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SC Court of Appeals

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

Appeal from Dorchester County
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Case No. 2020-CP-18-01027
Appellate Case No. 2021-000594

Paulette Walker
as Personal Representative of the Estate of Albert Walker,

Respondent,

v.

Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center
and Durena Stinson,

Defendants,

Of whom Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center is

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of	)	
the Estate for Albert Walker,	)	
	)	
Plaintiff,	)	CONSENT ORDER TO AMEND AND
	)	SUBSTITUTE PARTIES
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Durena Stinson,	)	
	)	
Defendants.	)	

The parties in the above-captioned case move the Court by consent for an Order allowing Plaintiff to substitute the parties of the Complaint from Paulette Walker as Power of Attorney for Albert Walker to Paulette Walker as Personal Representative of the Estate of Albert Walker. Additionally, the parties move the Court by consent for an Order allowing the Plaintiff to pursue a wrongful death claim against the Defendants. The proposed Amended Complaint is attached as Exhibit "A".

With consent of all counsel, it is hereby ordered that the Plaintiff is granted leave to substitute the parties and amend the complaint.

AND IT IS SO ORDERED.

Presiding Judge

_____, 2020
Dorchester County, South Carolina

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Attorney for Defendants



Dorchester Common Pleas

Case Caption: Paulette Walker , plaintiff, et al VS Hallmark Longterm Care Llc ,
defendant, et al
Case Number: 2020CP1801027
Type: Order/Amend

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
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Paulette Walker as Personal Representative of	)	
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	)	ORDER DENYING DEFENDANT'S
Plaintiff,	)	MOTION TO STAY ACTION AND
	)	COMPEL ARBITRATION
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center and Durena Stinson,	)	
	)	
Defendants.	)	

This matter was before the Court on Monday, February 8, 2020, at 9:30 a.m., in Dorchester County, South Carolina, upon Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Durena Stinson's Motion to Dismiss and Compel Arbitration. Oral argument was conducted via Webex. Attorney Bradley H. Banyas of Hughey Law Firm, LLC was present representing the interests of the Plaintiff. Attorney Kate C. Mettler of Clement Rivers, LLP was present representing the interests of the Defendant. For the following reasons set forth herein, the Defendants Motion to Dismiss and Compel Arbitration is hereby DENIED.

FACTS

The Defendants operate a skilled nursing facility in Dorchester County, South Carolina. The facility is licensed by the South Carolina Department of Health and Environmental Control, pursuant to R. 61-17, *Standards for Licensing Nursing Homes*. Albert Walker was admitted to the Defendants' facility on or about January 2, 2019. Mr. Walker's wife, Paulette Walker signed several documents upon admission, including an arbitration agreement which is the subject of Defendants' Motion. At this time, Paulette Walker did not have legal authority to contractually bind her husband to arbitration, by way of a Power of Attorney nor any Court appointed Guardianship. While a resident in the Defendants' facility, Mr. Walker was allowed to suffer from numerous falls, one of which ultimately led to him being diagnosed with compression spinal fractures on or about June 16, 2019. Following Mr. Walker's admission, he executed a Durable

Power of Attorney, naming his wife to serve as his agent. The Power of Attorney was acknowledged on January 16, 2019 and recorded with the Charleston County Register of Deeds on January 18, 2019.

STANDARD OF REVIEW

A parties' right to a jury trial in South Carolina is governed by state law. Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978). While the Federal Arbitration Act ("FAA") imposes a presumption favoring arbitration, the presumption does not apply to the "identity" of the parties who may be bound to such an agreement. Wilson v. Willis 426 S.C. 326, 335 827 S.E.2d 167, 179 (2019). In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. Id. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. 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 (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 to arbitrate 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, 22, 644 S.E.2d 663, 667 (2007) citing S.C. Code Ann. § 15-48-20(a) (2005). 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).

In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105,

(1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. The Arbitration Provision is not enforceable because Paulette Walker lacked the capacity to contract on behalf of her husband, and Albert Walker did not sign the Arbitration Agreement

It is undisputed that Albert Walker never signed the arbitration agreement. Paulette Walker executed an Admission Agreement on behalf of her husband upon his entry to the Defendants' facility on January 2, 2019. Mrs. Walker did not have any legal authority to sign on behalf of Mr. Walker though a Power of Attorney or Court Ordered Guardianship or Conservatorship. At the time of admission, Mrs. Walker was not Mr. Walker's Power of Attorney nor did she have legal guardianship over Mr. Walker. At the time of admission, Mr. Walker had never been declared incapacitated. The Court notes the distinctions among the two documents. An admissions agreement sets forth the terms of the resident's admission and scope of healthcare to be provided while at the facility. An arbitration agreement is a legal document which sets forth the terms of resolving potential disputes.

The mere fact that an arbitration exists does not automatically refer any dispute to arbitration. Like any contract, the agreement must be valid to be enforceable, signed by the parties who had the express and legal authority to do so. Paulette Walker was not the court appointed legal guardian of Albert Walker, nor did she have a durable power of attorney which would confer her authority to make legal decisions on his behalf. There is no evidence that Albert Walker was incapacitated or unable to sign the agreements himself. In fact, several days later on January 16, 2019, Albert Walker executed a valid durable power of attorney. This power of attorney was properly witnessed and notarized and was subsequently filed with the Charleston County Register of Deeds on January 18, 2019. Mr. Walker had legal capacity to enter into contracts following his admission to Defendant's facility as evidenced by the power of attorney; therefore Mrs. Walker's signature on the residency agreement is invalid as to the arbitration

agreement. The Defendant facility is a sophisticated business entity frequently interacting with residents and their families during the admission process. It should be well aware of the differences between a durable power of attorney, a healthcare power of attorney, and other forms of guardianship, or in this case, the lack thereof.

a. A Residency Agreement and an Arbitration Agreement are two separate agreements and one cannot be bound by the other.

The South Carolina Supreme Court has ruled the difference between a residency contract and an arbitration agreement, and that just because the two agreements are contained in one document does not make them one in the same. The Supreme Court has ruled that:

Assent to this contract [the admission agreement] was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). A decision to admit a resident to a community residential care facility such as the Defendants is a healthcare decision. As such, signing an admission agreement to a skilled nursing facility is a healthcare related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

b. Plaintiff did not Possess Statutory Authority to Bind Mr. Walker under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act (“AHCCA”), defines “health care” as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care.” *Id.* A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

- (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:
- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
- (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
- (3) a person given priority to make health care decision by another statutory provision;
- (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;
 - b. formal signing of a written property or marital settlement agreement; or
 - c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (6) a parent of the patient;
- (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
- (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
- (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendant has put forth no evidence that Mr. Walker was unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent, as required by the statute. In fact, based upon the evidence provided, Mr. Walker was capable of making his own decisions at the time of the admission to the facility. Additionally, the AHCCA

only deals “health care” related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word “legal” or “arbitration” mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The Defendants cite the case of Coleman v. Mariner Health Care, et al., 407 S.C. 346, 755 S.E.2d 450 (2014), which addresses the AHCCA. The Court in Coleman held that the sister of a nursing home resident could not bind the resident to an arbitration agreement at the time of admission, and that the arbitration agreement was not valid because it exceeded the scope of the sister’s authority under the AHCCA. According to the Court, AHCCA specifically limited surrogates’ authority to making health care decisions and associated financial arrangements. Arbitration is not a health care or related financial decision, and thus exceeds the authority granted by the AHCCA. Id. At 351-52, 755, S.E. 2d at 453.

ii. S.C. Bill of Rights for Residents of Long-Term Care Facilities

South Carolina Bill of Rights for Residents of Long-Term Care Facilities is codified in S.C. Code Ann. §44-81-10, et seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin, or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(3). This is substantially the same as the AHCCA. Under the Bill of Rights, decision making is limited to health care decisions, not legal decisions.

c. Paulette Walker Lacked Actual or Apparent Authority to Sign the Arbitration Agreement for Albert Walker

The legal consequences of an agent’s actions can only be attributed to the principle when the agent as actual or apparent authority. Charleston Registry v. Young Clement, 359 S.C. 635, 598 S.E.2d 717 (Ct. App. 2004). It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent’s authority. Frasier v. Palmetto Homes of Florence, 473 S.E.2d 865 (Ct. App. 1996). South Carolina law requires that to prove apparent authority, the Defendant 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. Id.

Defendants have produced no evidence indicating that Paulette Walker had authority to enter a contract on Albert Walker's behalf or waive Mr. Walker's right to a jury trial. The issue of arbitration agreements in skilled nursing facilities has been addressed at the Court of Appeals and Supreme Court, and the case is very similar to Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292, 304 (Ct. App. 2018); and Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d, 679 (Ct. App. 2016). In all three of these cases, South Carolina Courts have found Arbitration Agreements to be unenforceable where a family member signed an Arbitration Agreement near the time of admission to a skilled nursing facility for the Decedent and did not have any actual authority to do the same. In all three cases, the Courts found that no implied authority nor estoppel applied. Presently, a review of the admissions and arbitration documents by the Defendants would have informed them that Paulette Walker did not have actual authority by way of a Durable Power of Attorney, nor Court Appointed Guardianship to bind Albert Walker, nor did she ever indicate that she had any apparent authority to enter contracts on behalf of Mr. Walker.

II. PLAINTIFF IS NOT EQUITABLY ESTOPPED FROM DENYING THE ARBITRATION AGREEMENT.

Defendants also argue that Plaintiff should be equitably estopped from denying enforcement of the Arbitration Agreement. Equitable estoppel is a contract defense and the party

asserting this defense bears the burden of proving all of its elements.” Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting the estoppel must 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 in reliance on the conduct of the party to be estopped. Id.

Defendant has not met its burden to establish these elements. There is no evidence Paulette Walker acted in a way amounting to a false representation to Defendants regarding Mr. Walker’s status or that Mr. Walker intended for Defendants to act in reliance on her conduct. Additionally, the evidence shows Defendants cannot meet possibly its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

In this case, the Defendants had the capacity to determine whether Ms. Walker had the authority to sign an arbitration agreement on Mr. Walker’s behalf. Stated again, the Defendants should be familiar with these requirements as they frequently interact with residents and their families during the nursing home admission process. The Defendants are or should be familiar with the legal concepts of guardianship and powers-of-attorney. Since the Defendant has not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

III. THE ADMISSION AGREEMENT AND ARBITRATION AGREEMENT ARE SEPARATE CONTRACTS THAT DO NOT MERGE.

The Admission Agreement and Arbitration Agreement are separate contracts that do not merge. See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 573-74, 813 S.E.2d 292, 308 (Ct. App. 2018) (cert. denied Aug. 21, 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016); Coleman v. Mariner Health Care Inc., 407 S.C. 346, 352, 755 S.E.2d 450 (2014) (Coleman refused to apply the doctrine of merger because language in the contracts “recognize[d] the ‘separateness’ of the admission and arbitration agreements.” 407 S.C. at 355, 755 S.E.2d at 455. Thompson and Hodge applied Coleman and provided further examples of factors demonstrating “separateness and preventing merger. 416 S.C. at 52, 784 S.E.2d at 684; 422 S.C. at 563, 813 S.E.2d at 302.

As discussed above, there were two separate agreements signed separately, and they were not merged. Since there was no merger here, Defendants’ equitable estoppel argument must be denied. See Coleman, 407 S.C. at 355–56, 755 S.E.2d at 455 (rejecting estoppel argument by finding no merger). South Carolina courts have three times refused merger arguments for nursing home admission and arbitration contracts, and Defendants’ argument should be rejected as well. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 49-52, 784 S.E.2d at 683-84; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302.

The Klutts Resort Realty, Inc. v. Down’round Development Corp., 268 S.C. 80, 232 S.E.2d20 (1070) “merger” principle cannot apply unless the writings in question were executed “at the same time, by the same parties, for the same purpose, and in the course of the same transaction.” 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). Even then, merger does not apply if there is “anything indicating a contrary intention.” Id. (emphasis added). Thus, multiple executed writings relating to the same general subject matter will not be viewed as a single or merged agreement if either their language or the circumstances even hint that the parties actually intended the writings to be distinct, separate

contracts. Three nursing homes have previously attempted but failed to meet these requirements, and South Carolina's appellate courts have never applied merger to nursing home admission and arbitration contracts. See generally Coleman, Thompson, and Hodge.

The terms and context of the admissions agreement and arbitration agreement show the parties intended the two to be separate contracts. Hodge is the key precedent here because it builds on Coleman and Thompson to provide the Court's most recent and complete illustration of the type of contract language or structure showing parties do not intend multiple agreements to be interpreted as one. For example, admission and arbitration contracts cannot merge if they contain inconsistent terms, especially provisions related to how each contract may be terminated or the substantive law governing their interpretation. Hodge, 422 S.C. at 562, 813 S.E.2d at 302; Thompson, 416 S.C. at 53, 784 S.E.2d at 685. Moreover, courts look at the way the contracts are structured, finding it is unlikely parties intended two contracts to be treated as one if they chose separate titles and required separate signatures. Hodge, 422 S.C. at 562, 813 S.E.2d at 302; see also Thompson, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1. Finally, Hodge held a nursing home cannot argue for merger when it chose to separate arbitration and admission into two agreements while taking the position that agreeing to the former was not required to obtain the benefits of the latter. 422 S.C. at 562-63, 813 S.E.2d at 302.

