatively, together with the Arbitration Agreement, the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being. The fact that the Arbitration Agreement was not required for admission does not mean that it was not intended to be part of the admissions materials intended to be construed together. To say that the Arbitration Agreement is not essential to admission is not the same as saying it was not part of the admissions paperwork once it was in fact voluntarily agreed to and signed in conjunction with Stanley's admission. In other words, it did not have to be agreed to, in which case it would not have been included in the admissions paperwork, or anywhere else, as it simply would not have existed. But it was agreed to, as part and parcel of the admissions

paperwork, Stanley's admission to the Facility being the express—and only—reason why the parties chose to enter into the arbitration agreement to begin with.

Superficial matters like the fact that Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and separately signed are immaterial. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be *construed* together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of merger is to merge separate documents.

And to fall back on the idea that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context. It must be remembered that merger is the default position, i.e., it is presumed, and that this presumption arises only upon the occurrence of a specific set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all of these align—same time, same parties, same purpose, same transaction—our courts *will* consider and construe the documents together *unless* there is evidence of a contrary intention. The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” To allow the merger presumption to be upset, as, respectfully, the Court has done here, based on evidence that does not even go so far as to

clearly indicate a contrary intention, but at most *might* (or might not) reflect a contrary intention, is to allow the exception to devour the rule.

The presumption of merger arises from the concurrence of the four elements of time, parties, purpose, and transaction. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. This is why for the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). The merger presumption is “earned,” so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

Here, the instruments were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, the whole of which related to Stanley’s admission to the Facility and would not have been done at all but for his admission to the Facility. Any finding against merger improperly relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent.

VI. AT A MINIMUM, THESE DEFENDANTS SHOULD BE PERMITTED TO CONDUCT TARGETED DISCOVERY.

Assuming, *arguendo*, the Court is not yet persuaded to grant these Defendants’ primary request for relief, at a minimum, the interests of justice require that it allow these Defendants to

conduct targeted discovery on the Arbitration Agreement's enforceability based on agency or related concepts. Otherwise, these Defendants are left in the impossible Catch-22 of, on the one hand, being vulnerable to Plaintiffs' argument that they have not presented sufficient evidence to prove the Arbitration Agreement is enforceable (whether by true agency,¹⁵ estoppel,¹⁶ or ratification,¹⁷ each a fact-intensive inquiry), while, on the other hand, being vulnerable at the same time to Plaintiffs' argument that it waived its arbitration rights by making use of the tools of litigation (i.e., discovery) to prove them.

¹⁵ A true agency relationship may be established by evidence of actual or apparent authority. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). "An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties." *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145–46, 425 S.E.2d 764, 773 (Ct. App. 1992). The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

¹⁶ "When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const.*, 343 S.C. at 433, 540 S.E.2d at 118 (Ct. App. 2000).

¹⁷ Authority can be supplied to an agent retroactively by express or implied ratification. *See Brazell Bros. Contractors v. Hill*, 245 S.C. 69, 74, 138 S.E.2d 835, 837 (1964) ("Ratification, as the term implies, is the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for his subsequent assent."). "Ratification, as it relates to the law of agency, may be defined as the express or implied adoption and confirmation by one person of an act or contract performed or entered into on his behalf by another who at the time assumed to act as his agent." *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 608 (1962). It is not necessary for a principal to be present at the time of the commission of his agent's act in order for him to ratify that act. *See State v. Waldrop*, 73 S.C. 60, 52 S.E. 793, 795 (1905) ("The presiding judge ruled that he could ratify the act of the agent, whether he was present or not, and in this we see no error.").

It would be manifestly unfair and unjust for the Court to rely on the as-yet unchecked affidavits Stanly and Stephanie just submitted on September 2, 2022, without allowing these Defendants any opportunity to question them about them and then follow pertinent evidentiary leads. It cannot be the case that the proponents of arbitration (who, it must be remembered, may well be attempting to vindicate a valid right to arbitrate that the arbitration opponent has wrongfully denied) have the burden to establish that right in a fact-based judicial proceeding in which they is disallowed use of the fact-finding tools (discovery procedures) available in other judicial proceedings. Obviously, if this were an action to determine the validity of a contract other than an arbitration agreement there would be no question about these Defendants' ability to conduct discovery relevant to the facts/circumstances bearing on the contract's validity. To force them into a situation where its arbitration rights are at the mercy of unchecked affidavits (one of them filed by an affiant, Stephanie, whose new affidavit directly contradicts own prior representation of authority) and where they cannot otherwise conduct relevant discovery to vindicate those rights without risking waiving them at the same time as they prove them is not only patently unjust but also a violation of the FAA's requirement that arbitration agreements must be placed on equal footing with other contracts. *Concepcion*, 563 U.S. at 339; *see also Kindred Nursing Centers*, 137 S. Ct. at 1423.

CONCLUSION

For the reasons set forth herein, these Defendants respectfully requests that this Court enter an Order staying the pending action and compelling arbitration or, at a minimum, allowing the targeted discovery explained above, allowing additional briefing/argument to be presented based on such discovery, and providing for the instant motion to be decided once the Court has the benefit thereof.

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Charleston, South Carolina

Dated: September 6, 2022

RESIDENT ADMISSION AGREEMENT

RAA-SC (Revised: August 2011)

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EXHIBIT

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RESIDENT ADMISSION AGREEMENT

This Resident Admission Agreement ("Agreement") sets forth the terms under which the Facility will provide long-term care health services to the Resident and how the Resident will pay for such services. Based upon the consideration, mutual promises and agreements set forth in this Agreement, the parties agree as follows:

I. PARTIES

shall be referred to in this Agreement as the Facility. Whenever the term, Facility, is used in this Agreement, it refers to the company that operates the Facility and the company that manages Facility, as well as their employees and agents.

shall be referred to in this Agreement as the Resident. Except in Section VI of this Agreement, and when the context clearly indicates otherwise, whenever the term Resident is used, it refers to the Resident and anyone with legal authority to make decisions on the Resident's behalf (e.g. an agent under a health care power of attorney, a guardian or conservator, or a surrogate decision maker).

shall be referred to in this Agreement as the Responsible Party,

II. TERM AND TERMINATION

Term. This Agreement is effective as of the date of the Resident's admission to the Facility. The Agreement will continue in full force and effect until any party terminates it as provided below.

Termination. The parties may mutually agree to terminate this Agreement at any time. The Resident may also terminate the Agreement by notifying the Facility that he or she is leaving the Facility with no intention of returning to the Facility. If the Resident is absent from the Facility for any reason for thirty (30) consecutive days, this Agreement will be deemed to be terminated. If the Resident wishes to be readmitted after such an absence, the Resident and the Facility will execute a new Resident Admission and Financial Agreement. The Facility may terminate this Agreement by discharging the Resident in accordance with state and federal law. The Responsible Party may terminate this Agreement, solely as it applies to the duties and responsibilities of the Responsible Party by providing the Facility thirty (30) days written notice.

III. RIGHTS AND OBLIGATIONS OF THE RESIDENT

Physician's Care. Resident shall remain under the care of an attending physician of his or her choice (Resident's Attending Physician) throughout the stay in Facility. Facility is authorized to contact Resident's Attending Physician or his/her designated alternate whenever the Resident needs medical services. If Resident's Attending Physician is unavailable, and the Resident requires medical services, Resident authorizes Facility to obtain on behalf of Resident the services of any other physician licensed to practice medicine in this state, at Resident's sole expense (if not covered by Medicaid, Medicare or third party payer).

Resident's Attending Physician shall be one who has agreed to abide by Facility's policies and who agrees to see Resident either by visiting the Facility or through office visits. A list of physicians who treat residents of the Facility is in the Facility Guide. Resident will notify Facility if he or she selects a different attending physician during his or her stay at the Facility. If the Resident does not select his or her own attending physician, or is unable to select an attending physician, the Facility may designate an attending physician for the Resident. The Resident recognizes and agrees that all physicians providing services to the Resident, including those the Facility may designate, are not employees or agents of the Facility. Accordingly, the Facility is not legally

responsible for any physician's act or omission in providing services to the Resident as attending physician. The Resident shall be solely responsible for paying (or arranging for payment by a third party payer) for all services rendered by the Resident's Attending Physician.

Refusal of Treatment and Issuance of Advance Directive. The Resident may refuse any medical or surgical treatment that is recommended by the Resident's Attending Physician. If the Resident refuses treatment, then the Facility will make its best effort to inform the Resident of the possible consequences of such refusal. The Resident may also issue an Advance Directive in accordance with state law that describes the Resident's wishes with respect to treatments that may be administered or withheld in the event the Resident becomes unable to make health care decisions for him or herself.

Facility Policies and Rules. The Resident agrees to abide by Facility policies and rules regarding resident conduct and responsibilities. All policies and rules applicable to Resident's conduct and responsibilities are printed in the Facility Guide or this Agreement. The Facility may amend its policies and rules from time to time and will make its best effort to notify the Resident and his or her Representative of important changes.

The Resident understands that as part of Facility's emergency preparedness plans the Facility will perform emergency preparedness drills from time to time. The Resident understands these drills are performed to assure the safety of all residents, staff and visitors and agrees to participate in all scheduled drills.

Facility Smoking Policy. This is a non-smoking facility. Effective _____, the Facility will become a "smoke-free" environment. Therefore, the Facility will no longer admit residents who smoke after the effective date. In accordance with a mandate from the Centers for Medicare and Medicaid Services, existing residents who smoked prior to the effective date will be permitted to smoke in designated areas as long as they adhere to the Facility smoking policy that was in effect prior. Residents admitted after the effective date will be subject to involuntary discharge if they violate the Facility's "smoke-free" policy.

Pharmacy Services. Facility has an arrangement with a pharmacy to provide necessary prescription and over the counter medications to its residents. The Facility may participate in a therapeutic interchange program that, with the permission of the Resident's Attending Physician, allows the pharmacy to dispense less expensive medications that are the therapeutic equivalent of medications ordered by the Attending Physician. The Resident may choose another pharmacy only if that pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state laws and Facility policies. The Resident agrees to pay for medications unless they are otherwise paid for by Medicaid, Medicare, or other third party payer. All medications, including over the counter medications, must be prescribed by a licensed physician or other individual authorized by state law to write prescriptions. Resident may not bring medications or drugs onto Facility premises unless the medications or drugs are labeled according to the requirements of State and Federal law. All medications must be administered according to physician's orders. Qualified staff shall administer medications unless the Resident's Attending Physician writes an order authorizing the Resident to self-administer medications, in which case the Resident may administer his or her own medications under the guidance of a registered or licensed practical nurse.

Right to Leave. The Resident's stay with the Facility is voluntary. The Resident may leave the Facility temporarily on therapeutic leave at any time. The Resident agrees that he or she will provide the Facility with advance notice of plans to leave the Facility temporarily and how long the Resident expects to remain away from the Facility, so that the Facility may consult the Resident's Attending Physician, make arrangements regarding the Resident's medication and the like. The Resident also agrees that he or she will follow Facility rules regarding signing in and out of the Facility whenever he or she leaves the Facility. The Resident also agrees to give the Facility advance notice if the Resident intends to leave the Facility permanently so that the

Facility may obtain an appropriate discharge order from the Resident's Attending Physician. Facility will not be responsible for any personal injury, illness, or deterioration in Resident's condition while Resident is temporarily absent from the Facility. Resident and Responsible Party agree to release Facility from any and all related liability. If the Resident leaves the Facility permanently without an appropriate physician's order, then the Facility will document that the resident left against medical advice and will discharge the Resident.

Personal Items. The Facility desires to provide the Resident with a home-like environment. To that end, the Resident may bring personal items from home to the Facility. However, common sense should be used, and it is best if items of large monetary or sentimental value are not brought to the Facility. The Resident shall complete an inventory form listing the Resident's personal items at the time of admission. Additions and deletions to the inventory shall be brought to the attention of the Facility's administration so that records are current. The Resident may ask the Facility to accept Resident's personal items for safekeeping. The Facility assumes no liability for the security of personal items retained by Resident or kept in the Resident's room. All articles retained by the Resident, (including dentures, hearing aids, eyeglasses, jewelry and documents) shall be the responsibility of the Resident. At the time of transfer or discharge, the Facility shall be accountable only for the Resident's personal property items the Facility has accepted for safekeeping. The Resident must make arrangements to remove the Resident's personal property from the Facility within 72 hours of discharge unless alternate arrangements are made with Facility administration.

Residents may be permitted to bring personal refrigerators to Facility if there is appropriate space for the refrigerator, the refrigerator will not infringe on the personal space of other residents, and Facility's physical plant can support the use of the refrigerators (i.e. sufficient power source). Facility will provide a thermometer for checking refrigerator temperature, however Resident and/or Responsible Party is responsible for checking the temperature of the refrigerator and ensuring it is maintained at or below 41 degrees at all times. Further, Resident and/or Responsible Party is responsible for cleaning the personal refrigerator routinely, for ensuring that all items placed in Resident's personal refrigerator are dated and labeled to identify the contents, and for discarding expired food and drinks immediately. Facility staff will periodically perform inspections of personal refrigerators. If, at any time, during a periodic inspection Facility staff discover unidentified, undated or expired items in a personal refrigerator, then those items will be immediately discarded without the permission of Resident and/or Responsible Party. Resident and/or Responsible Party's failure to adhere to these requirements will be grounds for immediate removal of personal refrigerators.

Clothing. The Resident agrees to provide, to the extent possible, wash and wear clothing, properly labeled and marked in sufficient quantities for Resident to maintain a neat appearance.

IV. FACILITY OBLIGATIONS AND RIGHTS

Nondiscrimination. The Facility provides care on a non-discriminatory basis so that all residents are admitted and receive benefits and services without regard to race, religion, color, national origin, age, sex, disability, marital status or source of payment.

Facility Services. The Facility will provide the Resident with basic room and board as well as nursing and personal care and other ancillary items and services needed for the Resident's health, safety and well-being, consistent with the orders of the Resident's Attending Physician and the Resident's plan of care. If Resident's Attending Physician orders health care services that Facility does not have the capability to provide, Facility will arrange, with Resident approval, for the services to be provided by an outside provider or we will arrange for Resident to be transferred to the hospital or other health care provider.

Bed-hold Policy. Upon request, Facility shall hold Resident's bed when Resident is away from Facility for medical leave or on therapeutic leave, as long as the applicable bed-hold fee is paid. Except as provided below,

the daily bed-hold fee is the current daily charge for the Resident's room and board. Medicaid will pay applicable bed-hold charges for up to 10 days for short-term hospitalization, up to 18 days each state fiscal year (July 1- June 30) for therapeutic deinstitutionalization with individual leave periods not to exceed nine days and periods of leave cannot be consecutive, up to 30 days for participation in an approved rehabilitation program with approval from the Director of the Division of Community and Facility Services, and for up to 96 days each state fiscal year (July 1- June 30), with leave of a maximum of 8 days per month for leave to an intermediate care facility for the mentally retarded. In some instances leave to an intermediate care facility for the mentally retarded may be allowed to exceed 8 days per month. If a Medicaid resident exceeds 10 days for short-term hospitalization, 18 days per state fiscal year for therapeutic deinstitutionalization, 30 days for approved rehabilitation and/or 96 days per state fiscal year for leave to an intermediate care facility for the mentally retarded, the Facility may charge the Resident a bed-hold fee not to exceed the Medicaid daily rate. The Resident will be notified if bed-hold charges will be assessed, and must consent in writing to the additional charge. If bed-hold fees are not paid by Medicaid or the Resident, the Facility will not hold the Resident's bed. However, the Facility will readmit the Resident immediately upon the first availability of a bed in a semi-private room if the Resident requires the services provided by the Facility and is Medicaid eligible.

Transfer and Discharge. If a physician orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. Facility will not charge the Resident past the day the Resident is transferred unless the Resident wishes to reserve the bed for when the Resident returns in accordance with the Facility's bed-hold policy.

If Resident is transferred from Facility, or is on a therapeutic home leave in excess of the number of days specified by regulations for Medicaid residents, without arranging for a bed-hold, Facility may discharge the Resident. Except in an emergency, Facility will not transfer or discharge Resident without prior consultation with Resident. Facility will provide Resident with prior written notice of any transfer or discharge to the extent required by law.

Room Changes. The Facility reserves the right to change the Resident's room or roommate when the Facility determines it is appropriate to do so. Resident and Responsible Party will be notified prior to a transfer and will have an opportunity to provide input on roommate selection and location. The Facility will make changes in accordance with state and federal regulations.

Personal Needs Account. The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Resident must sign an authorization form. The Facility will not charge an additional fee for this service. The Facility or its contractor will hold the Resident's funds in trust in accordance with applicable federal and state laws. The Resident may see the Facility's records of the Resident's account upon reasonable request. Interest will be credited to Resident's account according to state and federal regulations.

Concerns and Issues. The Facility's policy is to support the Resident's right to voice concerns and to ensure that after a concern has been received, the Facility acts to resolve the issue and communicate the resolution to the Resident in a timely manner. In addition, the Resident may file a concern with the state survey and certification agency regarding grievances against the Facility, including allegations of resident abuse, neglect, misappropriation of property or Facility noncompliance with advance directive requirements.

V. RESIDENT PRIVACY

Release of Protected Health Information. The Facility will maintain the confidentiality of the Resident's protected health information, which includes but is not limited to information contained in the Resident's medical and financial records, in accordance with applicable state and federal law. Resident authorizes Facility to release the Resident's protected health information to the extent necessary to provide for continuity of care with other providers who render services to the Resident; to obtain payment for, or to allow other providers to obtain payment for, services rendered to the Resident; and to any agency or person with the right, by law, to review such records, including those who have a written authorization. Further, Resident authorizes other health care providers to release protected health information about the Resident to the Facility to the extent such information is reasonably related to the care that the Facility will provide or has provided to Resident.

MDS Privacy Act Notification. Facility is required by Medicare and Medicaid regulations to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity and health status. Facility is required to establish a database of resident assessment information and to electronically transmit this information to the state. The state is then required to transmit the data to the federal Central Office Minimum Data Set (MDS) repository of the Centers for Medicare and Medicaid Services (CMS). The primary use of this data is to aid in the administration of the survey and certification of Medicare/Medicaid long-term care facilities and to improve the effectiveness and quality of care given in those facilities. This system will also support regulatory, reimbursement, policy, and research functions. This system will collect the minimum amount of personal data needed to accomplish its stated purpose. The Computer Matching and Privacy Protection Act of 1988 permits the government to verify information by way of computer matches.

The information collected will be entered into the Long-Term Care Minimum Data Set (LTC MDS) system of records, System No. 09-70-1516. Information from this system may be disclosed, under specific circumstances, to: (1) a congressional office from the record of an individual in response to an inquiry from the congressional made at the request of that individual; (2) the Federal Bureau of Census; (3) the Federal Department of Justice; (4) an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease of disability, or the restoration of health; (5) contractors working for HCFA to carry out Medicare/Medicaid functions, collating or analyzing data, or to detect fraud or abuse; (6) an agency of a State government for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or quality of health care services provided in the State; (7) another Federal agency to fulfill a requirement of a Federal statute that implements a health benefits program funded in whole or in part with Federal funds or to detect fraud or abuse; (8) Peer Review Organizations to perform Title XI or Title XVIII functions; or (10) another entity that makes payment for or oversees administration of health care services for preventing fraud or abuse under specific conditions.

Collection of the Resident's social security number is voluntary. However, failure to provide this information may result in the loss of Medicare benefits provided by the Facility. The social security number will be used to verify the association of information to the appropriate individual.

VI. PAYMENT FOR SERVICES

Resident's Obligations. The Resident agrees to pay Facility for all services and items that the Facility provides to the Resident, except to the extent that the Resident's care is covered by and paid for by Medicare, Medicaid, or another third party payment source, such as private insurance.

Responsible Party's Obligations. The Responsible Party agrees to pay Facility, out of the Resident's assets to which the Responsible Party has access, for all services and items that the Facility provides to the Resident, except to the extent that the Resident's care is covered by and paid for by Medicare, Medicaid or another third

party payment source, such as private insurance. If the Responsible Party has access to Resident assets and fails to make payments to the Facility, the Responsible Party will be personally liable to the Facility to the extent of the Resident's assets that were not used to pay for the Resident's care. Notwithstanding anything else to the contrary in this Agreement, the Responsible Party shall not be liable to pay for the care Facility provides to the Resident unless Responsible Party fails to make payment to Facility for such care out of the Resident's assets to which the Responsible Party has access.

Private Pay. If the Resident's care is not covered by and paid for by Medicare, Medicaid or another third party payment source, such as private insurance, the Resident and Responsible Party agree to pay the rate established for the type of room the Resident is placed in, as well as the amount of any ancillary charges related to items or services that the Facility provides to the Resident or arranges to provide to the Resident. A list of the room types and the daily fee for each is attached to this Agreement as Exhibit 1. The Facility may increase the daily rate at any time by providing the Resident or Responsible Party written notice of the new rate at least thirty (30) days before the new rate becomes effective. One month's room and board charge, prorated based on the day of the month Resident is admitted to Facility, is payable to Facility at the time of admission. The Facility will provide the Resident or Responsible Party with a monthly invoice that itemizes all charges incurred by the Resident. The Facility will bill room and board charges in advance and ancillary charges in arrears. Payment of the invoice is due within ten (10) days of receipt of the invoice.

Medicaid Residents. If the Resident is a Medicaid beneficiary at the time of admission, then the State Medicaid program will pay for much of the Resident's care at the Facility. The services and items covered by Medicaid for which the Facility may not charge the Resident, as well as those non-covered items and services, are listed on Exhibit 1 and 2 to this Agreement. If the Resident or Responsible Party requests that the Facility provide services or items that are not covered by the Medicaid program, then the Resident and Responsible Party agree to pay for such non-covered items and services. In addition to the amounts paid by the State Medicaid program for the Resident's care, the state sets an amount of money, called the Resident Liability that the Resident must pay to or have paid directly to the Facility. Facility will invoice the Resident the amount of the Resident Liability and the amount of any non-covered items or services on a monthly basis. The Resident and Responsible Party agree to pay the Facility within ten (10) days of receipt of invoice, or by such deadline that exists under State law. From time to time, the State may make adjustments to the Resident Liability owed by the Resident. In the event the State makes such an adjustment retroactively, the Resident and Responsible Party agree to pay the adjusted amount to the Facility within thirty (30) days of notice of the adjustment. If the Resident's Medicaid coverage expires or lapses for any reason, then Resident shall be classified as a Private Pay Resident, and the terms of this Agreement applicable to Private Pay Residents shall apply to Resident, unless an alternative third party payer is available.

Medicaid Pending Residents. Residents who have applied for Medicaid benefits and meet clinical need and financial criteria but who have not been approved for Long Term Care Medicaid at the time of admission will be referred to as Medicaid Pending Residents. Medicaid Pending Residents agree to follow through all steps necessary to receive Medicaid benefits and to become enrolled in the Medicaid program as soon as possible after admission to Facility. Responsible Party agrees to take all steps necessary to assist the Medicaid Pending Resident to complete the application process to become eligible for Medicaid benefits. Facility may also provide the Medicaid Pending Resident with assistance to complete the application process. The Medicaid Pending Resident and Responsible Party agree to provide the state Medicaid program and Facility with such statements of the Resident's assets, income and other financial information as is reasonably requested. Facility will estimate the Medicaid Pending Resident's liability payment and will invoice the Resident the amount of the estimated resident liability payment and the amount of any non-covered items or services on a monthly basis. Resident and Responsible Party agree to make payment to Facility within ten (10) working days of receipt of invoice. Upon approval of the Medicaid Pending Resident into the state Medicaid program, Facility will compare the estimated resident liability payment with the amount of the resident liability payment set by the

state, Facility will bill Resident or show a credit on Resident's account for the difference on the next invoice. In the event that the state denies Medicaid coverage for Resident, or determines that any portion of the Medicaid Pending Resident's stay at Facility is not covered by the Medicaid program, then, to the extent allowed by applicable laws, Resident and Responsible Party agree to pay Facility the private room and board rate applicable to the period of non-coverage, as well as Facility's customary rate for ancillary items and services that Facility provided during the period of non-coverage. If the Medicaid Pending Resident is not enrolled in the state Medicaid program within sixty (60) days of Admission, then Facility may begin discharge proceedings in accordance with applicable law.

Medicare Residents. Resident may be eligible to have all or a portion of his or her stay in Facility paid for by the Medicare Program. Generally, Medicare Part A pays for services to Residents who have recently been in the hospital for at least three consecutive midnights and who continue to require a certain level of nursing or rehabilitation services. A list of items and services covered by Medicare Part A and a list of items and services that are not covered by Medicare Part A, are attached to this Agreement as Exhibits 1 and 3. Even though a Resident's stay is covered by Medicare, the Resident may be required to pay Facility coinsurance as required by Medicare regulations. The amount of the coinsurance is set annually by the Medicare program. The current amount of the coinsurance is set forth on Exhibit 1 to this Agreement. Facility will send Resident a monthly invoice listing any coinsurance amounts and charges for non-covered items and services. Resident and Responsible Party agree to pay Facility the amount shown on the invoice within 10 days of receipt. Medicare coverage is temporary. If the Resident remains in the Facility after Resident's Medicare coverage expires, the Resident and Responsible Party agree to (i) pay Facility the then current private pay daily rate plus the Facility's customary charges for ancillary services; or (ii) make other arrangements to have the Resident's care paid for, e.g., through the Medicaid program or private insurance. If Medicare denies payment for the Resident's stay in the Facility, then to the extent allowed by law, Resident shall be classified as a Private Pay Resident and the terms of this Agreement applicable to Private Pay Residents shall apply to Resident, unless another third party payer is available.

Other Payment Sources. If Resident's stay is covered by and paid for by any other third party payment source, then Resident and Responsible Party agree to pay Facility any applicable deductible, copayment, coinsurance or other amount, including payment for items and services not covered by the third party payment source within 10 days of receipt of an invoice from Facility.

Transportation. Facilities per diem or other daily rate includes the following transportation services:
 . Other scheduled and unscheduled transportation may be available upon request and then at applicable charges, as set forth in Exhibit 1.

Changes in Payment Source. Resident and Responsible Party understand that Resident's payment source may change over the course of Resident's stay in the Facility. For example, a resident may be admitted to Facility from the hospital with Medicare coverage. After such Medicare coverage expires, the Resident may have private insurance or Medicaid coverage to pay for the Resident's care, or the Resident may become private pay. Resident and Responsible Party agree to abide by the terms of this Agreement that are applicable to Resident's source of payment as such source of payment may change during the course of the Resident's stay at Facility. It is ultimately the Resident's and Responsible Party's responsibility to pay for or arrange for an alternative payment source to pay for all care the Facility provides to Resident during the Resident's stay at Facility.

Non-Sufficient Funds. If checks are returned for non-sufficient funds, Facility will charge a fee of \$35.00.

Payment. If Resident or Responsible Party fail to make any payment to Facility when due, then interest shall accrue on all unpaid amounts at 1.5% per month. If a check payable to Facility for payment is returned for insufficient funds, Resident or Responsible Party is responsible for all associated fees to the extent State law

allows. If the Facility hires an attorney to collect any unpaid balances, Resident and Responsible Party (to the extent the Responsible Party may be personally liable) agree to pay Facility's reasonable attorney fees and costs of collection in addition to any other amounts owed pursuant to this Agreement.

Refunds. If the Resident is discharged from the Facility, the Facility will apply any prepayment towards amounts due and owing to the Facility, and will refund the difference within 30 days, or sooner, if required by law. In the event of the Resident's death, refunds shall be paid to the Resident's estate or appropriate family member within thirty (30) days, or sooner if required by law.

Assignment of Benefits. The Resident authorizes and requests that payment of authorized Medicare Part A and Part B benefits, Medicaid benefits and any other payments for services furnished by or on behalf of the Facility be made to the Facility.

VII. MISCELLANEOUS

Identity Theft. Federal Trade Commission and federal financial regulatory agencies have enacted policies and regulations to detect, prevent, and mitigate identity theft. Pursuant to these rules and regulations, Facility will take reasonable efforts to verify the identity of each resident. Further, the Federal Identity Theft Prevention Program has identified certain "red flags". If any identified "red flags" appear, then they will be reported to the appropriate state and federal authorities, as the law requires.

Contributions, Donations and Gifts. Contributions, donations and/or gifts made to Facility by a governmentally assisted resident, his or her Responsible Party or family are given solely at their discretion, and in no way affect the eligibility for admission or availability of or access to the normal services provided to all residents. Facility does not solicit, or in any way require, such contributions, donations, and/or gifts.

Private Duty Nurses/Geriatric Aids. If the Resident wants a private duty nurse or private duty geriatric aid, then the Resident is responsible for selecting a person licensed and/or certified according to state laws and regulations. Resident is also responsible for paying him or her, and for informing Facility that an aid or nurse has been hired. The person that Resident hires cannot be an employee or agent of Facility, but he or she must meet Facility standards and follow Facility policies and procedures. Employees of Facility will not serve as private duty nurses or private duty geriatric aids.

Photographs. Resident agrees to allow Facility to photograph or videotape Resident as a means of identification or for health related purposes. The photographs or videotapes may also be used to help locate Resident in the event of an unauthorized absence from Facility, but shall otherwise be kept confidential. If Facility intends to use the photograph or videotape for purposes other than those noted above, Facility shall get written permission from Resident in advance of such use. Resident retains the right to refuse the taking of a photograph at any time.

State Resident Rights. A complete copy of State Resident Rights is located in the Facility Guide.

Entirety of Agreement. This Agreement, including all Exhibits hereto, supersedes all other agreements, either oral or in writing, between the parties, and contains all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement. Except as stated in this Agreement and the Exhibits hereto, no other agreement, statement, or promise shall be valid or binding. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

Amendment Due to Reimbursement Changes. If the governmental agencies that administer Medicare or Medicaid, or any other payer, or any other federal, state or local government or agency adopts any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect which affects the method or amounts of reimbursement or payment for services rendered under this Agreement, or which otherwise materially affects the obligations of Facility, Facility may give Resident/Responsible Party notice of its intent to amend this Agreement or, if applicable, increase charges in order to comply with the change in government law, rule, regulation, or standard or interpretation.

Section Headings. The section headings used in this Agreement are for reference purposes only and shall not be construed to add substantive content to the terms of this Agreement.

Counterparts. This Agreement may be signed in multiple counterparts, which taken together, shall be construed as a single document.

Savings Clause. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that provision shall not affect any other part of the Agreement and this Agreement shall be construed as if that section had never been included.

Parties Bound. This Agreement shall be binding on the Facility and its assigns, the Resident, the Responsible Party and the Resident's heirs, executors and administrators.

In Witness Whereof, the Parties have executed this Agreement as of the dates set forth below.

For the Resident:

Signature: _____

Printed Name: _____

Date: _____

For the Facility:

Signature: _____

Printed Name: _____

Date: _____

For the Responsible Party:

Signature: _____

Printed Name: _____

Date: _____

If an individual other than the Resident signs on behalf of the Resident, indicate the relationship to the resident and obtain copies of relevant documentation at the time of admission.

_____ Conservator/Guardian	_____ Surrogate Decision maker
_____ Medical or Health Care Power of Attorney	_____ Relative (state relationship)
_____ Other: _____	(Specify Relationship)

Amendment Due to Reimbursement Changes. If the governmental agencies that administer Medicare or Medicaid, or any other payer, or any other federal, state or local government or agency adopts any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect which affects the method or amounts of reimbursement or payment for services rendered under this Agreement, or which otherwise materially affects the obligations of Facility, Facility may give Resident/Responsible Party notice of its intent to amend this Agreement or, if applicable, increase charges in order to comply with the change in government law, rule, regulation, or standard or interpretation.

Section Headings. The section headings used in this Agreement are for reference purposes only and shall not be construed to add substantive content to the terms of this Agreement.

Counterparts. This Agreement may be signed in multiple counterparts, which taken together, shall be construed as a single document.

Savings Clause. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that provision shall not affect any other part of the Agreement and this Agreement shall be construed as if that section had never been included.

Parties Bound. This Agreement shall be binding on the Facility and its assigns, the Resident, the Responsible Party and the Resident's heirs, executors and administrators.

In Witness Whereof, the Parties have executed this Agreement as of the dates set forth below.

For the Resident:

Signature: _____

Printed Name: Stanley Floyd

Date: 5/16/19

For the Facility:

Signature: Katelyn Hodges

Printed Name: Katelyn Hodges

Date: 5/16/19

For the Responsible Party:

Signature: Stephanie Floyd

Printed Name: Stephanie Floyd

Date: 5-4-19

If an individual other than the Resident signs on behalf of the Resident, indicate the relationship to the resident and obtain copies of relevant documentation at the time of admission.

____ Conservator/Guardian

____ Medical or Health Care Power of Attorney

____ Other: _____

____ Surrogate Decision maker

____ Relative (state relationship)
(Specify Relationship)

Consent to Treatment

The Resident acknowledges that the Facility renders services to the Resident under the general and specific instructions of the Resident's Attending Physician. The Resident authorizes and directs Facility to provide routine and emergency care as the Resident's Attending Physician or designee may direct from time to time. If Resident's Attending Physician and such attending physician's on-call designee are unavailable and the Resident requires medical services, or if the Attending Physician has not seen Resident in accordance with the timeframes established by law; then Resident authorizes Facility to obtain, on behalf of Resident, the services of any other physician licensed to practice medicine in this state, at Resident's sole expense (if not covered by Medicaid, Medicare or third party payer) until Resident's Attending Physician is available, or Resident has selected a new Attending Physician. In that event, Resident authorizes and directs Facility to provide routine and emergency care as required for Resident's well-being, health, and safety in accordance with the orders of such physician.

Stanley Floyd

Resident Name (Print)

Resident Signature

[Signature]
Legal Representative Signature (e.g., Guardian)

Agent Signature (e.g., Agent through health care
Power-of-Attorney or Surrogate Decision-maker)

[Signature]
Responsible Party Signature (e.g., Family member)

[Signature]
Facility Representative Signature

05-06-2019
Date

Exhibit 11

Pneumococcal and Influenza Immunization Consent Form

PNEUMOCOCCAL IMMUNIZATION

BENEFITS:

Pneumococcal disease is a serious illness that causes much sickness and death. The pneumococcal vaccine protects against 23 types of pneumococcal disease. About 1 in 20 people who get pneumococcal pneumonia die. The vaccine begins to provide protection within 2-3 weeks. The pneumococcal vaccine is a very safe vaccine.

Side Effects/Risk Factors

- Soreness/redness of the arm
- Fever (low grade)
- Muscle aches
- Rash/hives (allergic reaction)

Pneumococcal vaccinations are contraindicated for people who have experienced a severe allergic reaction with previous vaccination.

A single dose of pneumococcal vaccine is recommended for most persons aged 65 or older. Some people might need a booster after 5-10 years, as deemed appropriate by the physician. Some people who were younger than 65 when they received the vaccine may need a second dose at age 65. The pneumococcal vaccine can be given at the same time as the influenza vaccine. If the date of the last vaccine is unknown, then it may be administered at the physician's discretion.

The Resident/Responsible Party has the right to refuse the vaccination.

☐ Accept

☒ Refuse

Date of last known pneumococcal vaccination: _____

Stephan DeLuz
Signature of Resident/Responsible Party

Date

INFLUENZA IMMUNIZATION

BENEFITS:

The best single way to protect against the flu is to get vaccinated in the fall. Vaccination is recommended any time during flu season (October-April) to prevent development of the flu. The vaccine begins to provide protection within 2 weeks.

Side Effects/Risk Factors

- Soreness/redness of the arm
- Fever (low grade)
- Muscle aches

Influenza vaccinations are contraindicated for people with a severe allergy to eggs, people that developed Guillain-Barre Syndrome within 6 weeks of getting a flu vaccination, or people that have had an allergic reaction to the flu vaccine in the past. People who have a moderate or severe illness with fever should wait until symptoms lessen. Coincidental respiratory disease unrelated to the flu vaccine may occur after vaccination.

The influenza vaccine is offered yearly, as deemed appropriate by the physician. If the date of the last vaccine is unknown, then it may be administered at the physician's discretion.

The Resident/Responsible Party has the right to refuse the vaccination.

☐ Accept

☒ Refuse

Date of last known influenza vaccination: _____

Stephan DeLuz
Signature of Resident/Responsible Party

Date

(Source of Benefits/Risk Factors from Centers for Disease Control)

Katelyn Hodges
Signature of Facility Representative

05/16/19
Date

NAME-Last

First

Middle

Attending Physician

Record No.

Room/Bed

Exhibit 12 (continued)

Acknowledgement of Receipt of Notice of Privacy Practices (Facility)

Stanley Floyd
Resident's Name

I acknowledge that I have received a copy of the Facility Notice of Privacy Practices.