With no valid underlying contract, there could be no third-party beneficiary. First, Plaintiff's action sounds solely in tort. There is no breach of contract claim asserted. Plaintiff's pleading does not specifically refer to any written contract or necessarily rely upon the language of any written contract. Plaintiff's tort claims presumably are based on common law and statutory or regulatory duties imposed by law. Second, as discussed above, the Arbitration Agreement is a separate and distinct agreement from the Admission Agreement. Plaintiff does not rely upon the terms of the Arbitration Agreement to establish her tort claims.

IV. THE FEDERAL ARBITRATION AGREEMENT ACT DOES NOT MANDATE ENFORCEMENT OF THIS AGREEMENT.

Under the FAA, arbitration is required when there is a valid arbitration agreement, and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed above, there is no valid arbitration agreement because Paulette Walker did not have the legal authority to execute a valid arbitration agreement. Second, Plaintiff's claims include negligence, negligence per se, fraud and misrepresentation, violations of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship. Nowhere in the Defendants' arbitration agreement are those causes of action listed. Accordingly, the FAA does not apply.

CONCLUSION

Based on the reasons set forth above, the Court respectfully DENIES the Defendant's Motion to Compel Arbitration.

IT IS SO ORDERED.

The Honorable Maite Murphy

St. George, South Carolina



Dorchester Common Pleas

Case Caption: Paulette Walker , plaintiff, et al VS Hallmark Longterm Care Llc ,
defendant, et al
Case Number: 2020CP1801027
Type: Order/Other

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of	)	
the Estate of Albert Walker,	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR RECONSIDERATION
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center and Durena Stinson,	)	
	)	
Defendants.	)	

This matter came before the Court on Defendant Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center's Motion to Reconsider, filed March 29, 2021. After careful consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Defendants' Motion to Reconsider is heard and respectfully Denied.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "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." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

CONCLUSIONS OF LAW

The Court finds that this Court's Order filed March 19, 2021 sufficiently addresses all issues that were raised by both parties' written submissions, as well as those issues raised at oral argument. Albert Walker himself did not sign the arbitration agreement. Paulette Walker, who signed the arbitration agreement, did not have actual or apparent authority to bind Albert Walker to arbitration. The Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. If the Defendants wished to have an enforceable arbitration agreement, they should have asked for supporting legal documentation for any signatory other than Albert Walker himself. They failed to do so, and as such, the arbitration agreement is invalid.

Defendants have put forth no evidence that Albert Walker was unable or lacked capacity to execute the arbitration agreement or admissions paperwork himself. In fact, in the days after his admission to the Defendants facility, Mr. Walker executed a valid durable power of attorney. As such, the presumption is that Mr. Walker had the capacity to sign the arbitration agreement himself, which did not happen. Further, Defendants have put forth no evidence that Paulette Walker had authority to execute the arbitration agreement at the time it was signed.

CONCLUSION

Based on the reasons set forth above, the Court respectfully denies the Defendant's Motion to Reconsider. Defendant's Motion to Compel Arbitration is Denied.

IT IS SO ORDERED!

April _____, 2021
St. George, South Carolina

Hon. Maite Murphy



Dorchester Common Pleas

Case Caption: Paulette Walker , plaintiff, et al VS Hallmark Longterm Care Llc ,
defendant, et al
Case Number: 2020CP1801027
Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2021-05-05 11:27:00 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No.
	)	
Paulette Walker as Power of Attorney for Albert Walker,	)	
	)	
	)	
Plaintiff,	)	SUMMONS
	)	(Jury Trial Demanded)
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Durena Stinson,	)	
	)	
	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the said Complaint to said Plaintiff's attorneys D. Nathan Hughey, A. Stuart Hudson and Bradley H. Banyas, at their office located at 1311 Chuck Dawley Blvd, Suite 201, Post Office Box 348, Mt. Pleasant, South Carolina 29465-0348, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
D. Nathan Hughey (SC Bar #68409)
A. Stuart Hudson (SC Bar #71691)
Bradley H. Banyas (SC Bar #101668)
Post Office Box 348
Mount Pleasant, South Carolina 29465
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Attorneys for Plaintiff

July 7, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No.
	)	
Paulette Walker as Power of Attorney for Albert Walker,	)	
	)	
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Demanded)
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Durena Stinson,	)	
	)	
	)	
Defendants.	)	

The Plaintiff, Paulette Walker as Power of Attorney for Albert Walker, complaining of the Defendants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Durena Stinson ("Defendants"), alleges as follows:

1. The Plaintiff is a citizen and resident of Charleston County, South Carolina.
2. Upon information and belief, the Defendant, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, is a business corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in Dorchester County, South Carolina at 255 Midland Parkway, Summerville, South Carolina.
3. Upon information and belief, the Defendant, Durena Stinson, is a citizen and resident of Dorchester County, South Carolina and is the administrator of Hallmark Healthcare Center.
4. The Defendants had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through skilled nursing facilities and they are personally, jointly and severally liable for the acts and omissions committed.
5. The Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the residency of Albert Walker.
6. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.

7. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

8. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants' employees and/or agents were acting on behalf of or, in place of the Defendants in making decisions regarding the care of Albert Walker. Additionally, the Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of the Defendants were acting within the course and scope of their employment in regard to their care and treatment of Albert Walker.

9. On the application for the license in effect at the time of Albert Walker's injury, Hallmark Healthcare Center, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-17 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Albert Walker's injury.

10. The State of South Carolina required that Hallmark Healthcare Center have policies and procedures that accurately reflected actual practice regarding care, treatment, procedures, and services - including nursing services, the operation of the facility, and how Hallmark Healthcare Center was going to meet the specialized needs of the residents with Alzheimer's disease and/or related dementia such as Albert Walker - and the State of South Carolina required that Hallmark Healthcare Center make the policies and procedures available be accessible to staff. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

11. The State of South Carolina required that Hallmark Healthcare Center have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Albert Walker, based on assessment data, e.g., social services, which was to be implemented for the benefit of Albert Walker as well as other residents. Hallmark Healthcare Center acknowledged its awareness of this

requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

12. The State of South Carolina required that Hallmark Healthcare Center keep a record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, and directed that it was required to be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

13. Albert Walker's injuries constituted reportable incidents.

14. The State of South Carolina required that Hallmark Healthcare Center keep a legible and complete medical record, to include and any all incidents involving Albert Walker as well as other residents. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

15. The State of South Carolina required Hallmark Healthcare Center to describe in its care plan for Albert Walker as well as other residents the services that Hallmark Healthcare Center was going to furnish to him, *i.e.*, what assistance Hallmark Healthcare Center was going to provide to him, how much assistance Hallmark Healthcare Center was going to provide to him, who at Hallmark Healthcare Center was going to provide the assistance, how often, and when. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

16. The State of South Carolina required that Hallmark Healthcare Center to administer treatment and services to Albert Walker as well as other residents in a caring and humane manner, *effectively* and *safely*, and staff were required to respond to a signal system call from a resident to provide care or assistance in a prompt manner. Hallmark Healthcare Center acknowledged its awareness of this

requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

17. The State of South Carolina required Hallmark Healthcare Center to provide appropriate staff members in numbers and training to perform those duties that result in compliance with 61-17, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise, and to provide training and qualifications for the tasks performed in compliance with all State, Federal, and local laws, and current professional organizational standards. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

18. The State of South Carolina required Hallmark Healthcare Center to ensure that staff members Direct care staff members, in addition to meal service staff have at least the following qualifications: ability to render care and services to residents in an understanding and gentle manner; sufficient education to be able to perform their duties and have a working knowledge of regulations applicable to their scope of work. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

19. The State of South Carolina required Hallmark Healthcare Center to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs and that direct care staff be assigned only duties for which they are trained. Further, the State of South Carolina required Hallmark Healthcare Center to have licensed nurse staff members currently and continuously licensed to practice nursing in South Carolina during the period they are staff members, and that only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse. Hallmark Healthcare Center acknowledged its

awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

20. The State of South Carolina required Hallmark Healthcare Center to have an adequate number of licensed nurses be on duty to meet the total nursing needs of residents. Licensed nursing staff were required to be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

21. The State of South Carolina required Hallmark Healthcare Center to ensure staff members were provided the necessary training to perform the duties for which they were responsible and that, before performing any duties, all newly-hired staff members were to be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members were to be instructed in the provisions of S.C. Code Ann. Section 43-35-5 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in 61-17. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

22. The State of South Carolina required Hallmark Healthcare Center to ensure all staff were provided inservice training programs that identify training needs related to problems, needs, care of residents and infection control and were sufficient to assure staff's continuing competency. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

23. The State of South Carolina required Hallmark Healthcare Center to acknowledge its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

24. The State of South Carolina required Hallmark Healthcare Center to ensure all entries in the resident record were legible and complete, and separately authenticated and dated promptly by the individual, identified by name and discipline, responsible for providing or evaluating the service or care furnished. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

25. The State of South Carolina required Hallmark Healthcare Center to admit only individuals identified as appropriate for the level of care, services, or assistance offered. The facility was required to establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations, and permitted to admit and retain only those individuals whose needs could be met by the accommodations and services for which the facility is licensed. Anyone who had a need for medical care for acute illness or injury that was beyond the scope of the facility to provide, and where hospitalization was consistent with the individual's condition was not permitted to be retained as a resident. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

26. The State of South Carolina required Hallmark Healthcare Center to have practices that promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices were required to be in compliance with applicable regulations and guidelines of the Occupational Safety and Health Administration, *e.g.*, the Bloodborne Pathogens Standard; the Centers for Disease Control and Prevention, *e.g.*, Immunization of Health-Care Workers: Recommendations of the Advisory Committee

on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's South Carolina Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable State, Federal and local laws and regulations. The State of South Carolina required Hallmark Healthcare Center to have an infection control/QI committee that meets at least annually to address infection control issues consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping staff to assure compliance with 61-17 regarding infection control. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

27. The State of South Carolina required Hallmark Healthcare Center to have a written, implemented quality improvement program that provided effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

28. Albert Walker was admitted to the Defendants' facility, Hallmark Healthcare Center, on or about January 2, 2019.

29. While residing at the Defendants' facility, Mr. Walker was allowed to suffer from numerous falls.

30. On or about June 16, 2019, Mr. Walker suffered a fall which resulted in compression spinal fractures.

31. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and appropriate nursing home care to Albert Walker.

32. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of Albert Walker and in accordance with federal and state regulations as well as the representations made by the Defendants.

33. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living were required to be provided to residents, as needed.

34. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

35. Upon information and belief, the Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to Albert Walker.

36. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to Albert Walker.

37. Upon information and belief, the Defendants failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Albert Walker.

FOR A FIRST CAUSE OF ACTION
(Negligence)

38. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph and in their entirety.

39. The Defendants undertook the duty to render nursing home care to Albert Walker in accordance with the prevailing and acceptable professional standards of care for nursing homes and their

employees and agents in the national community and as further required by the state and federal laws applicable to the same.

40. Notwithstanding undertaking that duty and while Albert Walker was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of Albert Walker and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Albert Walker, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to comply with those provisions of 61-17 recited above and to which the Defendants' swore under oath subject to penalty of perjury that they would comply;
- b. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- c. In failing to properly supervise the personnel and staff and employees at the Defendants' facility with regard to Albert Walker's care;
- d. In failing to properly revise and modify plans of care for Albert Walker in response to Albert Walker's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of Albert Walker, so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Albert Walker from suffering from injury and pain;
- h. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and pressure ulcer prevention procedures;

- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendants;
- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- l. In failing to ensure that Albert Walker had proper care;
- m. In failing to properly document significant clinical findings;
- n. In failing to properly document the medical records of Albert Walker;
- o. In failing to follow and ensure that its employees follow the South Carolina Residence Bill of Rights for Long Term Care Facilities, South Carolina Department of Health and Environmental Control Regulation 61-84;
- p. In failure to provide sufficient number of personnel to meet the needs of residents;
- q. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;
- r. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- s. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- t. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- u. In failing to notify family members or authorities after incidents;
- v. In failing to transfer Albert Walker to a higher level of care as needed, and
- w. In such other particulars as may be ascertained through discovery or shown at trial.

41. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, Albert Walker suffered from severe debilitating injuries which resulted in permanent decline, as a result of which Albert Walker has suffered severe and extreme emotional distress,

anxiety, physical injuries, medical bills, the likes of which no person should endure, for which Albert Walker is entitled to recover in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence per se)

42. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in their entirety.

43. The Defendants are a long term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

44. The federal and state regulations combine to form minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Albert Walker.

45. The Defendants failed to abide by the standards, rule and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of Albert Walker.

46. The standards, rule and regulations promulgated by the United States Government and the State of South Carolina were specifically enacted for the benefit of the class of persons for which Albert Walker was a member.

47. As a direct and proximate result of the Defendants' negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations standards, rule and regulations promulgated by the United States Government and the State of South Carolina, Albert Walker suffered severe injuries as described above, constituting negligence per se.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

48. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

49. The Defendants, through deception, artifice, and circumvention, successfully defrauded Plaintiff, who trustingly submitted to care at the Defendants' facilities on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him;
- d. Such other misrepresentations as may be set forth above in this Complaint or as may later be set forth;

50. At the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true.

51. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing themselves or their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

52. The Defendants fraudulently concealed its inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.

53. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.

54. At the time the Defendants made such representations, they knew such affirmative claims of service were false.

55. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.

56. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.

57. As a result of the Defendants' fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

58. As a proximate cause of the Defendants' fraud and misrepresentation, the Plaintiff suffered physical injuries, pain and suffering as previously alleged.

FOR A FOURTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

59. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

60. The Plaintiff and Defendants are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

61. The Defendants, by conducting business in the state of South Carolina, are engaged in commerce within the meaning of Code Section 39-5-10(b).

62. The Defendants' actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to the Plaintiff and his family: that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care; that the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him; and such other particulars as are set forth above in this Complaint or may be shown through discovery or trial;
- b. Further, at the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing himself or his relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

- c. The Defendants fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.
- e. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.
- g. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

63. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated with other residents.

64. The Defendants' conduct adversely affects the public interest of South Carolina.

65. The Defendants knew or reasonably should have known their conduct violated the Unfair Trade Practices Act.

66. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, the Plaintiff has suffered an ascertainable loss of money, physical injuries, pain and suffering as previously alleged.

67. The Plaintiff is entitled to recover her actual damages, which amount should be trebled, pursuant to South Carolina law, together with interest and attorneys' fees.

WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendants for actual damages, punitive damages, special damages and consequential damages, in an amount to be determined by the jury at the trial of this action, fees, the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey

D. Nathan Hughey (SC Bar #68409)

A. Stuart Hudson (SC Bar #71691)

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Attorneys for Plaintiff

July 7, 2020

Mount Pleasant, South Carolina

EXHIBIT A

- Failing to place interventions as necessary to prevent Albert Walker from suffering falls;
- Failing to timely address injuries by Albert Walker;
- Failing to properly supervise the nurses, administrators, physicians, and other agents and employees,
- And other particulars.

8. Additionally, it is my opinion that Albert Walker's injuries were proximately caused by the Defendants' deviations.

9. This is not a complete list of all deviations from the standard of care which I have found in reviewing these records. As a result, I reserve the right to modify, change or supplement these opinions in the future.

Tabitha Nolen, MSN, RN, PCCN
Tabitha Nolen, MSN, RN, PCCN

Sworn to me this 12th day of January, 2020.

Annika Wilson

Notary Public for South Carolina

My commission expires: 4/4/2022

Tabitha Nolen



LICENSES / CERTIFICATIONS

- NSQIP Surgical Clinical Reviewer Certification
- Lean Six Sigma Green Belt Certified
- Current South Carolina Registered Nurse (RN) License
- Progressive Care Certified Nurse (PCCN)
- Advanced Cardiac Life Support (ACLS)
- Basic Life Support (BLS)
- NIOSH Spirometry Certification
- CAOHC Hearing Conservation Technician Certification

PROFESSIONAL EXPERIENCE

Quality Improvement Specialist, Roper Saint Francis Healthcare
Charleston, SC
August 2014-Present

Duties

- National Surgical Quality Improvement Program Surgical Clinical Reviewer
- Responsible for reviewing patient charts pre-operatively, intra-operatively and post-operatively
- Responsible for measuring and improving clinical outcomes
- Assists management to implement improvement strategies
- Responsible for the promotion of the use of statistical processes
- Interacts continually with clinical and medical staff to provide data and solution development processes
- Assist with Joint Commission preparation with TJC Tracers

ICU, Roper Saint Francis Healthcare
Charleston, SC
June 2013-Present

Duties

- Provide excellent service to patients and their families.
- Perform assessments for patients and develop patient specific plan of care.
- Accurately administrate medication and treatments to patients while adhering to policy.
- Assist medical doctors with patient examinations and treatments.
- Educating patients on their illness and medications.
- Responsible to monitoring patients for any change in condition.
- Able to respond to patients experiencing life-threatening emergencies.

Charge Nurse, Preoperative Ambulatory Clinic, Medical University of South Carolina
Charleston, SC
July 2013-June 2014

Duties

- Manages the daily operational oversight of the pre-op clinic under general supervision of manager
- Ensures the effective delivery of patient care by providing excellent service to patients and their families
- Consistently models excellence in patient care and contributes to unit leadership
- Interacts with members of the healthcare team to achieve desired results
- Coordinates the daily staff assignment
- Performs daily rounding to ensure the effectiveness of our healthcare delivery and patient satisfaction
- Prepare staff schedule

- Perform assessments for patients and develop patient specific plan of care.
- Assist medical doctors with patient examinations and treatments.
- Educating patients on their illness, medications and preoperative instructions.

Occupational Health Nurse, Boeing Clinic, Roper Physician Site Partners,
North Charleston, SC
July 2011-December 2012

Duties

- Provide excellent service to employees and post offer applicants
- Case Manager for employees with workers compensation claims
- Perform assessments for patients and developing patient specific plan of care
- Accurately administrate medication and treatments to patients while adhering to policy
- Injury and Illness Care
- Hearing Conservation Program
- Bloodborne Pathogen Education
- Occupational Physical Examination Program
- Worker's Compensation Case Management
- Drug Free Workplace Program
- Occupational Disability Management
- Return to work evaluations
- Travel Immunizations
- Vision Testing Program
- Health Education

Cardiac Nurse, Progressive Care Unit, Roper Hospital, Charleston, SC
June 2004-Present

Duties

- Provide excellent service to patients and their families.
- Perform assessments for patients and develop patient specific plan of care.
- Accurately administrate medication and treatments to patients while adhering to policy.
- Assist medical doctors with patient examinations and treatments.
- Educating patients on their illness and medications.
- Responsible to monitoring patients for any change in condition.
- Able to respond to patients experiencing life-threatening emergencies.
- Clinical Coach to new registered nurse graduates as needed.
- Serves as one of the permanent charge nurses on the 25-bed unit.

EDUCATION

Master of Science Degree in Nursing, Walden University, 2015
Specializing in Leadership and Management
Current GPA 4.0
Member of Sigma Theta Tau International Honor Society of Nursing

Bachelor of Science Degree of Nursing, Kaplan University, 2014
Graduated with GPA 4.0
Honor Society
Presidents List Award every semester

Associates Degree of Nursing, Trident Technical College, 2004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
PAULETTE WALKER AS POWER OF	)	CASE NO. 2020-CP-18-01027
ATTORNEY FOR ALBERT WALKER ,	)	
	)	
PLAINTIFF,	)	
	)	ANSWER ON BEHALF OF DEFENDANT
vs.	)	HALLMARK LONGTERM CARE, LLC
	)	D/B/A HALLMARK HEALTHCARE
HALLMARK LONGTERM CARE, LLC	)	CENTER
D/B/A HALLMARK HEALTHCARE	)	
CENTER AND DURENA STINSON ,	)	
	)	
DEFENDANT.	)	
	)	

The Defendant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center (hereinafter the “Facility” or this “Defendant”), by and through its undersigned counsel, *subject to and without waiving any and all rights to compel this matter to arbitration*, responds to the allegations set forth in Plaintiff’s Complaint as follows:

1. Any and all allegations of Plaintiff’s 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 contained in Paragraph 1 of Plaintiff’s Complaint and therefore denies the same and demands strict proof thereof.
3. In responding to the allegations in Paragraph 2 of the Plaintiff’s Complaint, this Defendant admits only that it is a Delaware limited liability company and was the sole entity licensed to operate the skilled nursing facility doing business as Hallmark Healthcare Center at

the address stated. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 3 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies that Durena Stinson is the administrator of Hallmark Healthcare, and is without sufficient knowledge or information to form an opinion as to her county of citizenry or residency.

5. This Defendant denies the allegations set forth in Paragraph 4 of Plaintiff's Complaint and demands strict proof thereof.

6. Responding to the allegations set forth in Paragraph 5 of Plaintiff's Complaint, this Defendant admits that it provides skilled nursing care and treatment to its residents in compliance with the standard of care, and a fee is provided for services related thereto. Further responding, this Defendant admits it has the authority to control its employees in the provision of skilled nursing care at the facility. Any and all further allegations, and those inconsistent with the limited admission above, are hereby denied and strict proof is demanded thereof.

7. In responding to the allegations set forth in Paragraph 6 of Plaintiff's Complaint, this Defendant admits only that Plaintiff has attached a photocopied affidavit of Tabitha Nolen, RN to the Complaint. This Defendant denies the sufficiency of the affidavit and denies any and all allegations and assertions contained therein to the extent they allege liability or damages against this Defendant.

8. This Defendant denies the allegations set forth in Paragraph 7 of Plaintiff's Complaint and affirmatively states that this matter should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation.

9. The allegations set forth in Paragraph 8 of Plaintiff's Complaint call for legal conclusions to which no response is required. To the extent a response is required, those allegations are denied to the extent they allege liability or damages against this Defendant.

10. In responding to the allegations set forth in Paragraphs 9, 10, 11, and 12 of Plaintiff's Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant further affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with this response or intended to allege liability or damages as against this Defendant are denied and strict proof is demanded thereof.

11. The allegations set forth in Paragraph 13 of Plaintiff's Complaint call for legal conclusions to which no response is required. To the extent a response is required, those allegations are denied to the extent they allege liability or damages against this Defendant.

12. In responding to the allegations set forth in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Plaintiff's Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant further affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with

this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

13. In responding to the allegations in Paragraph 28 of Plaintiff's Complaint, this Defendant admits that Mr. Walker was a resident at the Facility at times relevant to this action, but would crave reference to the skilled nursing chart and records to confirm the dates of his admission. This Defendant denies any and all allegations inconsistent with those records or intended to assert liability or damages against this Defendant.

14. This Defendant denies the allegations set forth in Paragraphs 29 and 30 of Plaintiff's Complaint and demands strict proof thereof.

15. In responding to the allegations set forth in Paragraphs 31, 32, 33, and 34 Plaintiff's Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant also admits that the facility had a duty to provide skilled nursing care and treatment to Mr. Walker in compliance with the governing the standard of care. This Defendant affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

16. This Defendant denies the allegations set forth in Paragraphs 35, 36, and 37 of Plaintiff's Complaint and demands strict proof thereof.

17. In responding to the allegations set forth in Paragraph 38 of Plaintiff's Complaint, this Defendant would restate its answers to the Paragraphs above as if set forth herein verbatim.

18. Responding to the allegations set forth in Paragraph 39, this Defendant admits the Facility had a duty to provide skilled nursing care and treatment to Mr. Walker during his residency in compliance with the governing standard of care. This Defendant affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. Any and all allegations contained in the above Paragraph inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

19. This Defendant denies the allegations set forth in Paragraphs 40 and 41 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

20. In responding to the allegations set forth in Paragraph 42 of Plaintiff's Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

21. In responding to the allegations set forth in Paragraphs 43 and 44 of Plaintiff's Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable rules and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant further affirmatively states that at all times, care was provided to Mr. Walker within the appropriate standard of care. To the extent the allegations in Paragraphs 43 and 44 are intended to allege liability or damages as to this Defendant, those allegations are denied and strict proof is demanded thereof.

22. This Defendant denies the allegations set forth in Paragraph 45 of Plaintiff's Complaint and demands strict proof thereof.

23. The allegations set forth in Paragraph 46 of Plaintiff's Complaint call for legal conclusions to which no response is required. To the extent those allegations are intended to allege liability against this Defendant, those allegations are denied and strict proof is demanded thereof.

24. This Defendant denies the allegations set forth in Paragraph 47 of Plaintiff's Complaint and demands strict proof thereof.

25. In responding to the allegations set forth in Paragraph 48 of Plaintiff's Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

27. In responding to the allegations set forth in Paragraph 59 of Plaintiff's Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

28. The allegations set forth in Paragraphs 60 and 61 of Plaintiff's Complaint call for legal conclusions to which no response is required. To the extent the allegations contained in Paragraphs 60 and 61 of Plaintiff's Complaint are intended to allege liability or damages as against this Defendant, those allegations are denied and strict proof is demanded thereof.

29. This Defendant denies the allegations set forth in Paragraphs 62, 63, 64, 65, 66 and 67 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

30. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief and demands strict proof thereof.

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

31. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the arbitration agreement entered into by the Plaintiff's decedent and the Facility is determined by this Court. The Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

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

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

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

33. This Defendant would assert that it complied with the applicable standard of care at all times during the timeframe alleged in Plaintiff's Complaint and did not proximately cause damage to the Plaintiff.

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

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

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

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

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

36. This Defendant would affirmatively assert that, to the extent it is liable to Plaintiff, which is vehemently denied, it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Uniform Contributions Among Tortfeasors Act, Noneconomic Damages Award Act, and Medical Malpractice Reform Bill, including but not limited to §15-38-15; §15-32-200 et. seq.; §15-36-100; and §15-79-125 and any other applicable provisions under the acts.

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

37. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action. This Defendant reserves the right to withdraw this defense at a later time as discovery progresses.

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

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

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

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

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

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

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

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

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

42. Plaintiff's claims of fraud fail to meet the standards imposed by Rule 9(b) of the South Carolina Rules of Civil Procedure.