Stephanie Floyd
Signature (resident or legal representative)

5/6/19
Date

Stephanie Floyd
Printed Name

wife

Relationship to Resident (self, parent, legal guardian, personal representative)

Office Use Only

Signature by the individual or personal representative was not obtained on this form, despite our good faith effort to obtain it, for the following reason(s):

- ☐ The individual or personal representative refused to sign.
- ☐ The individual or personal representative failed to return the acknowledgement mailed or delivered on _____ (date).
- ☐ The individual or personal representative was unable to sign because of an emergency, _____ (describe).
- ☐ The individual or personal representative was unable to sign because (other, describe) _____.

Katelyn Hodges
Staff Signature

5/6/19
Date

Katelyn Hodges
Staff Name

DISPUTE RESOLUTION PROGRAM

TO BE COMPLETED BY ADMISSIONS' STAFF DURING ADMISSIONS PROCESS

**DEFENDANT'S
EXHIBIT**

2

TO BE COMPLETED BY ADMISSIONS' STAFF DURING ADMISSIONS PROCESS

AGREEMENT ACCEPTED /

AGREEMENT DECLINED

AGREEMENT FOR DISPUTE RESOLUTION PROGRAM

PLEASE READ CAREFULLY

We have a program to resolve disagreements with residents and their families or legal representatives called the Dispute Resolution Program ("DRP"). The purpose of DRP is to enhance the quality of care that is provided to our residents, and to resolve any disagreements about care and other services that we provide and that may arise.

DRP is valuable to all parties because it offers a streamlined process to settle disagreements. DRP increases the likelihood that disagreements can be resolved more quickly and less expensively than by litigation and that residents themselves will actually benefit from faster resolution of disagreements. Participation in DRP also helps to reduce the costs of health care for everyone.

THIS AGREEMENT IS SUBJECT TO ARBITRATION DISPUTES

BY AGREEING TO HAVE ALL DISAGREEMENTS RESOLVED THROUGH THE DISPUTE RESOLUTION PROGRAM, THE PARTIES AGREE TO WAIVE THE RIGHT TO A JUDGE OR A JURY TRIAL AND TO HAVE THE DISPUTE RESOLVED THROUGH VARIOUS STEPS, CULMINATING IN A DECISION BY AN ARBITRATOR.

DRP PROGRAM DESCRIPTION

WHAT ARE MY RIGHTS AND RESPONSIBILITIES UNDER THIS AGREEMENT?

YOUR PARTICIPATION IN DRP IS VOLUNTARY. BY SIGNING THIS AGREEMENT, YOU AGREE TO PARTICIPATE IN THE DISPUTE RESOLUTION PROGRAM. THIS AGREEMENT MAY BE REVOKED BY SENDING A WRITTEN NOTICE OF REVOCATION WITHIN THIRTY (30) DAYS FROM THE DATE OF ADMISSION OR THE DATE ON WHICH THIS AGREEMENT IS SIGNED, WHICHEVER OCCURS LATER. A DECISION TO REVOKE THIS AGREEMENT WILL IN NO WAY ADVERSELY AFFECT THE RESIDENT'S STATUS AT THE FACILITY. WE WILL NOT REFUSE TO ADMIT, ATTEMPT TO DISCHARGE THE RESIDENT OR TAKE ANY OTHER ADVERSE ACTION

YOU AGREE THAT YOUR PARTICIPATION IN DRP WILL BENEFIT AND BIND YOUR FAMILY, HEIRS, SUCCESSORS, ASSIGNS, AGENTS, INSURERS, TRUSTEES, AND/OR YOUR LEGAL REPRESENTATIVES, INCLUDING THE PERSONAL REPRESENTATIVE OR EXECUTOR OF YOUR ESTATE; AND HIS/HER SUCCESSORS, ASSIGNS, AGENTS INSURERS, TRUSTEES AND REPRESENTATIVES. BY AGREEING TO PARTICIPATE ALL DISAGREEMENTS MUST BE RESOLVED THROUGH THE DISPUTE RESOLUTION PROGRAM. LIKEWISE, THE FACILITY AND ALL OF ITS PARENTS, AFFILIATE, SUBSIDIARY COMPANIES OWNERS, OFFICERS, DIRECTORS, EMPLOYEES SUCCESSORS, ASSIGNS, AGENTS, INSURERS AND REPRESENTATIVES WILL BE REQUIRED TO RESOLVE DISAGREEMENTS PURSUANT TO THE PROGRAM.

INFORMATION RELATING TO THE SETTLEMENT OF A DISAGREEMENT IS CONFIDENTIAL AND MUST NOT BE DISCLOSED TO ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, DISCOVERY RESPONSES, THE ARBITRATOR'S DECISION, AND THE ARBITRATION AWARD, UNLESS OTHERWISE REQUIRED BY LAW.

YOU UNDERSTAND, AGREE TO, AND HAVE RECEIVED A COPY OF THIS AGREEMENT, AND ACKNOWLEDGE THAT THE TERMS HAVE BEEN EXPLAINED TO YOU OR YOUR REPRESENTATIVE, BY OUR AGENT, AND THAT YOU OR YOUR REPRESENTATIVE HAVE HAD THE OPPORTUNITY TO ASK QUESTIONS ABOUT THIS AGREEMENT AND THE DISPUTE RESOLUTION PROGRAM.

NOTHING IN THIS AGREEMENT SHALL PREVENT YOU OR ANY OTHER PERSON FROM REPORTING ALLEGED VIOLATIONS OF LAW TO THE APPROPRIATE ADMINISTRATIVE, REGULATORY OR LAW ENFORCEMENT AGENCIES.

THE PARTIES AGREE THAT THIS AGREEMENT, INCLUDING PARTICIPATION IN THE DISPUTE RESOLUTION PROGRAM, WILL CONTINUE AFTER YOUR TRANSFER OR DISCHARGE FROM THE FACILITY.

DEFINITIONS:

1. **"Parties"** include (a) the resident, any and all family members who would have a right to bring a claim in state court on behalf of the resident or the resident's estate, a legal representative, including a power of attorney for healthcare and/or financial matters or a court appointed guardian, or any other person that may have a cause of action arising out of or relating in any way to the resident's stay at the facility and (b) the facility, any parent or subsidiary of the facility, any company affiliated with the facility, or any of the facility's officers, directors, managers, employees, or agents acting in such capacity or any other person that may have a cause of action arising out of or relating in any way to the resident's stay at the facility.
2. **"Dispute"** means (a) any claim or dispute totaling \$50,000.00 individually or in the aggregate that would constitute a cause of action that either party could bring in a court of law (b) this agreement does not prevent either party from initiating a grievance proceeding, complaint to survey agencies, appeal proceedings with the

appropriate state or federal entity regarding an involuntary transfer or discharge, or any such claim or dispute involving solely a monetary claim in an amount less than \$50,000.00. Any such claim shall not be deemed a dispute under this agreement.

Notwithstanding the foregoing the parties may agree voluntarily to mediate or arbitrate the claims listed in Section (b) above in accordance with the terms of the Agreement, and applicable State or Federal law.

DRP consists of three steps that must be followed:

STEP 1 NOTICE OF THE DISAGREEMENT

If a party to this Agreement has a disagreement with the other party, the party with the disagreement must notify the Administrator, in writing, regarding the specific nature of the dispute. The written Notice should include details regarding the incident(s) or circumstance(s) that is the subject of the dispute. The details should include dates, times, a description of the incident(s) or circumstance(s), and identification of the individuals involved. The Administrator will forward the Notice to the DRP Review Committee within five (5) days of receipt. The members of the DRP Review Committee will include the Regional Vice President of Operations, the Regional Clinical Director, the District Human Resources Representative and the Risk Services Coordinator. Within fourteen (14) days of receiving the written Notice of a Dispute the Committee must will review the details of the Notice and inform the parties in writing of the Review Committee's decision.

STEP 2 MEDIATION BY A THIRD PARTY

If the DRP Review Committee is unable to resolve the dispute, either party may request mediation in writing within thirty (30) days of the DRP Review Committee's decision, or, in the event that the DRP Committee fails to render a decision, within forty-four (44) days of receiving the Written Notice of a Dispute. . Written requests must be submitted to the facility administrator within the applicable limitations period provided by law for the dispute. Mediation is an informal process in which an impartial third party (someone not associated with the parties) will meet face-to-face with both parties to help them reach a mutually agreeable solution. The mediator does not have the authority to impose a decision that the parties are required to follow. An impartial third party experienced in mediation can help each party understand the other party's point of view, which often leads to a resolution. Under no circumstances will mediation be a condition precedent to arbitration.

STEP 3 ARBITRATION

If a satisfactory resolution of the disagreement cannot be reached with sixty (60) days of a request for mediation, either party may request arbitration in writing within thirty (30) days of the conclusion of mediation. A written demand for Arbitration must be submitted to the facility administrator within the applicable limitations period provided by law for the dispute. This is the

third and final step of the Program. Arbitration is a process in which an impartial third party called an arbitrator (who usually is a retired judge or attorney) conducts a hearing, reviews evidence from the parties, and renders an opinion on legal responsibility and damages in the form of an “award.” Unlike Mediation, the arbitrator’s decision is final, and the parties are required to follow the arbitrator’s decision.

ADDITIONAL INFORMATION

IS THERE A DEADLINE FOR BRINGING DISAGREEMENTS UNDER THE DRP?

The parties agree that they will notify the other party of all disagreements under DRP within the deadline by which the disagreements would be required to be filed under applicable federal law or the state statute of limitations.

WHO WILL MEDIATE OR ARBITRATE THE DISAGREEMENT?

The mediation and arbitration of all disagreements under DRP must be settled by the rules and procedures of the National Arbitration Forum (“NAF”) or the Judicial Arbitration and Mediation Service (“JAMS”). One arbitrator can hear the dispute if the parties can mutually agree on the appointment of one arbitrator. If the parties cannot agree on the appointment of one arbitrator, each party will appoint an arbitrator and the two appointed arbitrators must appoint a third arbitrator using the applicable rules and procedures. In this instance, the award will be binding based on a decision of the majority of the arbitrators. The parties may agree to use a local arbitrator(s) in accordance with the process described above using the JAMS’ rules and procedures or such other rules and procedures as the parties may agree to use.

WHERE WILL THE MEDIATION OR ARBITRATION TAKE PLACE?

The parties must agree on the place where the mediation or arbitration will take place and inform the mediator or arbitrator of the location. If the parties cannot agree on the location for the mediation or arbitration, the mediator or arbitrator will have the authority to determine the place for the mediation or arbitration in accordance with JAMS or NAF rules (as applicable) and considerations of fairness, which is called due process. The mediator or arbitrator will take into account such factors as the subject matter of the disagreement, the convenience of the parties and witnesses, and the resources of the parties. Unless the parties agree otherwise, the mediator or arbitrator will set the date and time for each proceeding.

HOW MUCH WILL MEDIATION OR ARBITRATION COST?

Under DRP, the Facility will pay for ninety percent (90%) of the fees for mediation and arbitration and you will pay for the remaining ten percent (10%). Each party shall be responsible for their own attorneys’ fees. This includes the costs associated with presenting claims and/or defenses (including attorney fees and costs) unless state or federal law requires that the party

who succeeds at mediation or arbitration be entitled to payment for all or part of these costs, in which case state or federal law will apply.

ARE AWARDS FOR DAMAGES AVAILABLE UNDER THE DRP?

If the matter is resolved by arbitration, the arbitrator may award damages to either party in accordance with all applicable laws, rules, and regulations and this Agreement. The parties are entitled to all damages that would be available to them through the judicial process. All awards under DRP will be restricted to the limits on damages set forth in r federal or state law where permitted by relevant federal or state law. If it is determined that any requirement regarding the award of damages in this Agreement is invalid, unenforceable, or contrary to public policy, relevant federal or state law will control all damage awards.

HOW WILL THE TERMS OF THIS AGREEMENT BE ENFORCED?

The arbitrator is required to apply and enforce the terms of this Agreement. . Any party may bring an action in any proper court to require arbitration under this Agreement and to enforce an arbitration award.

WHAT LAW APPLIES TO THE RESOLUTION OF DISAGREEMENTS UNDER THIS AGREEMENT?

DRP and the nature and extent of our business activities substantially affects, relates, and involves the purchase of substantial quantities of goods and services that are produced outside of the state and shipped across state lines to the Facility, which is referred to as interstate commerce. As such, the Federal Arbitration Act ("FAA"), not state law, will control and applies to the arbitration of disagreements between the parties and the parties agree to incorporate such laws into this Agreement. This Agreement will otherwise be governed by the State law where the Facility is located. This shall include local court rules governing discovery, and state law governing state medical liability act(s), if applicable. If it is determined that the FAA does not apply to arbitration under this Agreement, the parties agree to resolve any disagreement through arbitration under control of state law.

WHAT IF A PROVISION OF THIS AGREEMENT IS HELD TO BE INVALID, UNENFORCEABLE, OR CONTRARY TO PUBLIC POLICY?

This Agreement is intended to be performed in accordance with all applicable laws, ordinances rules and regulations. If any term or phrase or provision of this Agreement is held to be invalid, unenforceable, or contrary to public policy, it will not invalidate the remainder of this Agreement. Instead, this Agreement will be determined to be amended to conform with applicable federal or state laws, ordinances, rules, or regulations and will otherwise remain in full force and effect.

WHAT IF A PARTY WAIVES A TERM OR CONDITION OF THIS AGREEMENT?

The waiver by either party of any term or condition of this Agreement or the breach of this Agreement is not a waiver of any other term or condition of this Agreement.

WHAT HAPPENS IF A PARTY FILES A LAWSUIT INSTEAD OF PARTICIPATING IN DRP?

If a party to this Agreement files a lawsuit in connection with a disagreement instead of participating in DRP, the other party does not lose its right to mediation or arbitration if a demand to enforce DRP is served on the other party before the first day of a judge or jury trial. The party who files such lawsuit instead of proceeding under this program will be liable for the other party's reasonable costs and fees incurred to have the lawsuit dismissed and the disagreement transferred to a mediation or an arbitration proceeding.

If a judge or jury enforces DRP with respect to a disagreement for which a lawsuit has been filed, the party who brought the lawsuit follow the three steps set forth in this Agreement within the deadline by which his or her disagreement would be required to be filed under applicable federal law or the state law in which the Facility is located.

This Agreement constitutes the entire agreement of the parties with respect to the Program, as a complete and final integration thereof. All understandings and agreements heretofore had between the parties are merged into this Agreement, which alone fully and completely expresses their understandings. In entering this Agreement, no party has relied upon a representation or warranty made by another party which is not contained in this Agreement or expressly referred to herein.

BY AGREEING TO HAVE ALL DISAGREEMENTS RESOLVED THROUGH THE DISPUTE RESOLUTION PROGRAM, THE PARTIES AGREE TO WAIVE THE RIGHT TO A JUDGE OR A JURY TRIAL. THE ARBITRATOR'S DECISION IS FINAL AND BINDING, AND CANNOT BE APPEALED TO ANY STATE OR FEDERAL COURT, UNLESS PROVIDED FOR STATE OR FEDERAL LAW.

[SIGNATURES ON FOLLOWING PAGE]

If resident is competent, complete this section:

Signature of Resident

(Sign where resident is mentally competent to consent to this Agreement under State law)

Date: _____

Signature of Representative

(Sign where mentally competent resident is unable to physically execute the Agreement and authorizes a Representative to sign Agreement on the resident's behalf)

Date: _____

Signature of Facility Witness One

Date: _____

Signature of Facility Witness Two

Date: _____

Signature of Facility Representative

Date: _____

If resident is adjudged incompetent, complete this section:

I am the spouse, responsible party, legal guardian or power of attorney of the resident and have the authority to sign the agreement on his/her behalf. In signing this Agreement, the Legal Representative or Family Member binds both the Resident and themselves individually.

Signature of Legal Representative or Family Member

Date: _____

Signature of Facility Witness One

Date: _____

Signature of Facility Witness Two

Date: _____

Signature of Facility Representative

Date: _____

If resident is adjudged incompetent, complete this section:

I am the spouse, responsible party, legal guardian or power of attorney of the resident and have the authority to sign the agreement on his/her behalf. In signing this Agreement, the Legal Representative or Family Member binds both the Resident and themselves individually.

Stephanie Flazel
Signature of Legal Representative or Family Member

Date: 5/6/19

Katelyn Hodges
Signature of Facility Witness One

Date: 5/6/19

Signature of Facility Witness Two

Date: _____

Katelyn Hodges
Signature of Facility Representative

Date: 5/6/19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2022-CP-43-00355
STANLEY DALE FLOYD and	)	
STEPHANIE FLOYD,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANTS' MOTION
	)	TO ALTER, AMEND, AND/OR
SSC SUMTER EAST OPERATING	)	RECONSIDER ORDER DENYING
COMPANY, LLC d/b/a Sumter East Health	)	MOTION TO COMPEL ARBITRATION
And Rehab Center, SSC EQUITY HOLDINGS,	)	AND MOTIONS TO STAY
LLC, SAVASENIORCARE, LLC,	)	
SAVASENIORCARE ADMINISTRATIVE	)	
AND CONSULTING, LLC,	)	
SAVASENIORCARE CONSULTING, LLC,	)	
SMV SUMTER EAST, LLC, and NATASHA	)	
NADKARNI,	)	
	)	
Defendants.	)	
	)	

TO: THE HONORABLE BENJAMIN H. CULBERTSON, Presiding Judge, and MATTHEW W. CHRISTIAN, ESQUIRE, CHRISTIAN & CHRISTIAN, LLC, Attorney for Plaintiffs

NOW COME the Facility¹ and Nadkarni² and the Other Defendants³ (collectively, "Defendants"), by and through their undersigned counsel, pursuant to Rules 52 and/or 59(e), SCRCP, and, on the grounds set forth below, hereby move this Honorable Court to alter, amend, and/or reconsider its Order filed October 4, 2022 (the "Subject Order"), which denied the Facility and Nadkarni's motion to compel arbitration (the "Motion to Compel Arbitration") and the Other Defendants' motions to stay this action pending the outcome of the arbitration that the Facility and

¹ The "Facility" refers to Defendant SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center.

² The "Nadkarni" refers to Defendant Natasha Nadkarni.

³ The "Other Defendants" refers to Defendants SSC Equity Holdings, LLC, SavaSeniorCare, LLC, SavaSeniorCare Administrative and Consulting, LLC, SavaSeniorCare Consulting, LLC, SMV Sumter East, LLC.

Nadkarni sought to compel (“Subject Order”) (collectively, the Motion to Compel Arbitration and the Motions to Stay are the “Underlying Motions”).

1. **Defendants ask the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Underlying Motions, i.e., each and every distinct issue/argument advanced in the Underlying Motions themselves, in the memo in support of the Motion to Compel Arbitration,⁴ and/or via oral argument, all of which is/are hereby incorporated herein by reference.**

See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

2. **Subject to and without waiving or otherwise lessening the all-encompassing scope of No. 1 above, Defendants respectfully contend that the Subject Order is erroneous and ask the Court to (re)consider and expressly rule on/address the following points.**
 - (a) **The Subject Order misstates the burden on the Facility and Nadkarni when it states, “the party seeking enforcement of the [arbitration] agreement bears the burden to prove a valid arbitration agreement exists that is enforceable, knowing, voluntary, and intentional.”⁵**

As an initial matter, this statement is erroneous to the extent that it the only way the proponent of arbitration can prevail is via an arbitration agreement that “enforceable” per se. This is not so. Coupled with the merger of the Admission Agreement and the Arbitration Agreement, equitable estoppel provides a workable theory for enforcement of an arbitration agreement against

⁴ The “Memo in Support of the Underlying Motion” refers to the Facility’s supporting memorandum filed May 18, 2022.

⁵ (Subject Order p. 4; *see also id.* at 3 (“The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement.”).)

a nonsignatory. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (observing that South Carolina has recognized a number of theories that could bind nonsignatories to arbitration agreements, including estoppel).

Conceptually, the Facility and Nadkarni's merger/equitable estoppel argument is not an argument for the *enforceability* of the Arbitration Agreement but rather for Mr. Floyd to be *estopped to deny the enforceability* of the Arbitration Agreement. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d 450, 455 (2014) ("Appellants contend that *even if* Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is *nevertheless equitably estopped to deny* the [arbitration agreement's] enforceability.") (emphasis added). In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and because Mr. Floyd effectively embraced and directly benefitted from the Admission Agreement, he is estopped to deny the enforceability of the Arbitration Agreement merged therewith. Accordingly, any contention about the Arbitration Agreement's supposed lack of enforceability (whether because of Mrs. Floyd's lack of authority or because of another alleged defect in contract formation) is beside the point and unavailing to refute the Facility and Nadkarni's merger/equitable estoppel argument, which, again, turns not on the question of whether they showed that the Arbitration Agreement is enforceable but whether they showed that Mr. Floyd should be estopped to deny that the Arbitration Agreement is enforceable—and, most respectfully, they did so.

Additionally, out of an abundance of caution, to the extent that the "knowing, voluntary, and intentional" part of the statement purports to place any burden on the Facility and Nadkarni to prove the absence of a ground for revocation, it is improper burden shifting. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) ("[A] party," i.e., the party

opposing arbitration, not the proponent, “may seek revocation of the contract under ‘such grounds as exist at law or in equity,’ including fraud, duress, and unconscionability.”). For that matter, no such ground for revocation has even been raised here, and indeed, the knowing, voluntary, and intentional nature of Mrs. Floyd’s signing of the Arbitration Agreement is presumed by virtue of her signing it. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”).

(b) The Subject Order erroneously states, “[U]nless there is a valid, irrevocable, and enforceable contract, the Federal Arbitration Act does not even apply.”⁶

Without question, the FAA applies here. For one reason, the Arbitration Agreement expressly states that the FAA applies, and this must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020) (“We first consider whether the FAA applies. We hold it does, for two reasons. First, the [subject contract] provides the parties ‘specifically agree that this transaction involves interstate commerce.’ We must enforce this agreement like any other contract term.”) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (finding the FAA applied because the parties had agreed the subject contract involved interstate commerce)). Moreover, and in any event, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363; *see also Allied–Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause). And our Supreme Court has expressly held that skilled nursing

⁶ (Subject Order p. 4.)

facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

- (c) **The Subject Order, and the unpublished trial court decisions that it cites, misapprehends the Fourth Circuit Court of Appeals’ decision in *Galloway v. Santander Consumer USA, Inc.*, 819 F.3d 79 (4th Cir. 2016)).**

In saying that “[t]his standard is akin to the burden on summary judgment,” the *Galloway* Court was not referring to the standard for the moving party to prevail on a motion to compel arbitration, but rather the standard for a party seeking a jury trial whether there is a binding arbitration agreement to prevail. *See Galloway*, 819 F.3d at 85 (“We first address Galloway’s contention that she is entitled to a jury trial regarding whether she and CitiFinancial entered into a binding contract that included the arbitration agreement. Under the FAA, the party seeking a jury trial must make an unequivocal denial that an arbitration agreement exists—and must also . . . provide sufficient evidence in support of its claims such that a reasonable jury could return a favorable verdict under applicable law. Thus, to obtain a jury trial, the parties must show genuine issues of material fact regarding the existence of an agreement to arbitrate.”) (internal citation and quotations marks omitted); *id.* at n.3 (“We have noted that this standard is akin to the burden on summary judgment.”) (internal citation and quotation marks omitted).

- (d) **Whether or not there is a policy favoring arbitration is inconsequential.**

The Subject Order cites language from our Supreme Court’s decision in *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 856 S.E.2d 150 (2021), wherein it stated that “statements [in our appellate jurisprudence] that the law ‘favors’ arbitration,” which are numerous,⁷ “mean simply that courts must respect and enforce a contractual provision

⁷ *E.g., Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (“The policy of the United States and of South Carolina is to

to arbitrate as it respects and enforces all contractual provisions” and that “[t]here is . . . no public policy—federal or state—‘favoring’ arbitration.” (Subject Order p. 5.)

Candidly, it is impossible to square this “no public policy . . . ‘favoring’ arbitration” language from *Palmetto Construction Group* with language in other Supreme Court decisions, for instance, the language in *Zabinski* (which the Court thereafter echoed in *Parsons*) that “[t]he policy of the United States and South Carolina is to *favor arbitration of disputes*.” 346 S.C. at 596, 553 S.E.2d at 118 (emphasis added). More than just recognizing that contractual provisions to arbitrate must be respected and enforced in the same way as other contractual provisions, this plain language expressly recognizes the existence of a public policy—federal and state—that “favor[s]” arbitration *as a method of dispute resolution*. Moreover, the *Zabinski* Court instructs that “[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration;” that, “unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered;” and that “[a] motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.” *Id.* at 597, 553 S.E.2d at 118–19. These rules do not merely ensure that contractual provisions to arbitrate are respected and enforced in the same way as other contractual provisions: They affirmatively tip the scales in favor of arbitration. Indeed, citing our Supreme Court’s decision in *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 747 S.E.2d 461 (2013), our Court of Appeals has expressly recognized that “[d]ue to the strong South Carolina

favor arbitration of disputes.”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (same); *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 455, 730 S.E.2d 312, 316 (2012) (“There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.”) (quoting *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999)).

and federal policy favoring arbitration, arbitration agreements are presumed valid.” Doe v. TCSC, LLC, 430 S.C. 602, 607, 846 S.E.2d 874, 877 (Ct. App. 2020) (emphasis added) (citing Cape Romain Contractors, 405 S.C. at 125, 747 S.E.2d at 466)).

In any event, however, even in the absence of a public policy favoring arbitration, the Underlying Motions are still meritorious.

- (e) **The FAA requires arbitration agreements to be placed on equal footing with all other contracts under South Carolina law, and purported presumption, cited in the Subject Order, against arbitration where the party resisting arbitration is a nonsignatory violates the FAA.**

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”⁸ and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] 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) (emphasis added); *see also* 9 U.S.C. § 4 (“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.*”) (emphasis added).

⁸ *Allied-Bruce*, 513 U.S. at 270.

While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*” *Concepcion* at 339 (emphasis added); *see also Allied–Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted).

The Subject Order cites *Wilson*, 426 S.C. 326, 827 S.E.2d 167, for the proposition that, under South Carolina law, there is a presumption against arbitration when enforcement is sought against a non-signatory. (Subject Order p. 5.) But the FAA requires arbitration agreements to be placed on equal footing with all other contracts under state law and prohibits courts from setting aside arbitration agreements based on state-law defenses “that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue.” *Concepcion*, 563 U.S. at 339. Thus, under the FAA, there cannot be a presumption against enforcement of arbitration agreements against nonsignatories unless the same presumption also applies to enforcement of all other contracts against nonsignatories. The Facility and Nadkarni are aware of no such general presumption under South Carolina law, and the Subject Order cites none. Indeed, where the *Wilson*

Court itself referenced “a presumption *against* arbitration . . . where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate,”⁹ it cited no South Carolina authority and the authority it did cite addressed arbitration in particular, not contracts generally. *Id.* (“*Global Pac., LLC v. Kirkpatrick*, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017) (‘Because no party can be required to submit to arbitration when it has not first agreed to do so, in a case where the party resisting arbitration is not a signatory to any written agreement to arbitrate, a presumption against arbitration arises.’); *cf. Comer v. Micor, Inc.*, 436 F.3d 1098, 1103–04 (9th Cir. 2006) (noting ‘the general rule that a nonsignatory is not bound by an arbitration clause’).”). The supposed presumption against arbitration violates the FAA’s equal footing rule and cannot be applied in this case.

- (f) **The Subject Order erroneously states that there was a “requirement” that Mr. Floyd sign the Arbitration Agreement,¹⁰ that “[Mrs. Floyd] made no verbal representation that she had any authority to bind [Mr. Floyd],”¹¹ and that “the Arbitration Agreement is explicitly clear that Spouse was attempting to sign on behalf of Dale Floyd, not herself for her loss of consortium claim,”¹² and in suggesting that there was any ambiguity in this regard.**

The Facility did “ha[ve]” Mrs. Floyd sign the Arbitration Agreement, as the Subject Order states. Rather, Mrs. Floyd voluntarily did so. And she did so on a signature line labeled “Signature

⁹ 426 S.C. at 337–38, 827 S.E.2d at 173 (emphasis in original).

¹⁰ (Subject Order p. 7 (“Defendants failed to follow the agreement’s own requirements to have Dale Floyd sign.”); *see also id.* at p. 13 (“Despite knowing the requirement to have Dale Floyd sign the Arbitration Agreement and the knowledge that he was competent, Facility/Natasha Nadkarni instead had Spouse, who had no authority, sign the Arbitration Agreement on Dale Floyd’s behalf. Because Dale Floyd was required to sign the Arbitration Agreement in the first place for it to be enforceable, no arbitration agreement could have existed as to Spouse as the terms of the Agreement required Dale Floyd, not Spouse, to sign.”).)

¹¹ (Subject Order p. 7.)

¹² (Subject Order p. 14.)

of Legal Representative or Family Member” and immediately below, and thereby expressly attesting to,¹³ the following language:

If resident is adjudged incompetent, complete this section:

I am the spouse, responsible party, legal guardian or power of attorney for the resident and have the authority to sign this agreement on his/her behalf. In signing this Agreement, the Legal Representative or Family Member binds both the Resident and themselves individually.

(Arbitration Agreement p. 9 (bold print in original).) There was no “requirement” that Mr. Floyd sign if he was in fact competent. Mrs. Floyd voluntarily signed for Mr. Floyd representing to the Facility both that Mr. Floyd was adjudged incompetent and that she was duly authorized to sign for him. This may not mean that either of these things (that Mr. Floyd was adjudicated incompetent or that Mrs. Floyd was duly authorized to sign for Mr. Floyd) was in fact true, but it does mean that Mrs. Floyd in fact represented to the Facility that they were true when she signed the Arbitration Agreement, which, again, she is presumed to have “read, understood, and assented to,”¹⁴ and as to which she owes the Facility a duty of good faith that is no less than that owed to her by the Facility. *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) (“There exists in every contract an implied covenant of good faith and fair dealing.”).

Lastly, the statement in the Subject Order that “the Arbitration Agreement is explicitly clear that Spouse was attempting to sign on behalf of Dale Floyd, not herself for her loss of consortium claim”¹⁵ is plainly erroneous, as, in fact, that Arbitration Agreement is explicitly clear that Mrs.

¹³ *Gibson*, 426 S.C. at 352, 827 S.E.2d at 181 (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”).

¹⁴ *Gibson*, 426 S.C. at 352, 827 S.E.2d at 181.

¹⁵ (Subject Order p. 14.)

Floyd did only sign for Mr. Floyd but so as to “**bind[] both [Mr. Floyd] and [her|self] individually.**” (Arbitration Agreement (bold print in original) (underline added).)

(g) The Subject Order erroneously states that there was no consideration to support the Arbitration Agreement as to Mrs. Floyd.¹⁶

Clear precedent says that mutual promises to arbitrate constitute valid consideration. *See Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“Valuable consideration for a contract may consist of some forbearance given or detriment suffered.”); *O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 274–75 (4th Cir. 1997) (“O’Neil first argues the contract to arbitrate was not supported by adequate consideration because the agreement was not binding on the hospital. O’Neil’s argument fails because its premise is mistaken. . . . It is true that courts have refused to enforce arbitration agreements where the agreement specifically allows the employer to ignore the results of arbitration. That is not the case here, however. There is no such clause in the arbitration agreement signed by O’Neil, and we decline to read such a clause into the contract. *A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.*”) (citing *Rickborn*, *supra*) (internal citation omitted) (emphasis added); *id.* at 275 (“O’Neil’s argument is especially misplaced in the circumstances of this case. Not only has the hospital consistently argued that it is bound by the arbitration agreement, it has, by virtue of this suit, shown its commitment to the arbitration process. Indeed, the only party to this case who has shown a desire to avoid binding arbitration is O’Neil herself.”) (applying South Carolina law); *Towles v. United HealthCare Corp.*, 388 S.C. 29, 40, 524 S.E.2d 839, 846 n.4 (Ct. App. 1999) (favorably citing *O’Neil* for the proposition that “a mutual promise to arbitrate constituted sufficient consideration to enforce an arbitration agreement where the employer proffered, and the

¹⁶ (Subject Order p. 14.)

employee signed, an employee handbook and acknowledgment form over three and one-half years after employment began.”). Moreover, it would violate the FAA for mutual promises to constitute sufficient consideration to form a binding agreement in all cases but for agreements to arbitrate. *See Concepcion*, 563 U.S. 333, 339 (2011).

(h) The Subject Order erroneously rules against the Facility and Nadkarni on the basis of authentication.¹⁷

As the Subject Order itself recognizes, the “burden to authenticate is not high.” (Subject Order p. 12.) All that is required is a satisfactory foundation from which it can reasonably be found that the evidence is authentic, i.e., that it is it was it purports to be. *Berry v. Span*, 433 S.C. 1, 10, 855 S.E. 309, 315 (Ct. App. 2021). Here, Mrs. Floyd herself expressly attested that she “signed” the “paperwork” “for my husband to be admitted to the facility,” “which presumably includes an arbitration agreement.” (*See Aff. of Mrs. Floyd.*) At that, Plaintiffs’ memo in opposition to the Motion to Compel Arbitration necessarily concedes that there was both an Arbitration Agreement and an Admission Agreement. (*See, e.g., Pls.’ Mem. in Opp’n* p. 10 (“[S]ince Plaintiffs’ claims are not grounded in, or even dependent upon, the Admission Agreement, equitable estoppel would not apply here even if the Admission Agreement and the Arbitration Agreement were a single, merged contract.”).) Indeed, Plaintiffs’ attached the Arbitration Agreement to their memo in opposition as Exhibit B. (*Pls.’ Mem. in Opp’n* at Ex. B.) The Facility and Nadkarni attached the signature pages of the Admission Agreement to their memo in support, which clearly bears Mrs. Floyd’s signature in the same hand as that appearing on the Arbitration Agreement that Plaintiffs’ themselves submitted as authentic. The other exemplar pages of the Admission Agreement that the Facility and Nadkarni attached to their memo in

¹⁷ (Subject Order pp. 12–13.)

support all plainly reflect, in the lower left corner, that they are from the very same document form that that Mrs. Floyd signed, namely, “RAA-SC (Revised: August 2011).” (*See* Admission Agreement.)

The Court erred here in not finding the Admission Agreement and Arbitration Agreement authenticated on the existing record, or at least in not allowing the Facility and Nadkarni to supplement the record to provide an affidavit to authenticate the documents, as allowing them to do so would have worked zero undue prejudice on Plaintiffs and would have furthered the interests of justice—and, indeed, to the extent it is necessary for authentication (which, as explained above, the Facility and Nadkarni contend it is not) the Court should allow them to do so even now. *See* Rule 1, SCRCP (“These . . . shall be construed to secure the just, speedy, and inexpensive determination of every action.”).

(i) The merger/equitable estoppel analysis in the Subject Order is erroneous and has led the Court to wrongly deny the Motion to Compel Arbitration—and, in turn, the Motions to Stay.

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that, as the Subject Order reflects, the denial of the former dictated the denial (as moot) of the latter. (*See* Subject Order p. 16.) Accordingly, in showing that the Court has erred in denying the Motion to Compel Arbitration, the argument below also shows its error in denying the Motions to Stay. *See* 9 U.S.C. § 3 (“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 the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such

arbitration.”) (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (“[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.”).¹⁸

The core question here is this: Is the Arbitration Agreement (which Mrs. Floyd signed for Mr. Floyd) enforceable against Mr. Floyd, even though it was not signed by Mr. Floyd himself? The answer is yes: The Arbitration Agreement is enforceable against Mr. Floyd—or more precisely, Mr. Floyd is now estopped to deny that the Arbitration Agreement is enforceable.

“South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel.” *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174; *see also Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354–355, 755 S.E.2d 450, 455 (2014) (confirming the legal validity, i.e., the potential viability, of the merger/equitable estoppel argument: “Appellants’ equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. . . . Here, the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.”).

¹⁸ Similarly, the propriety of the Court’s grant of Plaintiffs’ motion to compel discovery hinges on the propriety of the Court’s denial of the Motions to Compel Arbitration, as indeed the Court itself recognized. (See Subject Order p. 17 (“[T]he Court finds that Defendants shall provide full and complete responses to Plaintiff’s First Interrogatories and First Requests for Production within sixty (60) days of the date of the hearing *unless Defendants otherwise timely file and appeal on the denial of their Motions to Compel Arbitration and Motions to Stay.*”) (emphasis added).)

Again, conceptually, the merger/equitable estoppel argument is not about showing that the Arbitration Agreement is enforceable but about showing that Mr. Floyd is estopped to deny that the Arbitration Agreement is enforceable. In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and Mr. Floyd having effectively embraced and directly benefitted from the Admission Agreement, he is estopped to deny the enforceability of the Arbitration Agreement with which the Admission Agreement merged. Accordingly, any counterarguments aimed at denying the Arbitration Agreement's enforceability are beside the point and unavailing.