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

43. Some or all of the Plaintiff's claims are barred by the applicable Statute of Limitations.

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

44. This Defendant hereby raises election of remedies as an affirmative defense to Plaintiff's claims.

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

45. This Defendant hereby asserts that the Plaintiff lacks legal standing to pursue the instant claims.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.
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Attorneys for the Hallmark Long Term Care, LLC
d/b/a Hallmark Healthcare Center

Charleston, South Carolina
Dated: August 17, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of the	)	
Estate of Albert Walker,	)	
	)	
	)	AMENDED SUMMONS
Plaintiff,	)	(Jury Trial Demanded)
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Durena Stinson,	)	
	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the said Amended Complaint to said Plaintiff's attorneys D. Nathan Hughey, A. Stuart Hudson and Bradley H. Banyas, at their office located at 1311 Chuck Dawley Blvd, Suite 201, Post Office Box 348, Mt. Pleasant, South Carolina 29465-0348, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
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Attorneys for Plaintiff

December 29, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of the	)	
Estate of Albert Walker,	)	
	)	
	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
	)	
Plaintiff,	)	
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Durena Stinson,	)	
	)	
Defendants.	)	

The Plaintiff, Paulette Walker as Personal Representative of the Estate of Albert Walker, complaining of the Defendants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Durena Stinson ("Defendants"), alleges as follows:

1. The Plaintiff is a citizen and resident of Charleston County, South Carolina.
2. Upon information and belief, the Defendant, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, is a business corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in Dorchester County, South Carolina at 255 Midland Parkway, Summerville, South Carolina.
3. Upon information and belief, the Defendant, Durena Stinson, is a citizen and resident of Dorchester County, South Carolina and is the administrator of Hallmark Healthcare Center.
4. The Defendants had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through skilled nursing facilities and they are personally, jointly and severally liable for the acts and omissions committed.
5. The Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the residency of Albert Walker.
6. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.

7. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

8. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants' employees and/or agents were acting on behalf of or, in place of the Defendants in making decisions regarding the care of Albert Walker. Additionally, the Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of the Defendants were acting within the course and scope of their employment in regard to their care and treatment of Albert Walker.

9. On the application for the license in effect at the time of Albert Walker's injury, Hallmark Healthcare Center, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-17 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Albert Walker's injury.

10. The State of South Carolina required that Hallmark Healthcare Center have policies and procedures that accurately reflected actual practice regarding care, treatment, procedures, and services - including nursing services, the operation of the facility, and how Hallmark Healthcare Center was going to meet the specialized needs of the residents with Alzheimer's disease and/or related dementia such as Albert Walker - and the State of South Carolina required that Hallmark Healthcare Center make the policies and procedures available be accessible to staff. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

11. The State of South Carolina required that Hallmark Healthcare Center have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Albert Walker, based on assessment data, e.g., social services, which was to be implemented for the benefit of Albert Walker as well as other residents. Hallmark Healthcare Center acknowledged its awareness of this

requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

12. The State of South Carolina required that Hallmark Healthcare Center keep a record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, and directed that it was required to be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

13. Albert Walker's injuries constituted reportable incidents.

14. The State of South Carolina required that Hallmark Healthcare Center keep a legible and complete medical record, to include and any all incidents involving Albert Walker as well as other residents. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

15. The State of South Carolina required Hallmark Healthcare Center to describe in its care plan for Albert Walker as well as other residents the services that Hallmark Healthcare Center was going to furnish to him, *i.e.*, what assistance Hallmark Healthcare Center was going to provide to him, how much assistance Hallmark Healthcare Center was going to provide to him, who at Hallmark Healthcare Center was going to provide the assistance, how often, and when. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

16. The State of South Carolina required that Hallmark Healthcare Center to administer treatment and services to Albert Walker as well as other residents in a caring and humane manner, *effectively* and *safely*, and staff were required to respond to a signal system call from a resident to provide care or assistance in a prompt manner. Hallmark Healthcare Center acknowledged its awareness of this

requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

17. The State of South Carolina required Hallmark Healthcare Center to provide appropriate staff members in numbers and training to perform those duties that result in compliance with 61-17, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise, and to provide training and qualifications for the tasks performed in compliance with all State, Federal, and local laws, and current professional organizational standards. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

18. The State of South Carolina required Hallmark Healthcare Center to ensure that staff members Direct care staff members, in addition to meal service staff have at least the following qualifications: ability to render care and services to residents in an understanding and gentle manner; sufficient education to be able to perform their duties and have a working knowledge of regulations applicable to their scope of work. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

19. The State of South Carolina required Hallmark Healthcare Center to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs and that direct care staff be assigned only duties for which they are trained. Further, the State of South Carolina required Hallmark Healthcare Center to have licensed nurse staff members currently and continuously licensed to practice nursing in South Carolina during the period they are staff members, and that only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse. Hallmark Healthcare Center acknowledged its

awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

20. The State of South Carolina required Hallmark Healthcare Center to have an adequate number of licensed nurses be on duty to meet the total nursing needs of residents. Licensed nursing staff were required to be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

21. The State of South Carolina required Hallmark Healthcare Center to ensure staff members were provided the necessary training to perform the duties for which they were responsible and that, before performing any duties, all newly-hired staff members were to be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members were to be instructed in the provisions of S.C. Code Ann. Section 43-35-5 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in 61-17. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

22. The State of South Carolina required Hallmark Healthcare Center to ensure all staff were provided inservice training programs that identify training needs related to problems, needs, care of residents and infection control and were sufficient to assure staff's continuing competency. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

23. The State of South Carolina required Hallmark Healthcare Center to acknowledge its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

24. The State of South Carolina required Hallmark Healthcare Center to ensure all entries in the resident record were legible and complete, and separately authenticated and dated promptly by the individual, identified by name and discipline, responsible for providing or evaluating the service or care furnished. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

25. The State of South Carolina required Hallmark Healthcare Center to admit only individuals identified as appropriate for the level of care, services, or assistance offered. The facility was required to establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations, and permitted to admit and retain only those individuals whose needs could be met by the accommodations and services for which the facility is licensed. Anyone who had a need for medical care for acute illness or injury that was beyond the scope of the facility to provide, and where hospitalization was consistent with the individual's condition was not permitted to be retained as a resident. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

26. The State of South Carolina required Hallmark Healthcare Center to have practices that promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices were required to be in compliance with applicable regulations and guidelines of the Occupational Safety and Health Administration, *e.g.*, the Bloodborne Pathogens Standard; the Centers for Disease Control and Prevention, *e.g.*, Immunization of Health-Care Workers: Recommendations of the Advisory Committee

on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's South Carolina Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable State, Federal and local laws and regulations. The State of South Carolina required Hallmark Healthcare Center to have an infection control/QI committee that meets at least annually to address infection control issues consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping staff to assure compliance with 61-17 regarding infection control. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

27. The State of South Carolina required Hallmark Healthcare Center to have a written, implemented quality improvement program that provided effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility. Hallmark Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

28. Albert Walker was admitted to the Defendants' facility, Hallmark Healthcare Center, on or about January 2, 2019.

29. While residing at the Defendants' facility, Mr. Walker was allowed to suffer from numerous falls.

30. On or about June 16, 2019, Mr. Walker suffered a fall which resulted in compression spinal fractures.

31. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and appropriate nursing home care to Albert Walker.

32. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of Albert Walker and in accordance with federal and state regulations as well as the representations made by the Defendants.

33. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living were required to be provided to residents, as needed.

34. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

35. Upon information and belief, the Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to Albert Walker.

36. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to Albert Walker.

37. Upon information and belief, the Defendants failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Albert Walker.

FOR A FIRST CAUSE OF ACTION
(Negligence)

38. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph and in their entirety.

39. The Defendants undertook the duty to render nursing home care to Albert Walker in accordance with the prevailing and acceptable professional standards of care for nursing homes and their

employees and agents in the national community and as further required by the state and federal laws applicable to the same.

40. Notwithstanding undertaking that duty and while Albert Walker was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of Albert Walker and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Albert Walker, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to comply with those provisions of 61-17 recited above and to which the Defendants' swore under oath subject to penalty of perjury that they would comply;
- b. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- c. In failing to properly supervise the personnel and staff and employees at the Defendants' facility with regard to Albert Walker's care;
- d. In failing to properly revise and modify plans of care for Albert Walker in response to Albert Walker's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of Albert Walker, so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Albert Walker from suffering from injury and pain;
- h. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and pressure ulcer prevention procedures;

- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendants;
- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- l. In failing to ensure that Albert Walker had proper care;
- m. In failing to properly document significant clinical findings;
- n. In failing to properly document the medical records of Albert Walker;
- o. In failing to follow and ensure that its employees follow the South Carolina Residence Bill of Rights for Long Term Care Facilities, South Carolina Department of Health and Environmental Control Regulation 61-84;
- p. In failure to provide sufficient number of personnel to meet the needs of residents;
- q. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;
- r. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- s. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- t. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- u. In failing to notify family members or authorities after incidents;
- v. In failing to transfer Albert Walker to a higher level of care as needed, and
- w. In such other particulars as may be ascertained through discovery or shown at trial.

41. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, Albert Walker suffered from severe debilitating injuries which resulted in permanent decline, as a result of which Albert Walker has suffered severe and extreme emotional distress,

anxiety, physical injuries, medical bills, the likes of which no person should endure, for which Albert Walker is entitled to recover in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence per se)

42. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in their entirety.

43. The Defendants are a long term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

44. The federal and state regulations combine to form minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Albert Walker.

45. The Defendants failed to abide by the standards, rule and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of Albert Walker.

46. The standards, rule and regulations promulgated by the United States Government and the State of South Carolina were specifically enacted for the benefit of the class of persons for which Albert Walker was a member.

47. As a direct and proximate result of the Defendants' negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations standards, rule and regulations promulgated by the United States Government and the State of South Carolina, Albert Walker suffered severe injuries as described above, constituting negligence per se.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

48. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

49. The Defendants, through deception, artifice, and circumvention, successfully defrauded Plaintiff, who trustingly submitted to care at the Defendants' facilities on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him;
- d. Such other misrepresentations as may be set forth above in this Complaint or as may later be set forth;

50. At the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true.

51. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing themselves or their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

52. The Defendants fraudulently concealed its inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.

53. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.

54. At the time the Defendants made such representations, they knew such affirmative claims of service were false.

55. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.

56. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.

57. As a result of the Defendants' fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

58. As a proximate cause of the Defendants' fraud and misrepresentation, the Plaintiff suffered physical injuries, pain and suffering as previously alleged.

FOR A FOURTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

59. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

60. The Plaintiff and Defendants are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

61. The Defendants, by conducting business in the state of South Carolina, are engaged in commerce within the meaning of Code Section 39-5-10(b).

62. The Defendants' actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to the Plaintiff and his family: that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care; that the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him; and such other particulars as are set forth above in this Complaint or may be shown through discovery or trial;
- b. Further, at the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing himself or his relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

- c. The Defendants fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.
- e. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.
- g. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

63. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated with other residents.

64. The Defendants' conduct adversely affects the public interest of South Carolina.

65. The Defendants knew or reasonably should have known their conduct violated the Unfair Trade Practices Act.

66. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, the Plaintiff has suffered an ascertainable loss of money, physical injuries, pain and suffering as previously alleged.

67. The Plaintiff is entitled to recover her actual damages, which amount should be trebled, pursuant to South Carolina law, together with interest and attorneys' fees.

FOR A FIFTH CAUSE OF ACTION
(Negligence - Wrongful Death)

68. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

69. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents,

servants and/or employees, Albert Walker suffered from severe debilitating injuries which resulted in his death, as a result of which Albert Walker's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, the likes of which no person should endure, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et. seq., Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A SIXTH CAUSE OF ACTION
(Negligence - Survivorship)

70. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

71. Albert Walker's estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, has incurred expenses in the form of funeral and burial expenses. The Plaintiff is further informed and does believe that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, as stated, Albert Walker suffered fear, physical pain, and suffering, medical expense and mental and emotional distress and anguish in the time before his death, for which Albert Walker's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendants for actual damages, punitive damages, special damages and consequential damages, in an amount to be determined by the jury at the trial of this action, fees, the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
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Attorneys for Plaintiff

December 29, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
PAULETTE WALKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALBERT WALKER ,	)	CASE NO. 2020-CP-18-01027
	)	
PLAINTIFF,	)	
	)	ANSWER TO PLAINTIFF'S AMENDED COMPLAINT ON BEHALF OF DEFENDANT HALLMARK LONGTERM CARE, LLC D/B/A HALLMARK HEALTHCARE CENTER
vs.	)	
	)	
HALLMARK LONGTERM CARE, LLC D/B/A HALLMARK HEALTHCARE CENTER AND DURENA STINSON ,	)	
	)	
DEFENDANT.	)	
	)	

The Defendant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center (hereinafter the "Facility" or this "Defendant"), by and through its undersigned counsel, *subject to and without waiving any and all rights to compel this matter to arbitration*, responds to the allegations set forth in Plaintiff's Amended Complaint as follows:

1. Any and all allegations of Plaintiff's Amended 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 contained in Paragraph 1 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

3. In responding to the allegations in Paragraph 2 of the Plaintiff's Amended Complaint, this Defendant admits only that it is a Delaware limited liability company and was the sole entity licensed to operate the skilled nursing facility doing business as Hallmark Healthcare Center at the address stated. Any and all allegations inconsistent with this response or

intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 3 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies that Durena Stinson is the administrator of Hallmark Healthcare, and is without sufficient knowledge or information to form an opinion as to her county of citizenry or residency.

5. This Defendant denies the allegations set forth in Paragraph 4 of Plaintiff's Amended Complaint and demands strict proof thereof.

6. Responding to the allegations set forth in Paragraph 5 of Plaintiff's Amended Complaint, this Defendant admits that it provides skilled nursing care and treatment to its residents in compliance with the standard of care, and a fee is provided for services related thereto. Further responding, this Defendant admits it has the authority to control its employees in the provision of skilled nursing care at the facility. Any and all further allegations, and those inconsistent with the limited admission above, are hereby denied and strict proof is demanded thereof.

7. In responding to the allegations set forth in Paragraph 6 of Plaintiff's Amended Complaint, this Defendant admits only that Plaintiff has attached a photocopied affidavit of Tabitha Nolen, RN to the Complaint. This Defendant denies the sufficiency of the affidavit and denies any and all allegations and assertions contained therein to the extent they allege liability or damages against this Defendant.

8. This Defendant denies the allegations set forth in Paragraph 7 of Plaintiff's Amended Complaint and affirmatively states that this matter should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation.

9. The allegations set forth in Paragraph 8 of Plaintiff's Amended Complaint call for legal conclusions to which no response is required. To the extent a response is required, those allegations are denied to the extent they allege liability or damages against this Defendant.

10. In responding to the allegations set forth in Paragraphs 9, 10, 11, and 12 of Plaintiff's Amended Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant further affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with this response or intended to allege liability or damages as against this Defendant are denied and strict proof is demanded thereof.

11. The allegations set forth in Paragraph 13 of Plaintiff's Amended Complaint call for legal conclusions to which no response is required. To the extent a response is required, those allegations are denied to the extent they allege liability or damages against this Defendant.

12. In responding to the allegations set forth in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Plaintiff's Amended Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not

establish the standard of care. This Defendant further affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

13. In responding to the allegations in Paragraph 28 of Plaintiff's Amended Complaint, this Defendant admits that Mr. Walker was a resident at the Facility at times relevant to this action, but would crave reference to the skilled nursing chart and records to confirm the dates of his admission. This Defendant denies any and all allegations inconsistent with those records or intended to assert liability or damages against this Defendant.

14. This Defendant denies the allegations set forth in Paragraphs 29 and 30 of Plaintiff's Amended Complaint and demands strict proof thereof.

15. In responding to the allegations set forth in Paragraphs 31, 32, 33, and 34 Plaintiff's Amended Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant also admits that the facility had a duty to provide skilled nursing care and treatment to Mr. Walker in compliance with the governing the standard of care. This Defendant affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained

in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

16. This Defendant denies the allegations set forth in Paragraphs 35, 36, and 37 of Plaintiff's Amended Complaint and demands strict proof thereof.

17. In responding to the allegations set forth in Paragraph 38 of Plaintiff's Amended Complaint, this Defendant would restate its answers to the Paragraphs above as if set forth herein verbatim.

18. Responding to the allegations set forth in Paragraph 39, this Defendant admits the Facility had a duty to provide skilled nursing care and treatment to Mr. Walker during his residency in compliance with the governing standard of care. This Defendant affirmatively asserts that the care and treatment provided to Mr. Walker was at all times in compliance with the appropriate standard of care. Any and all allegations contained in the above Paragraph inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

19. This Defendant denies the allegations set forth in Paragraphs 40 and 41 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof.

20. In responding to the allegations set forth in Paragraph 42 of Plaintiff's Amended Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

21. In responding to the allegations set forth in Paragraphs 43 and 44 of Plaintiff's Amended Complaint, this Defendant admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable rules and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant

further affirmatively states that at all times, care was provided to Mr. Walker within the appropriate standard of care. To the extent the allegations in Paragraphs 43 and 44 are intended to allege liability or damages as to this Defendant, those allegations are denied and strict proof is demanded thereof.

22. This Defendant denies the allegations set forth in Paragraph 45 of Plaintiff's Amended Complaint and demands strict proof thereof.

23. The allegations set forth in Paragraph 46 of Plaintiff's Amended Complaint call for legal conclusions to which no response is required. To the extent those allegations are intended to allege liability against this Defendant, those allegations are denied and strict proof is demanded thereof.

24. This Defendant denies the allegations set forth in Paragraph 47 of Plaintiff's Amended Complaint and demands strict proof thereof.

25. In responding to the allegations set forth in Paragraph 48 of Plaintiff's Amended Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

26. This Defendant denies the allegations set forth in Paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof.

27. In responding to the allegations set forth in Paragraph 59 of Plaintiff's Amended Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

28. The allegations set forth in Paragraphs 60 and 61 of Plaintiff's Amended Complaint call for legal conclusions to which no response is required. To the extent the

allegations contained in Paragraphs 60 and 61 of Plaintiff's Amended Complaint are intended to allege liability or damages as against this Defendant, those allegations are denied and strict proof is demanded thereof.

29. This Defendant denies the allegations set forth in Paragraphs 62, 63, 64, 65, 66 and 67 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof.

30. In responding to the allegations set forth in Paragraph 68 of Plaintiff's Amended Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

31. This Defendant denies the allegations set forth in Paragraph 69 of Plaintiff's Amended Complaint and demands strict proof thereof.

32. In responding to the allegations set forth in Paragraph 70 of Plaintiff's Amended Complaint, this Defendant would restate its answers contained in the above paragraphs as if stated verbatim herein.

33. This Defendant denies the allegations set forth in Paragraph 71 of Plaintiff's Amended Complaint and demands strict proof thereof.

34. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief and demands strict proof thereof.

FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE

35. Pursuant to § 4 of the Federal Arbitration Act, this action must be stayed until the validity of the arbitration agreement entered into by the Plaintiff's decedent and the Facility is determined by this Court. The Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

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

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

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

37. This Defendant would assert that it complied with the applicable standard of care at all times during the timeframe alleged in Plaintiff's Amended Complaint and did not proximately cause damage to the Plaintiff.

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

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

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

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

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

40. This Defendant would affirmatively assert that, to the extent it is liable to Plaintiff, which is vehemently denied, it would be entitled to any and all benefits, joint and

several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Uniform Contributions Among Tortfeasors Act, Noneconomic Damages Award Act, and Medical Malpractice Reform Bill, including but not limited to §15-38-15; §15-32-200 et. seq.; §15-36-100; and §15-79-125 and any other applicable provisions under the acts.

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

41. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties not a party to this action. This Defendant reserves the right to withdraw this defense at a later time as discovery progresses.

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

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

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

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

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

44. To the extent this Defendant is required to raise the affirmative defense of comparative negligence under applicable South Carolina law in order to avoid an argument of waiver by Plaintiff, this Defendant would assert Plaintiff's damages, if any, should be

proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

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

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

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

46. Plaintiff's claims of fraud fail to meet the standards imposed by Rule 9(b) of the South Carolina Rules of Civil Procedure.

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

47. Some or all of the Plaintiff's claims are barred by the applicable Statute of Limitations.

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

48. This Defendant hereby raises election of remedies as an affirmative defense to Plaintiff's claims.

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

49. This Defendant hereby asserts that the Plaintiff lacks legal standing to pursue the instant claims.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

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Attorneys for the Hallmark Long Term Care, LLC

d/b/a Hallmark Healthcare Center

Charleston, South Carolina

Dated: January 13, 2021

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
PAULETTE WALKER as PERSONAL	)	
REPRESENTATIVE of the ESTATE	)	
of ALBERT WALKER	)	
PLAINTIFF	,)	
vs.	)	TRANSCRIPT OF RECORD
	)	2020-CP-18-1027
HALLMARK LONGTERM CARE, LLC	)	
d/b/a HALLMARK HEALTHCARE	)	
CENTER and DURENA STINSON	)	
DEFENDANTS	.)	

FEBRUARY 8, 2021
DORCHESTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MAITE MURPHY, JUDGE

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

BRADLEY H. BANYAS, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KATE METTLER, ESQUIRE
ATTORNEY FOR THE DEFENDANTS

SANYA L. KAISER
COURT REPORTER

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I N D E X O F W I T N E S S E S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATEMENTS MADE,
 BY MS. METTLER 3, 14
 BY MR. BANYAS 8

ORDER OF THE COURT	15
CERTIFICATE OF REPORTER	16

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(THERE WERE NO EXHIBITS TENDERED.)

1 THE COURT: The next matter is Paulette Walker
2 versus Hallmark Longterm Care.

3 And whose motion do we have here?

4 MS. METTLER: This is defendant Hallmark
5 Longterm Care's motion, Your Honor. This is a
6 motion to compel arbitration.

7 THE COURT: All right. Yes, ma'am. I'll be
8 happy to hear from you.

9 MS. METTLER: Okay. Your Honor, this concerns
10 the -- this action was brought by plaintiff and
11 concerns the residency and skilled nursing care and
12 treatment of her decedent and her husband, Albert
13 Walker. Mr. Walker was admitted to defendant's
14 long-term care facility on January 2nd, 2019. And
15 Mrs. Walker, his wife, is the personal
16 representative in this lawsuit. She also was
17 responsible for admitting her husband to the
18 facility on January 2nd, 2019.

19 Plaintiff does not dispute, according to their
20 briefing, that Mr. Walker at the time of his
21 admission on January 2nd, 2019, did have capacity to
22 contract. And in that regard this motion does not
23 concern any considerations under the Adult Health
24 Care Consent Act. So just as a threshold matter I
25 wanted to establish that.

1 The plaintiff was present at the time
2 Mr. Walker was admitted. So they were present at
3 the facility together. And by all indications,
4 Mr. Walker permitted his wife to admit him and held
5 her out as his agent on that very date.
6 Mrs. Walker, the plaintiff, entered into the
7 admissions agreement as well as an arbitration
8 agreement which is what this motion concerns and we
9 seek to compel on that basis. The facility chart
10 records in particular noted that the resident,
11 Mr. Walker, is present at the facility with his wife
12 on the date that these agreements were signed.

13 I call particular attention to exhibit,
14 Defendant's Exhibit 4 and on the second page of that
15 exhibit which has a date stamp of 001407.
16 Mrs. Walker, the plaintiff, was speaking on her
17 husband's behalf and making his needs, wishes and
18 desires known to the facility according to the
19 medical chart. She also did this by admitting him
20 and signing the admissions agreement and executing
21 the arbitration agreement on his behalf. The issue
22 becomes whether she had the authority to do so.

23 Defendant submits that she clearly had apparent
24 authority to effectuate his admission according to
25 his desires and that the facility should be entitled

1 to rely on both on that principal of law, the
2 apparent authority.

3 Mrs. Walker represented herself in the very
4 first sentence of the admissions agreement that all
5 information she was providing to facility was
6 truthful and correct. And then in the arbitration
7 agreement, which she signed, she also expressly
8 states the executing party represents that she has
9 the authority to sign on the resident's behalf so as
10 to bind the resident and herself as the
11 representative.

12 The issue here is that two weeks later,
13 Mr. Walker, who still had contractual capacity in
14 addition to this apparent authority conferred
15 expressed authority on plaintiff to enter into these
16 types of agreements. The exhibit 4, sorry, exhibit
17 5 to our briefing contains a power of attorney which
18 was duly executed and recorded by Mr. Walker and
19 conferred on his wife very broad powers including
20 the power to make determinations on how to treat
21 legal claims expressly including arbitration. But
22 it is not limited to arbitration. And the defendant
23 submits that after she was expressly authorized to
24 act in this regard, the plaintiff also had the
25 authority to cancel any prior actions that she

1 herself had taken.

2 I will get to that theory of contract and
3 agency in a second but just, you know, there is
4 obviously a policy in favor of arbitration. We
5 think that's a state and federal policy in favor of
6 arbitration. This arbitration agreement and the
7 admissions agreement concern interstate commerce and
8 therefore the Federal Arbitration Act should apply
9 to the evaluation of this matter. And the
10 arbitration agreement must be placed on equal
11 footing with other contracts.

12 On its face we maintain that this arbitration
13 agreement is valid by the plaintiff's own
14 representations. The Supreme Court has indicated
15 that arbitration agreements are presumed valid and
16 that the party resisting that contention bears the
17 burden. So in that regard, I think plaintiff, you
18 know, must convince the court why it is not valid.

19 The Theory of Ratification that I would like to
20 place before the court is that even if plaintiff did
21 not have sufficient authority on January 2nd, which
22 we maintain she did, she had sufficient apparent
23 authority and inherent agency powers in that
24 authority. But after she was expressly conferred
25 the ability to enter into arbitration agreements,

1 not only did Mr. Walker ratify her actions by
2 accepting the benefits with full knowledge of his
3 admission to the facility, but she also then
4 ratified her own actions. She could have moved to
5 cancel. She could have at that point in time
6 notified the facility that she didn't believe she
7 had authority. She could have discharged
8 Mr. Walker. Only now does plaintiff dispute
9 authority to enter into the arbitration agreement.
10 And I'm confused by plaintiff's briefing whether she
11 is also disputing that she had the authority to
12 admit.

13 Certainly we believe that the authority that
14 Mr. Walker conferred on his wife on January 2nd was
15 to admit him to the facility. She did that. She
16 entered into these consents and to repudiate the
17 authority to agreed arbitration but not admit is
18 inconsistent and she should be estopped from doing
19 so.

20 The last theory that legal doctrine which we
21 base our motion would be on merger. That does not
22 apply unless plaintiff believes there is some
23 independent authority which permitted Mrs. Walker to
24 admit Mr. Walker to the facility exclusive of
25 arbitration. So you know and it is unclear from

1 plaintiff's briefing whether that's what they
2 contend.

3 But it appears that they contend maybe she had
4 no authority whatsoever to do anything, in which
5 case I would again submit that she should be
6 estopped from bringing this suit. So it is an
7 interest of equity and justice in that regard. And
8 I would be happy to answer any questions that Your
9 Honor has.

10 THE COURT: All right. Thank you, counsel.

11 Any response, Mr. Banyas?

12 MR. BANYAS: Yes, Your Honor, very briefly. I
13 believe that I've had some of these arbitration
14 motions in front of you so I won't get into too much
15 of what the standard review is. But one thing that
16 I want to point out that I believe that Ms. Mettler
17 misspoke on is that somehow it is the plaintiff's
18 burden to now convince the court that arbitration is
19 not valid because they simply raise that. That is
20 not the case.