Merger

In *Coleman*, even though the Court found against merger on the *particular facts* of the case, it nonetheless confirmed the validity of the general proposition of *law* on which the *Coleman* appellants based their merger/equitable estoppel argument:

Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is nevertheless equitably estopped to deny the [arbitration agreement's] enforceability. The circuit court held there was no estoppel here, and we agree.

Appellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. In South Carolina,

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract.

Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

Here, the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.

407 S.C. 346, 354–355, 755 S.E.2d 450, 455 (2014) (emphasis added).

Here, the Court erred in rejecting the merger argument, failing to recognize material distinctions between the facts (and arguments) involved in this case and those that controlled (or were simply not appreciated or addressed in) *Coleman* and its progeny, *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”¹⁹ as indeed the Admission Agreement and the Arbitration Agreement were here,²⁰ there is evidence to upset the *presumption in favor of merger*, i.e., the presumption that the contracting parties intended the instruments to be construed together as effectively one contract. This is a question of the parties’ intention. *Id.* at 355, 755 S.E.2d at 455 (“in the absence of anything indicating a contrary *intention* . . .”) (emphasis added).

¹⁹ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (quoting *Klutts*, 268 S.C. at 88, 232 S.E.2d at 24).

²⁰ As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents were [indeed] executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). Indeed, in her affidavit Mrs. Floyd expressly acknowledges that she signed all of the documents that she signed at the same time in conjunction with Mr. Floyd’s admission to the Facility. (See Aff. of Mrs. Floyd.) Any finding by the Court that there is any doubt about whether the Admission Agreement and the Arbitration Agreement were signed at the same time, by the same parties, for the same purposes, as party of the same transaction, is plainly erroneous.

For the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. Indeed, it does not even make sense that the parties would have intended the Admission Agreement and the Arbitration Agreement not to merge.

While it is true that the Arbitration Agreement is unnecessary to the Admission Agreement,²¹ the converse is not true: The Admission Agreement is indeed necessary to the Arbitration Agreement. So yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with. But that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the unique circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction.

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission; whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of Mr. Floyd’s (and, for that matter, Mrs. Floyd, with respect to the “individual” capacity in which she also signed) relationship with the Facility: the Admission

²¹ (See Arbitration Agreement (“YOUR PARTICIPATION IN [THE DISPUTE RESOLUTION PROGRAM] IS VOLUNTARY . . .”).)

Agreement setting forth the terms of his admission, the Arbitration Agreement providing for arbitration of disputes arising out of his admission.

Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement). While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: The Admission Agreement *is* necessary to the Arbitration Agreement. Unlike the Admission Agreement, which theoretically could have stood on its own in the absence of the Arbitration Agreement—and, of course, had the Arbitration Agreement not been executed, it simply would not exist and no question of merger would have arisen to begin with—the Arbitration Agreement could not have stood on its own: It only makes sense together with, i.e., connected to, the Admission Agreement, which is its sole reason for being.

The fact that the Arbitration Agreement was not required for admission does not mean that it was not intended to be part of the admissions materials intended to be construed together. To say that the Arbitration Agreement is not essential to admission is not the same as saying it was not part of the admissions paperwork once it was in fact voluntarily agreed to and signed in conjunction with Mr. Floyd's admission. In other words, it did not have to be agreed to, in which case it would not have been included in the admissions paperwork, or anywhere else, as it simply would not have existed. But it was agreed to, as part and parcel of the admissions paperwork, Mr. Floyd's admission to the Facility being the express—and only—reason why the parties chose to enter into the arbitration agreement to begin with.

That the Admission Agreement and the Arbitration Agreement have their own titles and are separately paginated and signed admits of no reasonable inference of an intent contrary to

merger. To point to such things is to do no more than to observe that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of merger is to *merge* separate documents.

And—besides the fact, explained elsewhere, that there is no ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement—to fall back on the idea that it should be construed against the Facility as the drafter is uncalled for in this context. *Merger is the default position*, i.e., it is presumed, and this is so because of the confluence of a particular set of circumstances—the instruments at issue were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these stars align—same time, same parties, same purpose, same transaction—our law instructs the Court to consider and construe the instruments together *unless* there is evidence of a contrary intention. The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. To allow the merger presumption to be upset based on evidence that is merely ambiguous—i.e., that does not even go so far as to clearly indicate a contrary intention, but at most might (or might not) reflect a contrary intention—is to allow the exception to devour the rule.

Respectfully, the finding against merger here relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding the contracting parties’ intent. It must be remembered that the presumption of merger arises only where the four elements of time,

parties, purpose, and transaction coincide—as the all do here. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. So, again, for the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). The merger presumption is “earned,” so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

The Court should have found that the Arbitration Agreement merged with the Admission Agreement. The instruments were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, the whole of which related to Mr. Floyd’s admission to the Facility and would not have been done at all but for his admission to the Facility. Any finding against merger improperly relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent.

Equitable Estoppel

In *Wilson v. Willis*, this Court observed that South Carolina has recognized a number of theories under which a nonsignatory can be bound to an arbitration agreement, including under the theory of estoppel. 426 S.C. at 338, 827 S.E.2d at 174. The *Wilson* Court favorably discussed the framework of the so-called direct benefits test—which test the Court of Appeals had applied in the

decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals' earlier decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and under which the Facility and Nadkarni contend Mr. Floyd is estopped from refusing to comply with the Arbitration Agreement here, where he received direct benefits (in the form of his admission to and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement was merged. *Wilson*, 426 S.C. at 340–345, 827 S.E.2d at 175–177; *see also id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner's alternative argument based on the application of the state's "traditional" six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., "[t]he traditional test referenced by [the] [p]etitioners," "has been analyzed most-often in *non*-arbitration cases") (emphasis added). In other words, *Wilson* supports the use of the direct benefits test to answer the question of equitable estoppel in an arbitration case like this, and under that test, Mr. Floyd should be estopped to deny the enforceability of the Arbitration Agreement.

The key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the nonsignatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 ("Under direct benefits estoppel, [a] nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory knowingly exploits the benefits of an agreement

containing an arbitration clause, and receives benefits flowing directly from the agreement”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable.

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Mr. Floyd received the benefit of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein. To deny his receipt of such benefits is illogical. It would require wholly discounting every single aspect of his residency (every meal, every instance of care/treatment delivered, essentially every moment at the Facility). Not even Plaintiffs themselves have alleged this. (*See Compl.*)

The Court should have found Mr. Floyd estopped to deny the Arbitration Agreement’s enforceability, him having effectively embraced and directly benefitted from the Admission Agreement with which the Arbitration Agreement was merged.

WHEREFORE, for the foregoing reasons—and, again, for that matter, for all of the reasons previously advanced to the Court in and in support of the Underlying Motions, in writing and/or via oral argument, all of which are incorporated by reference herein and the Court to is asked (re)consider and expressly rule upon in full—Defendants ask that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Underlying Motions.

PLEASE NOTE: Defendants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,
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October 14, 2022

State of South Carolina)
)
County of Sumter) Circuit Court
 2022-CP-43-00355

Stanley Dale Floyd and)
Stephanie Floyd)
)
vs.) Transcript of Record
)
SSC Sumter East Operating)
Company, LLC d/b/a Sumter)
East Health and Rehab Center,)
SSC Equity Holdings, LLC,)
SavaSeniorCare Administrative)
and Consulting, LLC,)
SavaSeniorCare)

September 7, 2022
Georgetown, South Carolina

B E F O R E:

The Honorable Benjamin H. Culbertson, Judge.

A P P E A R A N C E S (All present by video or telephone):

Matthew Christian, Esq.
Attorney for the Plaintiff

Russell G. Hines, Esq.
Attorney for the Defendant

Anneliese Grassi
Transcriber



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1 THE COURT: All right. This is 2022-CP-43-00355.
2 Stanley Dale Floyd and others v. SSC Sumter East Operating
3 Company, LLC and others. According to my roster, the matter
4 is before the Court on a motion to compel, a motion to stay,
5 and another motion to compel. All right.

6 We'll need to go around ~~i~~^r everybody will need to give
7 their name, the capacity in which they're appearing, and where
8 they're physically located.

9 My name is Ben Culbertson. I am the presiding circuit
10 court judge for this term of common pleas, nonjury for the 3rd
11 Circuit during this hearing. I am in courtroom 3-A of the
12 Georgetown County Judicial Center in Georgetown, South
13 Carolina. All right.

14 Mr. Christian, do you want to go next?

15 MR. CHRISTIAN: Yes, sir. My name is Matt Christian.
16 I'm with Christian & Christian in Greenville, South Carolina.
17 I'm presently located in my office in Greenville, and I
18 represent the plaintiffs in this action.

19 THE COURT: All right. Mr. Hines? Wait a minute. I
20 can't hear you. Still cannot hear you.

21 Can you hear him, Mr. Christian?

22 MR. CHRISTIAN: No, sir, I cannot.

23 MR. HINES: I've tried to change something. Is
24 that ~~---~~ ---

25 THE COURT: Okay. Now I can hear you.

1 MR. HINES: Okay. Thank goodness. The last time I did
2 this (indiscernible) ~~---~~ --

3 THE COURT: Mr. Christian ~~---~~ -- hold for a second.

4 Mr. Christian, can you hear him now?

5 MR. CHRISTIAN: Yes, sir, I can.

6 THE COURT: Okay. All right, Mr. Hines. Go for it. Go
7 ahead.

8 MR. HINES: Thank you, Your Honor. And I apologize for
9 that technological delay. My name is Russ Hines with the firm
10 Clemment Rivers. I'm here at my office in Charleston
11 representing all of the defendants in this case, Your Honor.

12 THE COURT: All right. Let's see. I've got a
13 plaintiff's motion to compel, a defendant's motion to compel,
14 and a defendant's motion for stay. Now, I got something ~~---~~
15 ~~t~~ That motion for stay, has that been resolved?

16 MR. CHRISTIAN: No, sir, it has not.

17 THE COURT: Okay.

18 MR. CHRISTIAN: My understanding is ~~---~~ is that's in
19 conjunction with their motion to compel arbitration.

20 THE COURT: Okay. So it's a motion to compel arbitration
21 rather than a motion to compel discovery. All right.

22 MR. CHRISTIAN: Well, Your Honor, I actually ~~---~~ -- the
23 plaintiffs filed a motion to compel discovery, and then
24 thereafter, the defendants filed a motion to compel
25 arbitration and a motion to stay.

1 THE COURT: Okay. So I guess the motion to compel
2 arbitration and stay, this action would be dispositive over
3 the motion for discovery?

4 MR. CHRISTAN: ~~Q~~ Yes, sir, it would be.

5 THE COURT: Okay. Mr. Hines, let me hear from you.

6 MR. HINES: Thank you, ~~.~~ Your Honor, ~~.~~ May it please
7 the Court. A little bit of housekeeping, if I may, at the
8 start. The motions that Your Honor just recited, that are on
9 your roster for today, at least the motions made by one of the
10 defendants ~~--~~ I'm excluding the plaintiff's motion to compel
11 discovery. But as I see it on the roster, there is a motion
12 to stay, a single motion that seems to be the one filed by the
13 party SMV Sumter East, LLC. ~~.~~ That would be the motion to
14 stay, and then another motion to compel arbitration filed by
15 the defendant Sumter East Health and Rehab Center.

16 Your Honor, I believe ~~--~~ in fact, I have the filed
17 motions in front of me ~~--~~ that on August the 4th, which is
18 the same day as ~~--~~ well, it was both of these motions by
19 the defendants were filed, there were actually other motions
20 to stay. And in one motion, an identical motion to stay by
21 another defendant I filed more recently ~~--~~ just filed
22 yesterday, in fact ~~--~~ it's the same motion. And ~~--~~

23 THE COURT: Yeah, but I don't have any of those in front
24 of me.

25 MR. HINES: And, ~~in~~ Your Honor ~~--~~ and that's fine to

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1 proceed on. I guess I just wanted to make sure that those
2 motions~~---~~ well, that I accounted for them because in
3 addition to the motion filed by this SMV Sumter East, LLC,
4 there are, I believe, three other motions identical filed by
5 other defendants the same day to stay. ~~7~~ And they are all
6 identical, and the arguments on those are all identical. But
7 if ~~we (indiscernible)---~~

8 THE COURT: Well, I don't know why they don't appear on
9 my roster, but they don't.

10 MR. HINES: And I suppose what ~~---~~ and, Your Honor,
11 obviously~~7~~ however Your Honor wishes to proceed, we can do
12 that. We can proceed on what's on your roster, ~~7~~ and the ones
13 that are not, obviously, can come up in due course and can be
14 addressed~~---~~

15 THE COURT: Yeah, let's do it that way.

16 MR. HINES: Your Honor, the motion to stay, I'll start
17 off with it because it is what I would call a tagalong motion
18 in that really the primary motion here is the motion to compel
19 arbitration, Your Honor. The motion to stay, as do the others
20 that I mentioned that I know are not on the roster for today,
21 but~~---~~ and so specifically addressing the one that's on the
22 roster for today ~~---~~ is predicated on the idea that there's a
23 motion to compel arbitration pending. And the statute that
24 I'd like to at least read into the record, if Your Honor would
25 indulge me, is from the Federal Arbitration Act; ~~7~~ it's 9 U.S.

1 § 3, and it reads as follows: If any suit or proceeding be
2 brought in any of the courts of the United States upon any
3 issue referable to arbitration under an agreement in writing
4 for such arbitration, the Court in which such suit is pending
5 upon being satisfied that the issue involved in such suit or
6 proceeding is preferable to arbitration under such an
7 agreement shall on application of one of the parties stay the
8 trial of the action until such arbitration has been had in
9 accordance with the terms of the agreement, providing the
10 applicant for the stay is not in default and proceeding with
11 such arbitration.

12 I'd like to also, in that regard, note the case called
13 Stokes v. Metro Life Insurance Company, the South Carolina
14 Court of Appeals case from 2002, cite 351 S.C. 606, and this
15 is from page 612. The FAA clearly requires a court to stay
16 "any suit or proceeding" pending the arbitration of "any issue
17 referable to arbitration" under an agreement in writing for
18 such arbitration upon the application of one of the parties.

19 Your Honor, thank you for indulging me that little bit of
20 reading at the outset. The point of that is simply to say
21 that our position is, with respect to the motion to stay, is
22 that the motion to compel arbitration, should Your Honor agree
23 with us that arbitration should be compelled, the FAA and
24 South Carolina case law that has interpreted the FAA~~r~~ requires
25 a stay as to the rest of the lawsuit, even if those parties

1 are not involved in the arbitration.

2 Now, moving to the motion to compel arbitration, Your
3 Honor. The motion is whether ~~---~~ -- the case is a case of
4 alleged nursing home malpractice. The facility is a skilled
5 nursing facility. Legal name of that facility is SSC Sumter
6 East Operating Company, LLC. It's doing business as Sumter
7 East Health and Rehab Center. This motion to compel
8 arbitration is made on behalf of both the facility and the
9 administrator of the facility, a lady named Natash Nadkarni,
10 and the argument is the same for both of them.

11 Again, the case is nursing home malpractice, is what's
12 alleged. The resident of our facility was Mr. Floyd. Mr.
13 Floyd was admitted to the facility in May of 2019. At the
14 time, his wife, Stephanie Floyd ~~---~~ --7 who I should note, Your
15 Honor, also has a claim, her own independent claim in this
16 case for loss of consortium. So Mr. Floyd is alleging damages
17 as a result of alleged deficiencies in the care and treatment
18 he received at the facility. Mrs. Floyd has her own claim for
19 the loss of consortium. At the time that Mr. Floyd was
20 admitted, Mrs. Floyd signed -- she handled the paperwork for
21 Mr. Floyd, and in so doing she signed an admission agreement,
22 and she also signed an arbitration agreement.

23 The argument that I'm making today, Your Honor, is one
24 that's a two-step argument, and I suppose I could make some
25 points briefly about what I'm not arguing as a matter of maybe

1 trying to tidy something up. In fairness to the plaintiffs,
2 plaintiff's counsel's memo was filed in advance of our memo,
3 and so he was trying to address things in anticipation of what
4 might be argued. And I can say we're not arguing there's a
5 power of attorney that Mrs. Floyd had that that gave her
6 authority to sign the arbitration agreement for her husband.
7 We're not arguing that the Adult Health Care Consent Act
8 provided that authority. And we're not arguing a third-party
9 beneficiary theory that binds Mr. Floyd under a theory -- that
10 would bind Mr. Floyd as a third-party beneficiary.

11 What we are arguing, Your Honor -- except for 7 I should
12 say this. 7 I in the case of Mrs. Floyd herself, who has an
13 independent claim and who signed the arbitration agreement
14 expressly binding herself there -to, the case as to Mrs. Floyd
15 is very straightforward. As to Mrs. Floyd, she signed the
16 arbitration agreement herself. She is not what our law refers
17 to as a non-signatory. We have a number of cases that deal
18 with motions to compel arbitration against non-signatories.
19 Mr. Floyd did not sign the agreement. He is a non-signatory.
20 We acknowledge that 7 and I'll argue for enforcement against
21 him on the basis of merger and equitable estoppel.

22 But I would make clear at the outset that Mrs. Floyd
23 signed the arbitration agreement. And if I may, this is from
24 the arbitration agreement, which includes this language: I am
25 the spouse, responsible party, legal guardian or power of

1 attorney of the residence, and have the authority to sign the
2 agreement on his/her behalf. In signing this agreement, the
3 legal representative or family member binds both the resident
4 and themselves individually. ~~And~~ it's signed by Mrs. Floyd,
5 dated May the 6th, 2019.

6 Point of law that I would note in conjunction with that
7 that I just pointed out to the Court is a case called Gibson
8 v. Epting, 426 S.C. 346. It's a 2019 Court of Appeals case.
9 It cites a proposition of law that I believe is ~~is~~ ~~it's~~ it's not
10 unique to Gibson; ~~it's~~ it's just a proposition of law that is
11 reflected in other cases. But in any event, it is one who has
12 signed a contract, ~~is~~ is presumed to have read, understood, and
13 ascended to its terms. So with respect to Mrs. Floyd's claim
14 of loss of consortium, which is under South Carolina law, ~~an~~
15 independent and not a derivative claim, she has a signed
16 arbitration agreement that is part of what we are seeking to
17 enforce today as to her. So it's not necessary ~~that~~ that was
18 my point, Your Honor ~~for~~ for us to argue merger and equitable
19 estoppel as to Mrs. Floyd's claim.