21 It is well established where one party denies
22 the existence of an arbitration agreement brings
23 about opposing party the burden. The party seeking
24 to enforce the agreement to arbitrate has the burden
25 of establishing the existence of a valid arbitration

1 agreement.

2 The timeline in this case is important.
3 Mr. Walker was admitted to the facility on January
4 the 2nd of 2019. When he went in there was no
5 issues with his cognitive impairment. He did not
6 have any altered mental status or anything like that
7 that would prohibit him from signing any admissions
8 paperwork or arbitration agreements. And we will
9 kind of get to that. We have another motion coming
10 up after this one that kind of ties into this one a
11 little bit.

12 Mr. Walker certainly could have signed the
13 admissions agreement. He certainly could have
14 signed the arbitration agreement. There was nothing
15 that kept him from writing his name on any of that
16 sort of stuff. An arbitration agreement is a legal
17 decision. It is not a health care decision. The
18 being admitted into a facility is a health-care
19 decision. Absent somebody having a health care
20 power of attorney or a durable power of attorney it
21 is codified. Who has the authority to make health
22 care related decisions that's the Adult Health Care
23 Consent Act and the Bill of Rights for patients of
24 long-term care facilities.

25 I don't think that I don't have any issue with

1 Mr. Walker's wife admitting him into the facility.
2 I think that that probably happens a lot.
3 Technically speaking, should she have signed it? I
4 don't know. I'm not really here to get into whether
5 or not she had the authority to admit him. But she
6 very clearly did not have the authority to waive his
7 right to a trial by jury. He did not have a power
8 of attorney that gave her that authority.

9 If the facility wanted to really enforce this
10 arbitration agreement, they would have Mr. Walker
11 sign the arbitration agreement himself or ask
12 Mrs. Walker to provide a power of attorney, a court
13 appointed guardianship, something to that effect
14 that would show that she had the authority to bind
15 her husband to arbitration. Just as I can't
16 arbitrarily go and bind my wife to arbitration
17 without her knowing, Mr. Walker's wife could not
18 bind him to arbitration in this case.

19 He did execute a power of attorney. I guess
20 this was two weeks after he was admitted into the
21 facility and gave his wife the authority to do a
22 very broad number of things, litigate. Arbitrate is
23 included in one of them. And had Mr. Walker signed
24 this power of attorney prior to her being -- prior
25 to him being admitted to the facility, and

1 Mrs. Walker expressly had that authority to bind him
2 to arbitration because he's expressly gave that to
3 her, I would agree that there is a valid enforceable
4 arbitration contract. But that's not what we have
5 here.

6 Ms. Mettler says that all indications point
7 that Mr. Walker gave Mrs. Walker authority. I don't
8 think that there is anything in evidence that says
9 anywhere that it says I want her to make legal
10 decisions for me; I want her to agree to arbitrate.
11 I think that Mr. Walker did have a very active
12 family who was involved with his care at the
13 facility but there is no evidence anywhere that said
14 that Mr. Walker wanted his wife to sign this
15 arbitration agreement for him or he was prevented
16 from doing so.

17 So because of that, he did not have --
18 Mrs. Walker did not have any authority to bind him
19 to arbitration. Had this arbitration agreement been
20 signed two weeks after -- Judge, are you there?

21 MR. LAPCHAK: She is signing back on right now.

22 MR. BANYAS: Okay.

23 MR. LAPCHAK: Her computer just crashed.

24 MR. BANYAS: Okay.

25 THE COURT: I'm sorry about that. My computer

1 just crashed on me.

2 You may proceed with your argument, Mr. Banyas.

3 MR. BANYAS: Okay. I'm about wrapped up. But
4 I think the last thing that I said was if the
5 facility really wanted this to be enforceable, they
6 could have taken the arbitration agreement back to
7 Mrs. Walker, had her sign it after they provided her
8 with a copy of the power of attorney or just simply
9 had Mr. Walker sign the arbitration agreement.

10 I don't think that there is any evidence that
11 he came in with the inability to sign. He is in the
12 facility. I don't know how big the nursing home is
13 but I can't imagine that it is so difficult to walk
14 something from the one office to his room. He
15 should have care, nurses, staff coming in pretty
16 frequently anyway to do that. But that's really it.

17 You know, the nursing home is in the business
18 of admitting residents and dealing with their
19 families frequently. They know or should know what
20 is required to have somebody be allowed to bind to
21 arbitration. They should have the ability to ask,
22 do you have a power of attorney; do you have
23 something; do you have a guardianship; do you have
24 something that can do that. And if the person says
25 no, they can say, well, if we really want this

1 person to have to arbitrate, let's just go take it
2 to the resident himself. He is clearly not lacking
3 any cognitive abilities or anything like that. They
4 didn't do that here.

5 And finally, looking at this case, you know, we
6 filed the notice of intent just over a year ago,
7 participated and then filed the summons and
8 complaint last June. They filed, the defendants
9 filed their answer in August. We served them with
10 discovery. They answered our request to admit.
11 They served their own discovery. They then filed a
12 motion to compel arbitration in October. Then they
13 sent us back 34 pages worth of objections to
14 discovery saying that they are not going to answer
15 anything based on their arbitration motion, you
16 know.

17 Meanwhile we have gone ahead and answered their
18 own discovery. So we are halfway through the
19 discovery process here. And so I think that they
20 probably waived any right to seek arbitration by
21 engaging in that discovery process. But that's what
22 I have and I'm happy to answer any additional
23 questions Your Honor may have. Thank you.

24 THE COURT: All right. Thank you counsel.
25 Any response?

1 MS. METTLER: The only response is that I guess
2 that it comes down to the timing of according to
3 plaintiff's argument the timing of the ratification,
4 or ratification is a post hoc act. So it doesn't
5 preclude the application of ratification obviously
6 when a durable power of attorney is executed after
7 the admission. That's the whole point of
8 ratification. I think that that occurred here.

9 The power of attorney is very broad in its
10 powers and both Mr. Walker and Mrs. Walker had the
11 ability to repudiate Mrs. Walker's actions but that
12 neither one of them did it after the execution of
13 the power of attorney and he remained in the
14 facility for 20 months thereafter accepting the
15 benefits of the admission.

16 And then just on the misspeaking on the
17 presumed valid when I had stated that arbitration
18 agreements are presumed valid and the party
19 resisting bears the burden, I should have clarified.
20 The party resisting does in fact bear the burden to
21 prove that the claims are not arbitrable. So just
22 to the extent we think the arbitration agreement to
23 the extent is valid obviously covers these claims.
24 So I apologize for that misspeak.

25 THE COURT: All right. Thank you, counsel.

1 I'll take a look at your memos and notify you of an
2 opinion.

3 MS. METTLER: Thank you.

4 MR. BANYAS: Thank you.

5 THE COURT: Thank you.

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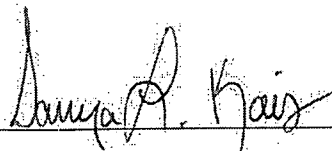
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

I, Sanya L. Kaiser, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the virtual proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, Court of Common Pleas for Dorchester County, South Carolina, on the 8th day of February, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 24, 2021



Sanya L. Kaiser, Court Reporter

My Commission Expires: 9-5-2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
PAULETTE WALKER AS POWER OF	)	CASE NO. 2020-CP-18-01027
ATTORNEY FOR ALBERT WALKER ,	)	
	)	
PLAINTIFF,	)	DEFENDANT HALLMARK LONGTERM
	)	CARE, LLC D/B/A HALLMARK
vs.	)	HEALTHCARE CENTER'S MOTION TO
	)	DISMISS PLAINTIFF'S COMPLAINT,
HALLMARK LONGTERM CARE, LLC	)	COMPEL ARBITRATION AND STAY
D/B/A HALLMARK HEALTHCARE	)	STATE COURT PROCEEDINGS
CENTER AND DURENA STINSON ,	)	
	)	
DEFENDANT.	)	

TO: D. NATHAN. HUGHEY AND BRADLEY H. BANYAS, ATTORNEYS FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Hallmark Longterm Healthcare, LLC d/b/a Hallmark Healthcare Center (hereinafter referred to as "Defendant" or the "Facility"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and compelling this matter to arbitration, or, alternatively, staying the action pending arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq.

Plaintiff has sued Defendant for negligence, negligence per se, fraud and misrepresentation, and violation of the South Carolina Unfair Trade Practices Act related to her husband's residency at the Facility. However, prior to being admitted to the Facility, Plaintiff's husband, Albert Walker, entered into an arbitration agreement with the Facility. (See **Exhibit A - Arbitration Agreement**). The Arbitration Agreement holds that any controversy or dispute arising out of Resident's stay at the Facility, such as the one at bar, shall be resolved by arbitration. *Id.*

The Arbitration Agreement was signed on behalf of Albert Walker by the Plaintiff. (See **Exhibit A**). Paulette Walker identified herself as Mr. Walker's "Representative," and expressly represented that she had the authority to sign on his behalf, binding both of them to the Arbitration Agreement. *Id.* Additionally, prior to the Arbitration Agreement being signed, Albert Walker designated the Plaintiff as his Power of Attorney, and the Plaintiff had full authority to enter into the binding Arbitration Agreement on behalf of Albert Walker. (See **Exhibit B** - Power of Attorney).

The Arbitration Agreement is a valid, enforceable contract under South Carolina law, as it represents (i) the Defendant's offer, (ii) Plaintiff's and Mr. Walker's acceptance of that offer and is supported (iii) by valid consideration as a result of the parties mutual promises to arbitrate and the exchange of services for compensation as to Mr. Walker's residency at the Facility. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272 (4th Cir. 1997)(holding that mutual promises to arbitrate support valid, sufficient legal consideration); see also *Rickborn v. Liberty Life Insurance Co.*, 321 S.C. 291, 468 S.E.2d 292, 300 (1996); see also *Towles v. United HealthCare Corp.*, 388 S.C. 29, 524 S.E.2d 404 (Ct. App. 1999).

Furthermore, the parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not apply; rather, arbitration would be governed by the Federal Arbitration Act ("FAA"), because the services and reimbursement thereof to be provided to the Plaintiff upon his admission to the facility involved interstate commerce. See 9 U.S.C. §§1 et seq. In accordance with the terms of the parties' agreement, the Defendant respectfully requests that this matter be compelled to arbitration.

Alternatively, this Defendant requests that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the FAA. Defendant respectfully requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any other motions or discovery filed or served by Plaintiff while the current motion is pending.

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

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
James D. Gandy, III
T. Ashton Phillips, III
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aphillips@ycrlaw.com
Attorneys for the Defendant Hallmark Longterm
Healthcare, LLC d/b/a Hallmark Healthcare Center

Charleston, South Carolina

Dated: October 2, 2020

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE ARBITRATION AGREEMENT

This Agreement is made between HALLMARK/HEALTHCARE ("Facility"), its agents, employees and servants, and Dear Sir or Madam, Albert Walker Jr. ("Resident") or ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code); notwithstanding any contrary provision of this Agreement or contrary state law.

I understand and agree that I am giving up and waiving my right to a jury trial.

This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement. By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.

X Albert Walker Jr. 11/2/19
Resident/Representative Signature Date

X
Printed Name of Resident/Representative

[Signature] 1-2-19
Authorized Agent of Facility Date

[Signature]
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

OMB Approval Number: 2900-0556
Estimated Burden: 10 minutes
Expiration Date: 10/31/2017

 Department of Veterans Affairs			
VA ADVANCE DIRECTIVE DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL			
This advance directive form is an official document where you can write down your preferences for your health care. If some day you can't make health care decisions for yourself anymore, this advance directive can help guide the people who will make decisions for you. You can use this form to: - Name specific people to make health care decisions for you - Describe your preferences for how you want to be treated - Describe your preferences for medical care, mental health care, long-term care, or other types of health care When you complete this form, it's important that you also talk to your doctor, family, and other loved ones who may help to decide about your care. You should explain what you meant when you filled out the form. A health care professional can help you with this form and can answer any questions that you have. If you need more space for any part of the form, you may attach extra pages. Be sure to initial and date every page that you attach.			
PART I: PERSONAL INFORMATION			
NAME (Last, First, Middle):		LAST FOUR DIGITS OF SSN:	
WALKER, ALBERT SYLVESTER, JR.		[REDACTED]	
[REDACTED]			
CITY, STATE, ZIP: [REDACTED]			
HOME PHONE WITH AREA CODE:	WORK PHONE WITH AREA CODE:	MOBILE PHONE WITH AREA CODE:	
NONE	NONE	(943) [REDACTED]	
Privacy Act Information and Paperwork Reduction Act Notice			
The information requested on this form is solicited under the authority of 38 C.F.R. §17.32. It is being collected to document your preferences for your health care in the event that you can't speak for yourself anymore. The information you provide may be disclosed outside the VA as permitted by law. Possible disclosures include those that are described in the "routine uses" identified in the VA system of records 24VA10P2, Patient Medical Records-VA, published in the Federal Register in accordance with the Privacy Act of 1974. This is also available in the Compilation of Privacy Act Issuances. You may choose to fill out this form or not. But without this information, VA health care providers may not understand your preferences as well. If you don't fill out this form, there won't be any effect on the benefits you are entitled to receive. The Paperwork Reduction Act of 1995 requires us to let you know that this information collection follows the clearance requirements of section 3507 of this Act. We estimate that it will take you about 30 minutes to fill out this form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information you write down. A Federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a current valid OMB control number. The OMB Control No. for this information collection is 2900-0556.			