20 Now, as to Mr. Floyd, merger and equitable estoppel works
21 like this. There are three main cases, I suppose, that are
22 usually cited, and I've argued these with Mr. Christian
23 before, and he certainly do an able job of making his
24 counterpoints. But the three main cases I'd like to bring to
25 the Court's attention are a case called Coleman v. Mariner

1 Health Care, another case called Hodge v. Unihealth Post-Acute
2 Care of Bamberg, and a case called Thompson v. Pruitt.
3 Coleman, Thompson, Hodge. And every one of those cases there
4 was an argument presented to the Court about merger and
5 equitable estoppel, and in every one of those cases, to be
6 fair, the proponent of the argument, that is the proponent of
7 arbitration, failed. They lost.

8 Our case today, Your Honor, relies upon different facts
9 and also different arguments. That is to say, that material
10 facts of this situation are different than those that control
11 those other cases. The arguments that we're presenting also
12 are arguments that were not addressed and disposed of in those
13 cases, at least not in all cases. It's a combination of
14 different facts and different arguments ~~is~~ my point. So
15 those cases do not doom us as I believe the plaintiffs believe
16 they do.

17 In Coleman, Coleman recognized the proposition of the
18 merger, which is simply stated, Your Honor, ~~it is~~ that when
19 you have multiple instruments that are executed at the same
20 time by the same parties for the same purpose and in the
21 course of the same transaction, ~~they~~ they are presumed to merge,
22 and it's presumed that they will be construed and considered
23 as effectively one contract. And, Your Honor, that
24 presumption can be overcome by evidence of a intent contrary
25 to merger. The question here on merger is ultimately a

1 question of intent. But I would reiterate that in Coleman~~7~~
2 the Court did recognize-- ~~what~~while ultimately they found
3 against merger on the facts of that case, i.~~It~~ recognized
4 the legal bedrock here that I'm starting with, which is the
5 proposition of same parties, same purpose, same time and
6 transaction. That is ~~---~~ that's where the merger presumption
7 arises out of. And it recognized that that's good law. And
8 not only that, it recognized-- ~~and~~the Coleman case was a
9 case of nursing home admissions. Every one of these cases I
10 mentioned, Coleman, Thompson, Hodges ~~---~~ these are all nursing
11 home admissions. They all deal with an argument about merging
12 admission agreements and arbitration agreements.

13 In the case of Coleman, the Court recognized that, yes,
14 unless there is evidence of a contrary intention, which the
15 Court went on to determine there was ~~---~~ meaning an intention
16 contrary to merger. Yes, the proponent of the merger argument
17 is correct. Thus recognizing not only the principle that I've
18 mentioned about the same parties, time, purpose, transaction,
19 but also that you have every one of those boxes checked in a
20 case like this, where you have admission agreements and
21 arbitration agreements signed in conjunction with an admission
22 to a nursing care facility. Where the Coleman Court found
23 against the Coleman appellants who were advocating for the
24 merger argument ~~they~~ said well, in Coleman on the
25 arbitration ~~---~~ excuse me, the admission agreement, there's an

1 entire agreement clause. That entirement agreement clause
2 makes express reference to the existence of an arbitration
3 agreement. And by doing that, it's making reference to
4 what ~~---~~ -- it's recognizing what the Coleman court called a
5 separatedness. It's recognizing a separatedness between these
6 two agreements.

7 We don't have that here in this case. We have an entire
8 agreement clause that's in the admission agreement, but it
9 does not ~~---~~ -- it is, in fact, almost identical to the Coleman
10 clause, but for the fact that it doesn't recognize the
11 agreement ~~---~~ -- excuse me, the arbitration agreement as being
12 separate.

13 Now, the Coleman court also said that one of the factors
14 that it found to be indicative of separatedness is something
15 that we do have here, and that is that the arbitration
16 agreement contains a 30~~---~~ -- day disclaimer period. Meaning that
17 within 30 days of it being executed, it can be disclaimed or
18 revoked. And the Coleman Court found that that could be
19 considered evidence of a separatedness.

20 Now, on that point I would note we have one of the two
21 factors that the Coleman court looked at. Coleman court also
22 was not sitting as a court hearing this in the first instance.
23 The Court was sitting as an appellate court reviewing whether
24 or not the lower court's decision or merger should be
25 affirmed, and it found there was evidence in the record to do

1 that. I don't read Coleman to say that the Court has to
2 conclude-- that this Court, in the first instance, has to
3 conclude this factual question against us on the basis of the
4 fact that there's a 30--day disclaimer, because I don't think
5 the Coleman Court was in a position to be answering that
6 question anyways as an appellate court. It concluded that
7 part of its opinion, since there was no merger here,
8 appellant's equitable estoppel argument was properly denied by
9 the circuit court. It was, after all, examining this on
10 appeal.

11 But what I wanted to note here specific on this 30 days
12 is where the Coleman Court says, moreover, the arbitration
13 agreement could be disclaimed within 30 days of signing, while
14 the admission agreement could not, evidencing an intention
15 that each contract remains separate. Well, I think that
16 analysis, respectfully, is incomplete. And this is an example
17 where I'm talking about an argument that I don't see where the
18 Coleman Court disposes of. At most, there could be some
19 evidence of separation for 30 days. But after that, there's
20 no indication. The only point there is to say, hey, this
21 thing can drop out and not exist for a period of 30 days.
22 This thing being the arbitration agreement. But to me, I
23 don't see where that analysis accounts for the fact that what
24 it's saying is, is that after 30 days, these are-- there
25 is no revocation. It doesn't drop out. Not to mention the

1 fact that I don't see where this actually accounts for the
2 fact that the admission agreement itself, while it doesn't
3 have specifically a revocation clause, it obviously could be
4 terminated within 30 days simply by the resident leaving the
5 facility within 30 days.

6 Now, I would just also note, Your Honor, as far as merger
7 is concerned, plaintiff made a few arguments anticipating
8 that, and I wanted to tick them off, at least with my response
9 to it. Argued that in addition to the 30--day revocation
10 where the plaintiff argues that there's certain indicia of
11 separated~~ness~~ between these two documents, and they include
12 the fact that the plaintiff-- -- I'll read from the
13 plaintiff's memo in opposition. These examples include having
14 an entire agreement provision in the admission agreement.
15 Well, respectfully, that does not-- -- that's not an accurate
16 interpretation of Coleman or any of these cases.

17 The mere existence of an entire agreement provision does
18 not indicate separated~~ness~~. What the Coleman court said was
19 that it was the entire agreement clause within which there was
20 an indication through its language that there was this-- --
21 both the admission agreement and the arbitration agreement.
22 The Coleman Court found that to be an evidence of an
23 indication of separated~~ness~~ between the two, and that they
24 would maintain their separate character. Just the fact that
25 there is an entire monetary clause was not enough.

1 Having different laws governing different parts of the
2 agreements. Well, it's perfectly true that the arbitration
3 agreement provides that it is to be governed by the FAA,
4 Federal Arbitration Act, in terms of its enforcement. And
5 that's because we have ~~---~~ and we cite a case in our
6 brief ~~---~~ I don't think this is at all in dispute ~~---~~ that
7 this is a contract evidencing a transaction in interstate
8 commerce. The case called Dean v. Heritage Healthcare, our
9 Supreme Court has explained that we're dealing with interstate
10 commerce when we're dealing with different things that have to
11 happen in respect to the provision of nursing care services.
12 ~~And so but~~ The ~~arbitration~~ readmission agreement itself
13 doesn't even have a choice of law provision in it. The
14 arbitration agreement simply says the FAA applies as to the
15 enforceability or the governing ~~---~~ it's covered by the FAA.
16 It also is, obviously, covered by the FAA because it's a
17 contract evidencing a transaction involving interstate
18 commerce. But it says the agreement will otherwise be
19 governed by the law where the facility is located. And this
20 shall include the local courts' rules governing discovery and
21 state law governing state medical liability acts, if
22 applicable.

23 Well, essentially, there is no evidence of a
24 separated~~d~~ness, an intent to have any sort of separation here.
25 The only law we have is that ~~---~~ like any situation, the state

1 law applies except for where it's displaced by federal law.
2 There are certain instances where the FAA preempts state law,
3 and ~~again~~, I don't see how this reflection ~~--~~ or this notion
4 of FAA being a matter of federal law, but in every other
5 respect, it's a matter of state law, could possibly be
6 construed as evidence of separatedness. And on that point,
7 Your Honor, the plaintiff tries to degrade that standard, or
8 water down that standard, and says at one point and highlights
9 the language that merger does not apply. ~~And~~ this is a
10 quote that, the plaintiff's highlighted the language, "Iif
11 there's anything indicating a contrary intention," it goes on
12 to say "if the circumstances even hint that the parties
13 intended the writings to be distinct and separate agreements."

14 Well, Your Honor, respectfully, there is language in
15 Coleman that says anything indicating a contrary intention.
16 Doesn't highlight the language anything, but logically, no
17 decision, not that I'm aware of in South Carolina ~~--~~ our
18 courts can't decide factual issues even when there is a
19 factual issue that's appropriate for it to decide. And in
20 this case, this is appropriate for this Court to decide on
21 this point. But the Court still can't speculate. We have a
22 situation where the presumption of merger, it only rises with
23 a certain particular set of circumstances, which are same
24 time, parties, purpose, transaction. When all of those apply,
25 that presumption of merger is earned by the concurrence of

1 those facts. The idea that that presumption would be overcome
2 by something that even hints at something contrary, it doesn't
3 compute. Because to overcome that presumption, it still has
4 to be nonspeculative evidence because otherwise the converse
5 would be that the Court is free to speculate as to what the
6 intention is, and you may do that based upon something that --
7 -- essentially, I'm repeating myself, and we cite a case for
8 this in our brief.

9 But I argue that justice verdicts cannot be based on
10 speculation, surmise, and conjecture. That point cannot be
11 overcome by speculation, surmise, and conjecture. If there is
12 indeed evidence from which a nonspeculative basis can be --
13 or a nonspeculative inference can be drawn that there's an
14 evidence intention contrary to murder, then so be it. That
15 would be -- and we argue that it's not -- but as to the
16 plaintiff's argument about watering down that standard, it has
17 to be hemmed in by the absence of speculation. And that's
18 particularly so when you have a presumption that our law
19 recognizes has arisen on the basis of the concurrence, again,
20 of a specific set of facts that justify that presumption.

21 There's another point in the Coleman case where in
22 dicta -- because it is in dicta; it's not necessary to the
23 holding -- where the Coleman court says even if the entirety
24 clause that it cites creates an ambiguity as to merger, the
25 law is clear that ambiguity in such a case is construed

1 against the drafter, in this case, the appellants. Well, we
2 argue, Your Honor --- and I don't see where that was ever
3 presented to the Coleman Court, for one. Even if language in
4 Coleman means it's dicta --- because dicta is anything not
5 essential to the holding, as I understand it --- the Court has
6 already made its ruling based upon its finding of no merger,
7 but then it goes on to this even if ambiguity language. And
8 the Court has never answered this question as far as I can
9 see. I don't understand how in the world ambiguity could
10 possibly rebut an affirmative presumption that arises in favor
11 of merger, because ambiguity would be --- you're saying --- that
12 it means you don't know one way or the other. I mean, maybe
13 there's an intention contrary to merger, maybe there's not.
14 The idea of rebutting a presumption with ambiguity is never
15 explained in that case. And I would argue to the Court that
16 it is illogical.

17 And I also argue, Your Honor, that there is no ambiguity
18 to begin with, because what we have here, and we've explained
19 this in our brief, is a situation where these documents, the
20 arbitration agreement especially, doesn't make any sense
21 without the admission agreement. The whole point of the
22 arbitration agreement is to provide for a method of dispute
23 resolution with respect to claims that may arise out of the
24 admission. Now, while it's perfectly true that the
25 arbitration agreement was voluntarily entered, that doesn't

1 mean that once it was agreed to that it wouldn't be a part
2 of ~~--~~ a part and parcel of the relationship between the
3 resident and the facility. And in this case, also, again,
4 even though she's directly signed it for herself, Mrs. Floyd.

5 So, Your Honor, ~~and~~ the reason why I'm getting all into
6 this merger, and I probably should have said this at the
7 outset to make sure this roadmap was clear ~~--~~ that the point
8 is, if you will go so far with me as to at least consider for
9 the purpose of this argument ~~--~~ but ultimately, I'm asking
10 you to agree with me, that the documents merge. Then what you
11 have is you have one contract that includes both the
12 arbitration agreement and the admission agreement. And that
13 sets the stage for my equitable estoppel argument, which is
14 based on what's called direct benefits estoppel. And the
15 short story on that is that you cannot receive direct benefits
16 under a contract that contains an agreement to arbitrate, and
17 then deny the enforceability of the agreement to arbitrate.
18 You can't take the part of the contract you like and don't
19 take the part of the contract that you don't like. That's
20 essentially what that point is.

21 And that point is there's a case called Wilson v. Willis
22 ~~w.~~ We cite in our brief where it recognizes direct benefit
23 estoppel. It cites it favorably. Another thing it does is it
24 specifically addresses what's called the traditional six-part
25 test for estoppel, which is cited on page 10 of the

1 plaintiff's memo in opposition. And it says that that
2 case--- -- it indicates that that test is not appropriate for
3 resolving a case like this. There's the six--part test there.
4 And we don't argue to, Your Honor, that the six--part test
5 is--- -- our argument is based on the applicability and us
6 passing the direct benefits test, and that's in the Wilson
7 case. And the Wilson case indicates that that is the
8 appropriate case to test to apply here in the arbitration
9 contract context. And that the key there is there is some
10 notion --- I know in the plaintiff's brief, I believe, and in
11 some of the cases subsequent to Wilson, for instance, in a
12 case called Weaver v. Brookdale, where this notion where they
13 cite Wilson for the proposition that to apply direct benefits
14 estoppel, the plaintiff has to actually not only have
15 received the direct benefit, but has to actually be pursuing a
16 claim that is predicated on the existence of the contract.

17 Your Honor, I submit to the Court that's not what Wilson
18 v. Willis says. In fact, Wilson v. Willis makes clear that
19 it's important to distinguish direct benefits from indirect
20 benefits, because when the benefits to a non-signatory are
21 merely indirect, arbitration cannot be compelled. A benefit
22 is direct if it flows directly from the agreement. The crux
23 and the critical point for direct benefits is, is it a direct
24 benefit from the contract? And here the benefit is obvious.
25 And again, if you have got these combined into one contract,

1 the benefit for the admission is room, board, care, treatment,
2 all sorts of various services that were provided.

3 And I understand that in this case there's allegations of
4 deficient care and treatment. But even those allegations
5 don't expand to the entirety of the care and treatment that he
6 received while he was a resident for about a month. They
7 don't, for instance, extend to --- I mean, he was provided
8 room. He was provided board. He was provided with benefits
9 that even the plaintiffs have not complained about. But even
10 if they were only benefits the plaintiff complained about, it
11 would still be the case that we wouldn't be in a position at
12 this point to prejudge those benefits as having not been
13 provided, because that's obviously the merits of the case.

14 So, Your Honor, that is the one--two punch. And if I
15 could look through --- I made a few notes --- a few things
16 that I wanted to point out. I think I've got most of them
17 pointed out. The question of --- sometimes it's argued that
18 there is an evidence of a separatedness because of different
19 termination provisions. For instance, because the language in
20 the admission agreement states that the admission agreement
21 will terminate essentially when the residency is over. And
22 under an arbitration agreement, the obligation to arbitrate
23 continues on thereafter. That's just the way arbitration
24 agreements work. That's not evidence of separatedness.
25 There's a case --- it's a U.S. district court case, Hooters of

1 America~~n~~ v. Phillips. This is from ~~---~~ -- the cite is 39 F.
2 Supp. 2~~n~~d 582. It's a 1998 case. Under South Carolina
3 arbitration law, the duty to arbitrate under an arbitration
4 clause in a contract survives termination of the contract. If
5 you didn't do that, then it would be very hard to have any
6 benefit for an arbitration clause because the claims are
7 almost always going to come after in the case of a dispute
8 that arises in the course of residency. You have a three-year
9 year statute of limitations or whatever the limitations period
10 is for the given claim, and so the arbitration clauses, they
11 ~~they that~~ just don't terminate; they they're not going to be
12 coterminous with the admission agreement. But that's not
13 evidence of separate~~d~~ness. That's just the way the law
14 operates.

15 And, Your Honor, well, I thank you. Oh. The one last
16 thing before I will hush. We argue that if Your Honor is not
17 prepared to go with us on branding the primary request for
18 relief here, the motion to compel arbitration at this time,
19 then we do ask for, as a fallback position, the ability to
20 conduct limited, targeted discovery. In particular, last week
21 affidavits were filed by Mr. and Mrs. Floyd. And the very
22 fact ~~that of~~ those affidavits were filed suggests that their
23 testimony would be relevant to issues involved in this case.
24 Otherwise, why else would their affidavit be filed? Well, as
25 yet those affidavits, obviously, haven't been able to be

1 inquired into ~~via~~the depositions of Mr. Floyd and Mrs. Floyd.
2 And so, Your Honor ~~--~~r and although I've made the argument to
3 you today, ~~and~~ I don't believe that any discovery is necessary
4 to prevail on it for merger and equitable estoppel, there are
5 other bases to enforce a arbitration agreement against the
6 non-signatory, for instance, through equitable, or agency
7 rather, or related principles.

8 Well, in this affidavit, both Mr. Floyd and Mrs. Floyd
9 deny that Ms. Floyd was an agent and she denied her authority
10 to sign on behalf of Mr. Floyd. Well, the mere fact that
11 they've made that denial, seemed only fair that we should be
12 able to inquire about that. Because under the law of
13 agency ~~---~~-- and we cite both agency ratification, ~~for~~another
14 instance, another concept that's related to agency ~~---~~-- that
15 you don't have to formally, or expressly, make someone the aid
16 agent to do the things in law that make a person the agent of
17 one ~~of~~for another.

18 And another thing about this is in multiple points in the
19 plaintiff's memo, in opposition it stated that Mrs. Floyd
20 never communicated anything to our facility to the
21 effect ~~---~~-- for instance, she made no representation that she
22 had any authority to bind her husband. Your Honor, that's not
23 accurate. Right here at the signature page, which she signed,
24 she said that she had the authority to sign the agreement on
25 his or her behalf ~~--~~r or his being her husband. Now,

1 especially considering this affidavit was recently filed ~~---~~
2 again, the filing of the affidavit clearly reflects that these
3 affidavits would contain material factual representations that
4 we've not yet been able to inquire into and follow up, ~~w. We~~
5 would argue, on pertinent evidentiary leads that might arise
6 out of the depositions and that they expressly contradict, in
7 the case of Mrs. Floyd, the representation that she made.
8 ~~And~~ again, under the Gibson v. Epting case and that principle
9 of law, she did sign this document, and that she is presumed
10 to have read, understood it, and agreed to it.