VA FORM
NOV 2016

10-0137

Page 1 of 7

VA ADVANCE DIRECTIVE: DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL			
NAME (Last, First, Middle)		LAST FOUR DIGITS OF SSN:	
WALKER, Albert Sylvester Jr.		[REDACTED]	
PART II: DURABLE POWER OF ATTORNEY FOR HEALTH CARE			
This section of the advance directive form is called a Durable Power of Attorney for Health Care. It lets you appoint a specific person to make health care decisions for you in case you can't make decisions for yourself anymore. This person will be called your Health Care Agent. Your Health Care Agent should be someone: - You trust - Who knows you well - Who is familiar with your values and beliefs. If you get too sick to make decisions for yourself, your Health Care Agent will have the authority to make all health care decisions for you. This includes decisions to admit and discharge you from any hospital or other health care institution. Your Health Care Agent can also decide to start or stop any type of health care treatment. He or she can access your personal health information, and medical records, including information about whether you have been tested for HIV or treated for AIDS, sickle cell anemia, substance abuse or alcoholism. NOTE: If you wish to give general permission for VA to share your medical records or health information with others, you can complete VA Form 10-5345 (Request for and Authorization to Release Medical Records or Health Information). You can get VA Form 10-5345 from your VA health care provider or you can get it using a computer from this website http://www4.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf			
A - HEALTH CARE AGENT			
Place your initials in the box next to your choice. Choose only one.			
Initials	I don't wish to appoint a Health Care Agent right now. (Skip this section and go to Part III, Living Will.)		
Initials	I appoint the person named below to make decisions about my health care if I can't decide for myself anymore.		
Name (Last, First, Middle):		Relationship to Me:	
WALKER, Paulette A.		Wife	
[REDACTED]		City, State, Zip: [REDACTED]	
Home Phone with Area Code:		Work Phone with Area Code:	Mobile Phone with Area Code:
N/A		N/A	843- [REDACTED]

VA ADVANCE DIRECTIVE: DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL			
NAME (Last, First, Middle) <i>Walker, Albert Sylvester Jr.</i>			LAST FOUR DIGITS OF SSN: [REDACTED]
B - ALTERNATE HEALTH CARE AGENT			
Fill out this section if you want to appoint a second person to make health care decisions for you, in case the first person isn't available.			
Initials <i>AW</i>	If the person named above can't or doesn't want to make decisions for me, I appoint the person named below to act as my Health Care Agent.		
Name (Last, First, Middle) <i>Walker, Cathy</i>		Relationship to Me: <i>Daughter</i>	
Street Address:		City, State, Zip:	
Home Phone with Area Code: <i>n/a</i>	Work Phone with Area Code: <i>n/a</i>	Mobile Phone with Area Code: <i>843</i> [REDACTED]	
PART III: LIVING WILL			
This section of the advance directive form is called a Living Will. This section of it lets you write down how you want to be treated in case you aren't able to decide for yourself anymore. Its purpose is to help others decide about your care.			
A - SPECIFIC PREFERENCES ABOUT LIFE-SUSTAINING TREATMENTS			
In this section, you can indicate your preferences for life-sustaining treatments in certain situations. Some examples of life-sustaining treatments are:			
• CPR (cardiopulmonary resuscitation) • a breathing machine (mechanical ventilation) • kidney dialysis • a feeding tube (artificial nutrition and hydration)			
Think about each situation described on the left and ask yourself, "In that situation, would I want to have life-sustaining treatments?" Place your initials in the box that best describes your treatment preference. You may complete some, all, or none of this section. Choose only one box for each statement.			
	Yes, I would want life-sustaining treatments.	I'm not sure. It would depend on the circumstances.	No, I would not want life-sustaining treatments.
If I am unconscious, in a coma, or in a vegetative state and there is little or no chance of recovery.	Initials	Initials	Initials <i>AW</i>
If I have permanent, severe brain damage that makes me unable to recognize my family or friends (for example, severe dementia).	Initials	Initials	Initials <i>AW</i>

VA ADVANCE DIRECTIVE: DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL			
NAME (Last, First, Middle)		LAST FOUR DIGITS OF SSN:	
Walker, Albert Sylvester, Jr		[REDACTED]	
	Yes, I would want life-sustaining treatments.	I'm not sure. It would depend on the circumstances.	No. I would not want life-sustaining treatments.
If I have a permanent condition where other people must help me with my daily needs (for example, eating, bathing, toileting).	Initials A.W.	Initials	Initials
If I need to use a breathing machine and be in bed for the rest of my life.	Initials	Initials	Initials A.W.
If I have pain or other severe symptoms that cause suffering and can't be relieved.	Initials	Initials	Initials A.W.
If I have a condition that will make me die very soon, even with life-sustaining treatments.	Initials	Initials	Initials A.W.
Other:	Initials	Initials	Initials
B - MENTAL HEALTH PREFERENCES			
This section is optional. You may skip this section if you do not have a serious mental health problem or if you do not want to write down your preferences for mental health care. If you have a serious mental health condition, you might want to write down medications that have worked for you in the past and that you would want again, or you might want to write down the mental health facilities or hospitals that you like and those that you don't like. If you need more space, you may attach extra pages and use this space to refer to attached pages. Be sure to initial and date every page that you attach. N/A			

VA ADVANCE DIRECTIVE: DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL	
NAME (Last, First, Middle) <i>Walker, Albert Sylvester, Jr.</i>	LAST FOUR DIGITS OF SSN: [REDACTED]
C - ADDITIONAL PREFERENCES	
This section is optional. In this space, you can write other important preferences for your health care that aren't described somewhere else in this document. For example, these might be social, cultural, or faith-based preferences for care, or preferences about treatments such as feeding tubes, blood transfusions, or pain medications. If you need more space, you may attach extra pages and use this space to refer to attached pages. Be sure to initial and date every page that you attach. <i>N/A</i>	
D - HOW STRICTLY YOU WANT YOUR PREFERENCES FOLLOWED	
Place your initials in the box next to the statement that reflects how strictly you want others to follow your preferences. Choose only one.	
Initials <i>WJ</i>	I want my preferences, as expressed in this Living Will, to serve as a general guide. I understand that in some situations, the person making decisions for me may decide something different from the preferences I express above, if they think it's in my best interests.
Initials	I want my preferences, as expressed in this Living Will, to be followed strictly, even if the person making decisions for me thinks that this isn't in my best interests.

WALKER, ALBERT SYLVESTER JR 247-52-9402 (CHA) SCAN ADVANCE DIRECTIVE-POWER OF ATTORNEY NOTE 06/12/2018 -- page 7 of 7 --

VA ADVANCE DIRECTIVE: DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL	
NAME (Last, First, Middle) <i>Walker, Albert Sylvester Jr.</i>	LAST FOUR DIGITS OF SSN: [REDACTED]
PART IV: SIGNATURES	
A - YOUR SIGNATURE	
By my signature below, I certify that this form accurately describes my preferences.	
SIGNATURE <i>Albert Walker</i>	DATE <i>6/12/18</i>
B - WITNESSES' SIGNATURES	
Two people must witness your signature. VA employees may be witnesses if they are members of: • The Chaplain Service • The Social Work Service • Nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) Other employees of your VA facility may not sign as witnesses to your advance directive unless they're in your family.	
Witness #1	
I personally witnessed the signing of this advance directive. I am not appointed as Health Care Agent in this advance directive. I am not financially responsible for the care of the person making this advance directive. To the best of my knowledge, I am not named in the person's will.	
SIGNATURE <i>Janet A. Teel</i>	DATE <i>6/12/18</i>
Name (Printed or Typed): <i>Janet A. Teel</i>	
Street Address: <i>Charlottesville, VA 22901</i> <i>109 Bell St.</i>	
City, State, Zip: <i>Charlottesville, SC 22901</i>	
Witness #2	
I personally witnessed the signing of this advance directive. I am not appointed as Health Care Agent in this advance directive. I am not financially responsible for the care of the person making this advance directive. To the best of my knowledge, I am not named in the person's will.	
SIGNATURE <i>John M. Walters, USA</i>	DATE <i>6/12/18</i>
Name (Printed or Typed): <i>JOHN M. WALTERS, USA</i>	
Street Address: <i>Charlottesville, VA 22901</i> <i>109 Bell St.</i>	
City, State, Zip: <i>Charlottesville, SC 22901</i>	

INTRODUCTION

1

this matter to arbitration. See Ex. 2. Further, the Arbitration Agreement explicitly binds not only the parties to the agreement, but “also their successors, assigns, heirs, **personal representatives**, guardians or any persons deriving their claims through or on behalf of Resident.” See Id. (emphasis added).

When the Admission Agreement and the Arbitration Agreement were signed by Paulette Walker on January 2, 2019, Ms. Walker was acting as Albert Walker’s agent and possessed apparent authority to enter into the Admission Agreement and the Arbitration Agreement, as discussed further below, *as conferred by Mr. Walker*.¹ Mr. Walker and Plaintiff presented Plaintiff to the Facility as having authority to act on behalf of Mr. Walker and, as a matter of law, the Facility may rely on such apparent authority to enter into a valid, binding and enforceable contract.

Further, during the course of Mr. Walker’s residency at the Facility Mr. Walker *ratified* his wife’s actions in entering into the Admission Agreement and the Arbitration Agreement, rendering them effective and enforceable under South Carolina law. Indeed, on January 16, 2019, two weeks after Plaintiff admitted Mr. Walker to the Facility and executed the Admission Agreement and Arbitration Agreement on his behalf, Mr. Walker executed a power of attorney in favor of Plaintiff. See Exhibit 5 – Power of Attorney. The power of attorney expressly authorized Plaintiff to make healthcare decisions and enter into related contracts, such as admit Mr. Walker to the Facility, keep Mr. Walker in the Facility, enter into contracts such as the Arbitration Agreement and *repudiate or cancel any such agreements*. Id. Following Mr. Walker’s conference of express authority to Plaintiff in this way, Mr. Walker stayed in the Facility as a resident and Plaintiff

¹ Ms. Walker’s authority to admit Mr. Walker and to bind him to the contracts she entered into on his behalf on admission does not arise from the Adult Healthcare Consent Act, S.C. Code Ann. 46-66-10 *et seq.*, as Mr. Walker was not rendered unable to make healthcare decisions as of the date of his admission (January 2, 2019) and, in fact, Plaintiffs admit that Mr. Walker had capacity to executed various powers of attorney and make healthcare directive just two (2) weeks’ after admission on January 16, 2019.

continued to make healthcare and other decisions as she had done since January 2, 2019. Plaintiff never repudiated or canceled the Arbitration Agreement, at any point in time prior to her opposition to the Facility's efforts to enforce the Arbitration Agreement. Moreover, Plaintiff does not now dispute and has never disputed that she had authority to admit Mr. Walker to the Facility on January 2, 2019 (or keep him there). *Plaintiff should be estopped from claiming she had authority to enter into the Admissions Agreement and receive the benefits thereunder but refute that same authority to enter into the Arbitration Agreement* on the very same day.

There is absolutely no evidence that the Arbitration Agreement was entered into under duress. Further, the Arbitration Agreement is not substantively or procedurally unconscionable by its terms. Therefore, as discussed further herein, Defendant respectfully requests that that the Court compel arbitration of Plaintiff's claims pursuant to the valid and binding contract between the Parties and, accordingly, dismiss or stay Plaintiff's Complaint.

FACTUAL BACKGROUND

Plaintiff's husband, Mr. Albert Walker, was admitted to the Facility for long-term care and rehabilitation on January 2, 2019. His wife, Paulette Walker, entered into a number of contracts and consents with the Facility on behalf of Mr. Walker (as well as herself individually)— namely, the Admission Agreement, the Arbitration Agreement and the various consents related to his residency at the Facility. See **Exhibit 1** – Admission Agreement; **Exhibit 2** – Arbitration Agreement; **Exhibit 3** - Other Written Consents. These contracts were for the mutual benefit of both Mr. Walker and the Facility and their respective representatives and agents. As for the various consents, Plaintiff consented to various directives and healthcare treatment (such as resuscitation/CPR orders and consent to use psychoactive medications) and expressly denied others (such as denial of flu vaccine and denial of pneumococcal vaccine). **Ex. 3.**

Based on the Admission Agreement and pursuant to the agreements set forth therein, Mr. Walker was admitted to the Facility and both he and Plaintiff accepted the benefits of the contracts entered into on his behalf by Ms. Walker. Such benefits included, but are not limited to, Mr. Walker's receipt of the skilled nursing care, other health care and residential services at the Facility. Plaintiff has never challenged the validity of any of these agreements and consents. **Notably, Plaintiff does not assert that the Admission Agreement is invalid or that Ms. Walker lacked authority to enter into that contract. The only contract and consent that Plaintiff now disputes she had authority to enter into is the Arbitration Agreement.**

Mr. Walker's medical records indicate that Plaintiff was present with Mr. Walker on admission on January 2, 2019. See **Ex. 4 – Medical Records Supporting Ms. Walker's Agency**². According to these records, in the presence of Mr. Walker, Plaintiff was acting on his behalf and communicating his needs and decisions to the Facility. In addition, Plaintiff was designated as Mr. Walker's "responsible party" ("RP"). **Ex. 4 – Walker, A. 00002**. Further, on that same day, Ms. Walker explicitly represented that she was authorized to admit Mr. Walker to the Facility and execute necessary documents on her behalf, including the Arbitration Agreement. The very first provision of the Admission Agreement states that *all information provided to the Facility* is truthful and correct, including Ms. Walker's authority to bind her husband, Mr. Walker, to certain agreements. See **Ex. 1**. Ms. Walker signed the Admission Agreement on behalf of Mr. Walker as his "Representative," as defined therein.