11 It also contradicts her affidavit in other ways. For
12 instance, in her affidavit she says that she was made to
13 believe that the arbitration agreement was mandatory. The
14 arbitration agreement says on the first page your
15 participation is voluntary and also, of course, says the
16 agreement may be revoked within 30 days. And it says a
17 decision to revoke it will in no way adversely affect the
18 resident status of the facility. And yet she's trading the
19 picture in this affidavit that we were pressuring her to sign
20 this and that it was mandatory, when in fact, ~~it~~ it says
21 otherwise.

22 And also the document she signed, the arbitration
23 agreement, in bold ~~---~~ ~~--~~ all this is in capital letters ~~---~~ ~~--~~
24 you understand, agree to, and have received a copy of this
25 agreement and acknowledge that the terms have been explained

1 to you or your representative by our agent, and that you or
2 your representative had the opportunity to ask questions about
3 this agreement and the dispute resolution program.

4 So those contradictions, Your Honor, I would argue that
5 at a minimum, and again, we do argue that it's a very
6 straightforward shot as to arbitration against Mrs. Floyd
7 herself, who signed this in her individual capacity, as well
8 as a representative of her husband. But if Your Honor is not
9 prepared to grant us the motion to compel arbitration, we
10 would ask for Your Honor to allow us to conduct at least the
11 depositions of Mr. and Mrs. Floyd and to follow up on any
12 pertinent evidentiary leads that they may reveal. And the
13 reason why -- Your Honor might be thinking, well, couldn't
14 you just take those depositions without me saying so? And
15 Your Honor, the answer to that question is we don't feel like
16 we should be put in a position of potentially being subject to
17 the waiver argument that we've waived arbitration rights by
18 using the tools of discovery, litigation tools, to try and
19 vindicate those rights.

20 The problem is, Your Honor, that our position, which we
21 believe is correct, is that we're entitled to proceed in
22 arbitration, not in litigation. ~~And - But~~ But if we were to go and
23 just notice the deposition of Mr. and Mrs. Floyd, well, then
24 we would be walking into a situation where we could be in a
25 catch 22, and plaintiff's counsel could say, ah-ha, there you

1 are invoking the tools of litigation, ~~and~~ which is
2 inconsistent. ~~7~~ ~~A~~and potentially an argument would be
3 available that you've waived your arbitration rights by doing
4 that. And so that's why we ask, Your Honor, to bless our
5 doing that and give us the safe harbor of not waiving our
6 rights by taking ~~---~~ ~~--~~ we would ask for limited, targeted
7 discovery, not on the merits, but strictly on the issue of the
8 arbitration question. And again, that wouldn't be on merger
9 and estoppel, which I've prepared to argue to you today, and I
10 think we have all the ducks in a row for that today. But even
11 if Your Honor is not in agreement with that, the point would
12 be to pursue this question of agency, which certainly the
13 Floyds have raised in their recent affidavits, and is also ~~---~~
14 on the face of the arbitration agreement ~~7~~ is an issue that is
15 fair to get into based upon the representation that Ms. Floyd
16 made by signing the arbitration agreement.

17 So, I Your Honor, with that thank you. I apologize. That
18 was quite a long argument, but it's a bit of a cumbersome one.
19 I appreciate very much your graciousness ~~in~~ ~~and~~ hearing it.

20 THE COURT: All right. Mr. Christian, let me hear from
21 you.

22 MR. CHRISTIAN: Yes, sir. Your Honor, just briefly, I
23 think the facts and the background on this is fairly
24 important. As the affidavits present, my client was enroute
25 in an ambulance from the hospital on the way over to the

1 nursing home at the time that his wife allegedly signed these
2 documents. She had no power of attorney, and she had no other
3 authority to sign on his behalf. He was there for a seven-
4 day admission. This was not a long admission, as though he
5 was there for months or years, and would have been aware that
6 his wife had signed any documents on his behalf. In the
7 motion originally filed by the defendants, they incorrectly
8 represented to the Court that my client's wife was indeed
9 power of attorney when that was, in fact, not true, and in
10 fact, explicitly stated that he had executed a power of
11 attorney on her behalf prior to the signing of the arbitration
12 agreement.

13 After we filed our motion, or excuse me, our memorandum
14 in opposition, they then pivoted and changed their position
15 and sent a brief, which I received at 8 p.m. last night,
16 attempting to change their position to estoppel and agency.
17 And one of the things I would like to point out that I think
18 is important is some incorrections sort of in their brief.
19 First of all, they state that the law does not favor
20 arbitration. That's absolutely incorrect. Our court has most
21 recently stated that there is no federal or state law favoring
22 arbitration. Furthermore, they have the burden to prove that
23 a valid and enforceable arbitration agreement existed, which
24 means they have the burden to prove agency, merger, and
25 estoppel, and all of those elements.

1 Their argument is essentially in direct contradiction to
2 every nursing home appellate case dealing with arbitration and
3 these issues that they have raised for the last ten years. I
4 had the Coleman case. They actually tried to petition to the
5 United States Supreme Court for cert. It was denied, and they
6 raised estoppel in that as well. The other cases include
7 Thompson, and Hodge, and Weaver, which Mr. Hines has raised.
8 All of those reflect that merger and estoppel do not fly in
9 these situations. And so their arguments are in direct
10 contradiction to that. Almost every case that they cited and
11 included in exhibits preceded these cases. And so I don't
12 believe those are good law either.

13 There is essentially no agency. I think that defense
14 counsel did a good job of parsing out some of the law and
15 things that were, in a way, that appeared favorable to them,
16 but really are not. The essential points of agency is, as the
17 Court knows, is not what the wife represented or what his
18 spouse represented, but what did he represent. What did Mr.
19 Floyd represent. And they have produced zero evidence that
20 he made any representation that she was his agent, or apparent
21 agent, or to allow them to have any type of reasonable belief
22 for that. In fact, in the Hodge case, the Court said to
23 establish apparent authority, they must show that, in this
24 case, Mr. Floyd consciously or impliedly represented to the
25 facility to be his agent. There's zero evidence of that.

1 ~~They~~ also must prove that they relied on the
2 representation. There's really not even a representation that
3 she had power of attorney or authority. And then, finally,
4 they have to prove that there was a change of position to the
5 detriment. And the Court said that nursing homes can't do
6 that because that means they would have to show they didn't
7 admit or wouldn't have admitted the resident. And there's no
8 evidence of that either. So we know that agency cannot exist
9 here. There's no evidence of him holding her out to be his
10 agent.

11 Furthermore, the facility was required by the arbitration
12 agreement to have Mr. Floyd sign it because it says if
13 resident is ~~is~~ -- it says right here ~~is~~ -- "if the resident is
14 competent, complete this section." And there is no signature
15 by my client. So they were required by the arbitration
16 agreement itself to have him sign. They had the seven days he
17 was there, plus any preadmission time to have him sign. They
18 never did that. So they had her sign and she signed.
19 Underneath her signature it says sSignature of legal
20 representative or family member, which she was a family
21 member. That doesn't mean she had any authority to sign an
22 arbitration agreement on his behalf. So there's no evidence
23 of agency, Your Honor. Our courts have routinely struck that
24 theory down in this context.

25 So then if we move on to their second argument, which is

1 merger. Mr. Hines highlighted one of my statements in our
2 brief ~~that~~ where the Court in Coleman said if there was any
3 anything indicating a contrary intent to merger, then there
4 was no merger. And that was not taken out of context; ~~7~~ that
5 was a direct quote from the case. And if we look at the
6 Thompson case and the Hodge case, the Court didn't say you've
7 got to have all these elements to prove that there was no
8 merger or contrary intent. In fact, in Thompson ~~7~~ the Court
9 determined that there was no merger ~~7~~ just based upon the fact
10 that the arbitration agreement was voluntary, not required for
11 admission, and ~~in~~ a separate agreement.

12 And the Court in Hodge said ~~--7~~ in Thompson they
13 determined the arbitration agreement in that case was not
14 incorporated into the admissions agreement because the mother
15 that had been admitted ~~--7~~ it says that the two agreements are
16 independent of one another, as reflected in the language of
17 the arbitration and agreement, indicating its execution is not
18 a condition for being admitted to the nursing home. Further,
19 any other possible benefit emanating from the arbitration
20 agreement alone is offset by the arbitration agreement's
21 requirement that mother waive her access to the courts in
22 right to a jury trial. Therefore, there could be no equitable
23 estoppel in merger.

24 And so in this case, not only are these separate
25 agreements, not only was the arbitration agreement not

1 required, just like in Thompson, we also have the other issue
2 that the arbitration agreement could be revoked within 30
3 days. The admissions agreement could be revoked at any time.
4 That's pretty much exactly similar to Coleman, Hodge, and
5 Thompson. We also know that they were referred to separately.
6 That's another element that the courts discuss. The courts
7 also discussed the fact that they're paginated separately.
8 And so those are all elements that these agreements did not
9 merge. And so I don't believe that they can prove estoppel
10 because the agreements didn't merge to begin with. But even
11 if for some reason the Court did believe that they merged,
12 then they have to show multiple other things. And, Your
13 Honor, in Weaver, the arbitration agreement was contained
14 within the admissions agreement. And the fact that it was
15 contained within the admissions agreement and the Court still
16 found no estoppel is very important and enlightening to the
17 uphill battle they have to prove that there was estoppel.

18 The other issue, Your Honor, is that estoppel only
19 applies if the contract that we are suing under is the one
20 that contains the arbitration clause. And the courts have
21 said in Weaver and in Hodge that in this theory, in the nursing
22 home context, we're not suing under any contract. We're suing
23 under a tort under which the duty arises out of the provider-
24 patient relationships. And so we're not even attempting to
25 sue or file a claim under any contract here, whether it's the

1 admissions agreement or the arbitration agreement. Our case
2 arises out of an independent tort duty, and so therefore,
3 we're not even relying on any contract to file our case. And
4 that is the same holding in these other cases, in Weaver and
5 Hodge as well.

6 And then, finally, Your Honor, I don't believe they meet
7 the elements of estoppel, and there's no evidence that they
8 could have relied upon this, nor the other elements that are
9 required for them to prove those issues. This is a very clear
10 cut case. And one of the other concerns that I have, Your
11 Honor, as well, is that they have not produced an admissions
12 agreement. The admissions agreement that was emailed to me
13 last night at 8 o'clock is not the one that was signed by my
14 client. There is a signature page and the rest of the
15 admissions agreement is not there. So I don't know how in the
16 world we would possibly know what the terms of the admissions
17 agreement are when they've not even produced that.

18 ~~They've~~ produced another admissions agreement where they
19 redacted the name of the facility, and they also redacted the
20 name of the resident, which is somewhat concerning to me that
21 they're purporting that this particular admissions agreement
22 applies to my client. There's no signature, and there's no
23 name for the facility or the resident. They've redacted both
24 of those. And so, in any event, that I think is very
25 concerning. But there can't be any merger based upon the

1 factors that we've already considered.

2 Additionally, Your Honor, I would like to note that the
3 Court in *Berry v. Spang* ~~--~~ the Court of Appeals said that the
4 defendants, or the party moving to enforce arbitration, must
5 establish the foundation and the authenticity of the documents
6 which they're purporting to enforce, and that's done by either
7 affidavit or witness testimony. There is no foundation or
8 proof provided by the defendants in this particular case as to
9 the authenticity of this arbitration agreement, as to the
10 authenticity of any other documents that they've alleged that
11 my client has signed. And this was their day and their
12 opportunity to come in and prove their case for arbitration,
13 and they chose to not present the evidence to authenticate and
14 lay the foundation for those documents. And so, therefore,
15 the arbitration agreement and their motion should fail for
16 those reasons as well.

17 And then, finally, Your Honor, this is a motion that
18 these nursing homes continuously make, despite the fact that
19 our courts at no point in the last ten years in a nursing home
20 context, as far as I can recall, have upheld this type of
21 argument ~~in and~~ these types of circumstances. And they
22 continue to do that. And, in fact, this same nursing home
23 chain argued the same issues in *Fowler v. Sava Senior Care*,
24 which was in *Seneca*, and then appealed to the Fourth Circuit
25 Court of Appeals after Judge Hurlong, the Federal District

1 Court judge, denied their motion to compel arbitration for the
2 very same issues. They then appealed it to the Fourth Circuit
3 Court of Appeals, who affirmed Judge Hurlong's denial of their
4 motion to compel arbitration. That order came out, I believe,
5 at the end of July. And so they continuously file these
6 motions with really no basis because the facts are the same.

7 If we look at the facts in this case, compared to the
8 facts ~~in~~ Hodge v. UHS, Unihealth Post Acute Care of
9 Bamberg, Your Honor, the facts are nearly the same. In that
10 case, a husband signed an arbitration agreement and an
11 admissions agreement on behalf of his wife. His wife was
12 competent. The facility never had her sign the agreement,
13 even though they were supposed to. The facility then argued
14 merger, and estoppel, and agency, and all the same things that
15 these defendants are arguing today. And the Court found that
16 none of those elements could exist. And the elements were
17 almost essentially the same as what we have here today.

18 And then, finally, Your Honor, with regards to their last
19 position on discovery, the Hodge case essentially holds that
20 they're not entitled to discovery on these issues. The Hodge
21 case, which I've mentioned, is almost exactly the same facts
22 as this particular case. The Court noted that the parties had
23 submitted all the documents they wanted the Court to consider
24 for the hearing at that time. The Court also noted that
25 nothing indicates that the spouse would have realized ~~--~~ or

1 in this case Mr. Floyd~~r~~ would have realized that his wife
2 would sign an arbitration agreement in admitting her to the
3 facility. In other words, there was no evidence that's been
4 presented that he should have known his wife was signing an
5 arbitration agreement. That's the same thing in Hodge~~r~~ and
6 the Court said there's no discovery because there's no
7 evidence of that.

8 And then~~r~~ finally, the Court noted in Hodge that the
9 defendants were not entitled to discovery on these issues
10 because the Court said even if, in this case Mrs. Floyd, had
11 some authority to sign admitting or financial documents, that
12 authority does not encompass executing an arbitration
13 agreement on behalf of the resident. And the Court said, so
14 therefore~~r~~ discovery would not be beneficial at all.

15 And I would like to add that I don't think our affidavits
16 were necessary in any way to resolving this motion. It just
17 bolsters our position. The affidavits were not necessary to
18 show that there was no agency. The affidavits were not
19 necessary to show there was no merger. And the affidavits
20 were not necessary to show that there was no estoppel. But
21 we'd submitted those just to bolster our opinion. And the
22 defendants had all the time in the world they wanted leading
23 up to this to file any motion to request discovery in
24 furtherance of their motion to compel, but instead chose to go
25 forward with their motion to compel arbitration and have their

1 day with the Court today to determine whether this is
2 enforceable or not.

3 And so I believe I've addressed all the main points, Your
4 Honor, but I'm happy to answer any other questions the Court
5 may have.

6 THE COURT: All right. Mr. Hines, anything in reply?

7 MR. HINES: As quickly as possible, Your Honor. Yes,
8 sir.

9 I didn't hear anything in plaintiff's counsel's argument
10 to rebut in any way the argument that Mrs. Floyd's individual
11 claim for loss of consortium should be compelled arbitration.
12 And I don't believe there is an argument in this case
13 because, again, she's not a non-signatory; she is a signatory
14 and she signed the arbitration agreement. So I think that I
15 should say, at a minimum, Your Honor, that one is unscathed.

16 Now, as for these other cases, for instance, there's
17 Fowler, for instance, and these other cases that Mr. Christian
18 is arguing do us in on this merger and equitable estoppel
19 argument. Respectfully, Your Honor, there are all sorts of
20 nuances in both factual and in terms of legal argumentation
21 that we're making to Your Honor that are either different or
22 simply not addressed. ~~They~~ They weren't a part of those other
23 cases, and they are fair game to distinguish, as we are
24 attempting to do, or to raise, as we are attempting to do, in
25 furtherance of our arguments. So any suggestion that there is

1 any sort of ~~---~~ that what we're arguing is not justifiable, as
2 a matter of fact, in law, Your Honor, I just have to push back
3 against that as strongly as possible and also to push back
4 against this conflation of cases.

5 For instance, it's very easy to say, as Your Honor is
6 sitting there having to have all sorts of words flung at him
7 over the course of this far~~---~~ranging hearing by the Coleman
8 case. For instance, Your Honor, if you didn't know anything
9 else other about it, you would hear, well, gosh, y'all lost on
10 Coleman, and you took the thing up, tried to go to the U.S.
11 Supreme Court, and lost up there too, didn't you? Your Honor,
12 that's true so far as it goes. The Coleman case was largely
13 about whether or not the Adult Health Care Consent Act and the
14 surrogacy provision of that allowed a surrogate to agree to
15 arbitration. And so the merger in equitable estoppel was a
16 secondary position, which relied upon state law principles,
17 beginning with merger and the application of equitable
18 estoppel as far as ~~---~~, well, that argument never explained it.

19 But what was relevant to the cert petition, Your Honor,
20 had nothing to do with my merger and equitable estoppel
21 argument. It had to do with whether or not the interpretation
22 of the Adult Health Care Consent Act that was contrary to the
23 proponents of arbitration violated the Supremacy clause by
24 violating the FAA, by treating ~~---~~ by creating a my previous
25 situation where arbitration agreements weren't placed on equal

1 footing. So, Your Honor, if you only heard that argument, I
2 don't know, perhaps it could be somewhat persuasive to you,
3 but really, that's not the whole case. In fact, ~~that's~~ it's
4 not at all what we're talking about.

5 Same thing with the case of Weaver v. Brookdale, Your
6 Honor. That case is an ~~---~~ I can't ~~---~~ that case, the
7 resident was not even suing. That case was a horrible
8 tragedy. Apparently, I think her name is Mrs. Walker, who was
9 a resident of a facility here, who I think had a host of
10 issues, and was somehow was not attended to, or accounted for,
11 and left the facility when she wasn't able to care for
12 herself, and apparently was attacked and killed by an
13 alligator down here.

14 And the case that was brought was a case by her
15 granddaughter, Ms. Weaver, who was suing for negligent
16 instruction of emotional distress, intentional infliction of
17 emotional distress. Because when her grandmother went
18 missing, they called family members, and she showed up to try
19 and find her. And she's the one who finds her grandmother in
20 ~~this is~~ horrible ~~---~~ she's no longer living, and had died a
21 terrible, grisly death. She sued. We didn't do this. It was
22 another ~~---~~ somebody else defending the case made a motion
23 to compel arbitration on the basis of merger and equitable
24 estoppel.

25 Well, Your Honor, there's a million reasons why that was

1 never going to fly. Because I'm arguing to you that the
2 resident here is merger and equitable estoppel. They were
3 arguing in that case merger and equitable estoppel for someone
4 who was completely a stranger to the contract. So just --
5 that's not even remotely close to being on all fours, Your
6 Honor. And by the way, it's mixing metaphors-- -- to mix my
7 own metaphor and say it-- -- when you say, ah-ha, in that
8 case, the arbitration agreement was within the admission
9 agreement, and there was still no estoppel. Just in that
10 sentence, Your Honor, that's two different things. You've got
11 merger and estoppel. So just because you might -- you could
12 agree with me on merger, Your Honor, and still I could lose on
13 estoppel. Now, we argue, obviously, that we ought to win, but
14 those are two concepts. And so when Your Honor is-- -- I
15 guess I say that as a way of trying to, in some sort of albeit
16 general way --, I mean, there are a whole host of nuances
17 here, and I don't believe that plaintiff's counsel's argument
18 is addressing.

19 And as to the question of foundation, that one was, one,
20 Your Honor, I have to say that is in the territory of sort of
21 a gotcha type argument that I think in fairness to the extent
22 it got any traction with Your Honor, we could clear that up
23 with some sort of supplemental affidavit in a very short
24 amount of time from some appropriate person to explain this.
25 However, I think that you might have another argument here for

1 estoppel, that plaintiff's counsel shouldn't be able to argue
2 against us in a memo in opposition that never raises the
3 question of foundation~~7~~ and acts as if we have agreements,
4 arbitration agreements~~7~~ and admission agreements signed, and
5 then files an affidavit that is entirely consistent with our
6 position that she signed these things. This is Mrs. Floyd.

7 ~~-~~Any paperwork was presented to me in such a fashion that
8 I was led to believe that all paperwork I signed ~~---~~ she's
9 acknowledging signing paperwork, ~~was --- --~~ now, she's saying
10 it was necessary for her husband. It's admission to the
11 facility. So, I mean, she's acknowledging in her affidavit to
12 signing admissions paperwork. You can compare her signature
13 on her affidavit with the signature on the documents that we
14 filed and see, I think, at a glance~~7~~ that we're talking about
15 the same signature.

16 Also, as far as the issue of not being able to prove the
17 content of the admission agreement. Well, Your Honor, we have
18 provided the signature page for the admission agreement, and
19 admittedly, at least as of yet, that's what we have at our
20 disposal. But if you'll notice on the bottom of that
21 document, it says ~~---~~ at the bottom left corner ~~---~~ RAA,
22 which stands for Resident Admission Agreement, hyphen SC,
23 revised August 2011. That is on the bottom left of the
24 signature page. And what we've provided is the very same
25 agreement that we used. It's~~7~~ that document, the RAA-SC

1 revised 2011. We provided a exemplar document. Again, Your
2 Honor, if that issue~~---~~ -- because really that's an issue that
3 can be cleaned up with minimal, I mean, essentially no time in
4 terms of any time that would be~~we~~ prejudicial to plaintiff's
5 counsel, or with the supplementary submission on our part.

6 So, Your Honor, I think the foundation issue is, one, I
7 think entirely inconsistent with the argument, well, with the
8 affidavit that's filed, with the way that the opposition was
9 briefed. But also, Your Honor, in terms of~~---~~ -- look at rule
10 one of the rules of civil procedure. 7 ~~T~~hese rules shall be
11 construed to secure the just, speedy, and inexpensive
12 determination of every action. Well, justice first. And I
13 think for a good reason, it allows the Court in a situation
14 like this to the extent it mattered, that is, to the extent
15 that Court considered to be significant for us to clear this
16 up. I think that really should be much ado about nothing in
17 terms of it just requires us~~---~~ -- if Your Honor disagrees
18 with what I've already had to say, we would theoretically be
19 required to jump through a hoop. But jump through it we
20 certainly may, or certainly will if that's where we are in
21 terms of argument.

22 There was, oh, an idea that Mr. Floyd ~~---~~ -- he was required
23 to sign. That's not accurate, Your Honor. It was said, as I
24 understand plaintiff's counsel, and it's also in the
25 affidavit, Mr. Floyd was in the hospital and on the way~~---~~ --

1 or excuse me— ~~---~~ in an ambulance traveling from a hospital
2 to the facility. Well, two things. To the extent that that's
3 argued to suggest ~~that we're~~ some sort of callousness on our
4 part, he was traveling away from a hospital in an ambulance,
5 not to one. So, I mean, that does cut against the idea that
6 we're talking about some emergency situation. The idea is
7 that if you're going to a hospital in an ambulance, that's
8 where you deal with things that are of a certain level of a
9 critical nature. This is— ~~---~~ he's obviously leaving a
10 hospital by ambulance. Sure.

11 But also, we're relying upon Mrs. Floyd's
12 representations. She's the one who's making the
13 representation that the resident is judged incompetent and
14 complete this section. That's what's happening when she signs
15 that. And she didn't just sign it as a family member. ~~It~~ It
16 specifically says have the authority to sign on his behalf.
17 And that's the representation that she made. There's no
18 question here as to her competency. And she's signed it and
19 she's agreed or presumed by our law to have read, understood,
20 assented to those terms. She's also bound by an obligation of
21 good faith and fair dealing, no more, no less than we are.

22 And oh, yeah. I think I mentioned this, Your Honor.
23 This idea, again, you have to be suing under the contract to
24 do this. I'll rely, I guess, on my earlier argument and point
25 to the Wilson case. I don't see where the Wilson case

1 actually says that. I think that's a misunderstanding of
2 Wilson. And Wilson makes clear that the importance is direct
3 benefits versus indirect benefits. And I don't even
4 understand why it would require a lawsuit or a claim based
5 upon the contract, because from an equitable standpoint,
6 you're having your cake and you're eating it too by virtue of
7 the direct benefits themselves. I don't know why you have to
8 have any more than that.

9 In fact, when the Wilson case is citing another case
10 called Pearson (phonetic), where the Court of Appeals applied
11 this to require arbitration, it indicates Dr. Pearson clearly
12 received a direct benefit from the hospital's contract with
13 another entity because Dr. Pearson was able to work at the
14 hospital and receive payment for his work due to the contract
15 containing the arbitration clause. And then the next thing
16 they say here is, in addition, where plaintiffs sue and seek
17 release based on contracts containing arbitration clause.
18 That's in addition. That's just saying that that would be
19 another ~~redacted~~ redacted certainly, I think it would, if anything,
20 have ~~redacted~~ redacted you can add that on as a little extra sweetener to
21 your argument, but that's not saying it's necessary as far as
22 suing based upon contract.

23 Oh, and the other things about Fowler, that case Fowler.
24 Fowler is a different case and it's also an unpublished
25 decision from the Fourth Circuit. That's not controlling

1 here. Thompson. The whole discussion in Thompson, I should
2 mention, is in fact ~~---~~ -- let me make sure it's Thompson and
3 not Hodge ~~---~~ -- is in fact dicta because before they actually
4 even get into the merger analysis, the competency court says,
5 based on the foregoing, appellants are precluded from arguing
6 the doctrine version is appeal. The point is they found it to
7 have been waived. So, Your Honor, ~~that~~ there's plenty of meat
8 on this bone, is my point, for us to be able to argue, as we
9 most respectfully do, and we believe thoughtfully and
10 certainly in good faith that merger and equitable estoppel
11 apply.

12 The other thing, the last thing I'd mentioned is there's
13 a note in plaintiff's brief about how if you agree with us on
14 arbitration, that all of the defendants should be forced to
15 arbitrate. Your Honor, we do respectfully disagree with that,
16 because one thing underlying that notion and the reason why
17 you see all these different entities named in this complaint,
18 and the complaint itself is 30 or 40 pages, the plaintiff's
19 case involves this argument about alleged corporate
20 negligence. 7 ~~And~~ ideas that these defendants are
21 amalgamated ~~---~~ ~~t~~ there's all sorts of allegations as to their
22 relationship.

23 And so the idea that these defendants would ~~---~~ -- that
24 they ~~did~~ not moved to compel arbitration, ~~7~~ but merely moved
25 to stay would be required to arbitrate, it would be wrong,

1 Your Honor. It also prejudices the relationship question
2 and ~~---~~ -- well, those allegations have been addressed through
3 the answers of those defendants, and that would be where I
4 would point as far as explaining, or whatever the statement is
5 in response to plaintiff's allegations about their
6 relationship. But there's no basis to require those
7 defendants to arbitrate if they've not moved to compel it.

8 And so if Your Honor agrees with us about arbitration --
9 ~~it-as~~ would be as to the facility and as to the administrator,
10 the individual, and ~~the~~ everything else would be stayed
11 according to the FAA and the case law that I cited earlier.

12 So, Your Honor, with that, that's at last what I 'll have
13 to say.

14 THE COURT: All right. All right. Mr. Christian, if I
15 could get you to prepare an order that's going to deny the
16 motion to compel arbitration. ~~I~~ It grants it as to Ms.
17 Floyd. She signed the agreement. I grant it as to her. Deny
18 it as to the plaintiff, Mr. Floyd.

19 The motion to stay, let me hear from you on that again,
20 Mr. Christian, on the motion to stay, since I'm granting it
21 only ~~as~~ as to Ms. Floyd.

22 MR. CHRISTIAN: Yes, sir. To the extent if I did
23 not ~~---~~ -- and I understand your ruling, but I just want to
24 make sure for the record if I did not address that properly.

25 First of all, I think that the Hodge court had dealt with

1 that situation where a spouse had signed on behalf of the
2 other spouse individually. ~~(indiscernible)~~

3 THE COURT: Maybe, I mean, I did not hear an argument
4 from you as to Ms. ~~---~~

5 MR. CHRISTIAN: Yes, sir, I know. And that ~~---~~

6 THE COURT: ~~---~~ Floyd individually.

7 MR. CHRISTIAN: ~~---~~ that was something I mistakenly
8 left out. So that's why I was trying to, just for the record,
9 make that clear. The Thompson court said, and it was quoted
10 in Hodge, that there was nothing that they could hold the
11 mother's estate for for any possible misrepresentations the
12 son or daughter may have made in their individual capacities
13 in signing the arbitration agreement. And in this particular
14 instance, they're saying that she signed in her individual
15 capacity, even though the arbitration agreement
16 (indiscernible) ~~---~~

17 THE COURT: Oh, I see what you're saying.

18 MR. CHRISTIAN: ~~---~~ under ~~---~~ Yes, sir. And then on
19 her arbitration agreement under her name, it just says
20 signature of legal representative or family member. Also, I
21 don't believe there would be any consideration for her signing
22 the arbitration agreement because there was no instance
23 whatsoever where the defendant facility would ever sue her,
24 but only where she might sue them. So there's also no
25 consideration for her signing the arbitration agreement. So

1 my client~~---~~ --

2 THE COURT: I understand your argument now.

3 MR. CHRISTIAN: Okay.

4 THE COURT: I see what you're saying. So I'm going to
5 deny the motion to compel arbitration and the motion to stay.

6 MR. HINES: Your Honor, can I be heard because being as
7 that was the first I heard Mr.~~---~~ Christian argue against that
8 point, may I at least put my point~~---~~ --

9 THE COURT: Very briefly. We've been on this one motion
10 now going on for about an hour and five minutes. So very,
11 very briefly, make your point and we'll be good.

12 MR. HINES: Very briefly, Your Honor. Those cases, Hodge
13 and Thompson, that he cited are completely inapplicable, Your
14 Honor. In those cases, you didn't have someone making their
15 own claim. It was Hodge, for instance, his personal
16 representative of the estate of a decedent~~---~~ that was the
17 plaintiff. In Thompson it's Mae Ruth Thompson, individually
18 and as appointed personal representative of the estate of the
19 decedent. These people are making~~---~~ -- it's mixing issues by
20 arguing this. What they were saying is that the Court was
21 recognizing a distinction between signing something
22 individually and signing something that could bind an estate.

23 In this case, Mrs. Floyd signed this~~---~~ and she did sign it
24 so as to bind her. It says so. In signing this agreement,
25 the legal representative or family member binds both the

1 resident and themselves individually. She did do that. And
2 that's different than the Hodge and Thompson case, where they
3 were talking about there is where you had, for instance, a
4 wrongful death case that followed, where the spouse, or the
5 son, or whoever it is goes and signs this, and then they end
6 up the PR. And they say, ah-ha, you as the PR, you signed
7 this. And they go, yeah, but when I signed it, I wasn't the
8 PR; ~~7~~ no one was dead then. That doesn't have anything to do
9 with what we're talking about now. She signed it for herself.
10 It expressly says so.

11 As far as consideration is concerned, you have mutual and
12 binding promises to arbitrate. That's all that you need for
13 consideration. There's a case called O'Neil v. Hilton Head
14 Hospital, Rick Warren v. Liberty ~~---~~ -- I can't remember the
15 name of the case ~~---~~ -- we cited that. And so it would violate
16 the FAA to require more in terms of consideration, because the
17 FAA says that you have to enforce contracts for arbitration
18 the same and put them on equal footing with any other
19 contract. She signed it in her individual capacity containing
20 mutual and binding promises to arbitrate. And it's not true,
21 even as a factual matter, even if you could get to this and
22 try to argue that there would be no reason to sue her, that's
23 not true. She took on certain responsibilities as the
24 representative of her husband in signing this document in
25 terms of his admission. I mean, she has certain rights and

1 responsibilities. It's not at all true that there couldn't
2 be, potentially, some dispute between her and the facility.

3 But I don't even know that that's necessary to get into
4 because what we're doing now is trying to figure out,
5 could— -- it's inaccurate to say there couldn't be a dispute
6 between those two that could be arbitrated. That's not
7 something that's been proved, and it couldn't be proved based
8 upon the documents. But I don't even know where that has to
9 be addressed in terms of consideration. It's mutual and
10 binding promises to arbitrate. That's set forth plainly in
11 the document, which she signed for herself in her own
12 capacity. And she said as much with her representation that
13 she is presumed again to have read, agreed with, and
14 understood.

15 THE COURT: All right. All right. I'm going to stick
16 with my prior rule.

17 Mr. Christian, if you'd prepare the order for me?

18 MR. CHRISTIAN: Yes, sir. The only very short issue is
19 we also had a motion to compel discovery.

20 THE COURT: Right.

21 MR. CHRISTIAN: And they haven't answered. I don't think
22 there's any dispute about that and that it's otherwise due. I
23 just wanted to see if we could get an order compelling
24 responses sometime.

25 THE COURT: Mr. Hines, any argument on the motion to

1 compel discovery since I've denied the motion to compel
2 arbitration?

3 MR. HINES: Your Honor, and I'll say this with the utmost
4 respect, because I don't ever like to talk about appeal issues
5 in front of a trial court. That just seems to be ~~---~~ -- I
6 don't know. I don't want to suggest anything like that. But
7 the ~~---~~ --

8 THE COURT: No, I understand.

9 MR. HINES: ~~---~~ -- the truth is, I mean, we do have a
10 statutory right to appeal immediately from the denial of a
11 motion to compel arbitration. And what I suspect will be the
12 case ~~---~~ --, obviously, our client's not aware of the ruling just
13 yet because it's hot off the press. But provided there is an
14 appeal, Your Honor, it would have the effect of an automatic
15 stay and so forth. So as far as subject to that type of
16 consideration, Your Honor, then, obviously, if we are
17 litigating, if we are to go forward in court and not an
18 arbitration, then there's discovery responsibilities that
19 we'll have to meet. So I'm not trying to wriggle out of that,
20 but I just want to be candid with the Court in saying that I
21 wouldn't want there to be ~~---~~ -- I guess, just for what it's
22 what it's worth, I'd like the Court to know that it's entirely
23 possible that we ~~---~~ --

24 THE COURT: I understand. I understand. All right. I'm
25 going to grant the motion to compel discovery. Defendant must

1 comply with Discovery within 60 days unless the defendant
2 appeals the denial of their motion to compel arbitration.

3 So ~~---~~ ---

4 MR. CHRISTIAN: Thank you, Your Honor.

5 THE COURT: ~~---~~ --- if they appeal the motion to compel
6 arbitration, my denial of that motion, then that'll put
7 discovery on hold. Okay?

8 MR. HINES: Yes, sir.

9 MR. CHRISTIAN: Yes, sir. Sounds good. Thank you very
10 much.

11 THE COURT: All right. Thank you.

12 MR. HINES: Thank you, Your Honor.

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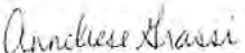
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Sumter)

I, ANNELIESE GRASSI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 7th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 29, 2023



Anneliese Grassi, CDLT-264
Transcriber

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

Appeal from Sumter County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2022-CP-43-00355

Stanley Dale Floyd and Stephanie Floyd,

Respondents,

v.

SSC Sumter East Operating Company, LLC
d/b/a Sumter East Health and Rehab Center,
SSC Equity Holdings, LLC, SavaSeniorCare, LLC,
SavaSeniorCare Administrative and Consulting, LLC,
SavaSeniorCare Consulting, LLC, SMV Sumter East, LLC, and
Natasha Nadkarni,

Appellants.

NOTICE OF APPEAL

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Defendants/Appellants, SSC Sumter East Operating Company, LLC d/b/a Sumter East Health and Rehab Center, SSC Equity Holdings, LLC, SavaSeniorCare, LLC, SavaSeniorCare Administrative and Consulting, LLC SavaSeniorCare Consulting, LLC, SMV Sumter East, LLC, and Natasha Nadkarni (“Appellants”), hereby appeal the following orders of the Honorable Benjamin H. Culbertson, Circuit Court Judge:

- **Form 4 Order filed September 8, 2022**, denying Appellants’ respective motions to compel arbitration and to stay;
- **Formal Order filed October 4, 2022**, denying Appellants’ respective motions to compel arbitration and to stay; and
- **Form 4 Order filed June 5, 2023**, denying Appellants’ motion to alter, amend, and/or reconsider order denying motion to compel arbitration and motions to say; and

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on June 5, 2023.

Respectfully submitted,

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July 5, 2023

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Jan 19 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

Respectfully Submitted,

s/Timothy Maio

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January 19, 2024

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