The Arbitration Agreement at issue defines Hallmark Healthcare as the "Facility" and Albert Walker as the "Resident," with Ms. Walker signing the Arbitration Agreement as Mr.

² Exhibit 4 is being submitted for *in camera* review because it contains certain medical information.

Walker's "Representative." The relevant provisions of the Arbitration Agreement state the following:

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules. See Ex. 2.

The Arbitration Agreement further provides:

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law. See Ex. 2.

Regarding Ms. Walker's authority to sign on behalf of her husband, the Arbitration Agreement states:

By his/her signature below, **the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.** (emphasis added) See Ex. 2.

The Arbitration Agreement was executed by Ms. Walker as "Representative" of Mr. Walker, and the Admissions Director for the Facility signed on behalf of Hallmark Healthcare.

On January 8, 2019, social service records once again indicate that Mr. Walker and Plaintiff are in each other's presence at the Facility and Plaintiff, as the responsible part ("RP") the decision that Mr. Walker should be a "full code" status. See Ex. 4 (Walker, A. 003271).

On January 16, 2019, two weeks after admission, Albert Walker executed a "Durable Power of Attorney for Financial Management," which appointed Paulette Walker to act as his

attorney-in-fact. See **Exhibit 5 – Durable Power of Attorney**. The Power of Attorney was effective immediately, and recorded with Charleston County on January 18, 2019. See **Id.** The Power of Attorney gave Ms. Walker *extremely broad powers* as it relates to Mr. Walker's affairs, including:

“To institute, maintain, defend, compromise, **arbitrate** or otherwise dispose of, any and all actions, suits attachments or other legal proceedings for or against me. This power includes, but is not limited to, the power to: appear on my behalf, and the power to settle any claim against me **in whichever forum or manner my Attorney-in-fact deems prudent**, and to receive or pay any resulting settlement.” See **Id.** (emphasis added).

That Power of Attorney unquestionably gave Ms. Paulette Walker the authority to enter into arbitration agreements on behalf of Mr. Walker *or to repudiate her authority to make these same decisions as of January 2, 2019 and to seek the cancelation of such an agreement directly or through removing Mr. Walker from the Facility.* Plaintiff never took such actions.

As additional grounds for how this Power of Attorney supports a finding of valid authority by Plaintiff to enter into the Arbitration Agreement, Defendant submits that Mr. Walker *ratified* Plaintiff's actions in entering into the Arbitration Agreement on January 2, 2019 – on account of the subsequent execution of the Power of Attorney and other actions discussed herein. Because the Power of Attorney was executed after the Arbitration Agreement at issue was signed, the question remains if South Carolina law allows a principal to ratify a contract, after the contract was signed, that his agent entered into on his behalf, rendering that contract valid. The answer under well-established South Carolina law is in the affirmative - and the facts of this case render the Arbitration Agreement at issue a binding and enforceable contract. For that reason, and for the other reasons stated below, the Court should stay these proceedings, and compel this matter to arbitration as required by the FAA. 9 U.S.C. § 3.

ARGUMENT AND CITATION TO AUTHORITY

I. POLICY IN FAVOR OF ARBITRATION

As a general matter, there is a strong presumption in favor of the validity of arbitration agreements because of strong policy considerations favoring arbitration. O’Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997). Indeed, both federal and state policy favors arbitrating disputes. 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.”). “The federal policy favoring arbitration, as expressed in the [Federal Arbitration Act], is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements.” Zabinski v. Bright Acres, 346 S.C. 580, 590, 553 S.E.2d 110 (S. Ct. 2001). Further, arbitration agreements are presumed valid, and “[t]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” Green Tree Fin. Corp.- Ala. v. Randolph, 531 U.S. 79, 91 (2000).

II. THE FEDERAL ARBITRATION ACT GOVERNS THE ARBITRATION AGREEMENT AND MANDATES THAT THE CLAIMS ASSERTED BY THE PLAINTIFF IN THE COMPLAINT BE COMPELLED TO ARBITRATION

As an initial matter, the Arbitration Agreement, by its terms and by law, is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (holding that skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA). Under the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. Section 4 of the FAA provides, in pertinent part, as follows:

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

9 U.S.C. § 4 (emphasis added).

“By its terms, the (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). While a court a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not invalidate an arbitration agreement 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, 197 L. Ed. 2d 806 (2017)(citing AT & T Mobility LLC v. Concepcion, 563 U.S. 333, 339, 131 S.Ct. 1740, 179 L.Ed.2d 742).

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. As discussed and further described herein, such a binding and enforceable written agreement to arbitrate disputes exists in this case and Plaintiff's claims should be compelled to arbitration.

III. THE ARBITRATION AGREEMENT IS VALID AND ENFORCEABLE

A. Plaintiff's Attestation of Authority in the Arbitration Agreement Binds Plaintiff to the Arbitration Agreement as it is a Facially Valid Contract.

Ms. Paulette Walker represented herself to staff and admissions personnel at Hallmark Healthcare as her husband's representative, with the authority to sign documents on his behalf, make decisions on his behalf and bind Mr. Walker and herself pursuant to those documents.

Indeed, immediately above Plaintiff's signature on the Arbitration Agreement, Plaintiff attests in bold font:

By his/her signature below, **the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.** (See Ex. 2)(emphasis added).

Plaintiff indisputably represented to Hallmark Healthcare that she had authority to act on behalf of her husband in executing the Arbitration Agreement. It was clearly Plaintiff's intention to bind both her husband, Mr. Walker, and herself on the face of the Arbitration Agreement according to its plain language. **Mr. Walker was present with Plaintiff in the facility at the time of such representation and he interacted with the Facility in Plaintiffs' presence as though Plaintiff had authority to make representations and decisions on his behalf. See Ex. 4.**

Notably, the Court faced facts similar to the ones at 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 Price Order Granting Defendant's Motion to Compel Arbitration, attached hereto as **Exhibit 6**) and in Josephine Spears v. Rehab Center of Cheraw, LLC et al. 2019-CP-13-00308 (January 10, 2020) (See Spears Order Granting Defendant's Motion to Compel Arbitration, attached hereto as **Exhibit 7**). In both of these cases, the plaintiff was the wife of a skilled nursing home resident at a skilled nursing facility in South Carolina. Further, the applicable resident's 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 similar to the ones in the case at bar. (See **Ex. 6**, p. 2-3; see **Ex. 7**, p. 1). In both Price and Spears, despite each wife's representation to the respective skilled nursing facility that she had authority to enter into the arbitration agreement on behalf of her husband, after the defendant skilled nursing facility moved to compel arbitration, each wife subsequently filed an affidavit refuting that she

actually had authority in opposition to the defendant's motion to compel arbitration. **However, in both Price and Spears this Court found that the signatory plaintiff's attestation of authority in the arbitration agreement bound plaintiff to its terms.** The circumstances are no different in the instant matter before the Court.

Specifically, this Court determined in Price that "the terms of the Arbitration Agreement clearly apply to the instant dispute[,]" because was it clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See Ex. 6, p. 5). Likewise, in Spears, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident very similar to Plaintiff's attestation in the Arbitration Agreement noted above.³ As such, this Court in Spears held, in part, that the wife's authority to sign the arbitration agreement at issue was "valid on its face" by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff's authority beyond her own attestation. (See Ex. 7, p. 4).

As in Price and in Spears, Plaintiff in this matter expressly attested to her own authority to enter into the Arbitration Agreement on behalf of her husband, Mr. Walker, and herself. **Mr. Walker was present with Plaintiff on admission (and on multiple times thereafter) and presented Plaintiff to the Facility as his agent. See Ex. 4.** As further discussed herein, Plaintiff is competent now to serve as the Personal Representative in this litigation and there is absolutely no reason to believe she was not competent to have entered into the Arbitration Agreement as of January 2, 2019. By signing the Arbitration Agreement, Plaintiff is "presumed

³ The arbitration agreement at issue in Spears contained the exact same attestation of authority as this case: "By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative."

to have read, understood, and assented to [the] terms” of 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.”). Therefore, the Court should find that Plaintiff is bound by the plain language of the Arbitration Agreement and the authority that she attested to therein is sufficient to enforce the Arbitration Agreement and compel this matter to arbitration.

B. Ms. Walker Possessed the Apparent and Inherent Authority to Bind Mr. Walker under the Arbitration Agreement, and should be Estopped from Denying the Validity of the Arbitration Agreement.

a. Agency Relationship – Apparent Authority

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, 145-146, 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).

Hallmark Healthcare points to Carraway v. Beverly Enters. Ala., Inc., 978 So. 2d 27 (Ala. 2007), as persuasive authority in this case. There, the plaintiff was the brother of a resident of a nursing home facility who executed a number of documents on his sister's behalf upon her admission to the facility, including an arbitration agreement. The brother signed the documents as his sister's authorized representative but did not have a power of attorney for his sister at the time. Nevertheless, as in this case, the admissions agreement in Carraway provided that plaintiff was his sister's legal representative for the purposes of admission as he was her next-of-kin and represented himself to be authorized to make health care decisions on her behalf. Also like in this case, the arbitration agreement in Carraway was a separate document and was not a condition of admission to the facility. Id.

When signing the arbitration agreement, the brother in Carraway left the resident signature line blank and signed it as the "authorized representative" of his sister. Suit was later filed and the facility moved to compel arbitration, which the trial court granted. On appeal, the Alabama Supreme Court affirmed the trial court's decision holding, relevant here, that the resident's brother possessed the apparent authority to enter into the arbitration agreement on his sister's behalf, as evidenced by the fact that she never objected to him signing on her behalf and the arbitration agreement specifically provided that any person authorized by the resident may execute it on her behalf. Id. See also, Tenn. Health Mgmt. v. Johnson, 49 So. 3d 175 (Ala. 2010)(holding that a daughter possessed the apparent authority to enter into an arbitration agreement on her mother's behalf). Notably, the Supreme Court of Alabama's holding in Carraway was applied as "persuasive authority" by this Court in Price, *supra*. Ex. 4, p. 8.

Clearly, Mr. Walker presented his wife, Plaintiff, as his agent and representative with authority to make decisions on his behalf with the Facility. See Ex. 4. *Not only was Plaintiff his “responsible party”, but she made decisions on his behalf on the date that Mr. Walker and Plaintiff were present together in the Facility. Id.* Likewise, on the date of admission and in the presence of Mr. Walker, Plaintiff expressly represented to the Facility that she as an agent for her husband when she executed various admission documents on behalf of her husband, including the Arbitration Agreement. (See Ex. 1, Ex. 2 and Ex. 3). She executed these documents in her capacity as Mr. Walker’s “representative.” Ms. Walker was present on admission with Mr. Walker, signed numerous consent documents, helped make the decision to maintain Mr. Walker status as full code, and informed the NP Ginger Arntz as to Mr. Walker’s medical history. See Ex. 3; see also Exhibit 4 – Medical Records Supporting Ms. Walker’s Agency.

This continuity of decision-making by Plaintiff Ms. Walker further led the Facility staff to believe that Ms. Walker was acting as Mr. Walker’s agent during this time. Furthermore, as the Activities Director noted on January 11, 2019, Mr. Walker’s family was “very involved in his care,” and Ms. Walker expressed to the staff that they desire for Mr. Walker to enter back into the community; Exhibit 8 – Plaintiffs’ Actions as Agent for Mr. Walker Post-January 2, 2019. During these frequent visits, none of Mr. Walker, Plaintiff or any other family member of Mr. Walker ever repudiated that Plaintiff, his wife, was authorized and able to act on his behalf and make decisions as to all matters related to his residency at Hallmark Healthcare— health, residential-related or otherwise.

When Mr. Walker’s actions in holding his wife, Plaintiff, out to the Facility as his agent is presented concurrently with Ms. Walker’s attestation to authority on the documents

themselves, and in conjunction with Ms. Walker's making various decisions, the staff at Hallmark Healthcare naturally and reasonably deduced that Ms. Walker was acting pursuant to the authority cloaked on her by Mr. Walker. This apparent authority continued throughout his residency, as Ms. Walker continued *in the exact same way throughout Mr. Walker's residency*, as she continued to interact with the Facility as she had on January 2, 2019. (e.g. sign consents on his behalf for psychoactive medication in April 2019 and denied the flu vaccine on Mr. Walker's behalf in October 2019. See **Ex. 3 – Walker, A. 0000017-000020**). Therefore, it was Hallmark Healthcare's reasonable and justified belief that, as of January 2, 2019, Plaintiff was her husband's authorized agent/representative and that she had the authority to execute the documents on his behalf, including the Arbitration Agreement.

Moreover, by allowing Ms. Walker to procure his admission to the Facility and thereafter by accepting the benefits of the contracts entered into in connection with that admission, Mr. Walker represented that his wife was his authorized representative to act on his behalf in connection with admission. See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as 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")(emphasis added).

A holding that Plaintiff, as Mr. Walker's wife and frequent communicator of her husband's desires, wants and needs to Hallmark Healthcare was *not* Mr. Walker's apparent agent would go against the fundamental concept of apparent agency: **that an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable**

belief that the agent has been authorized to act. Mr. Walker was present with Plaintiff when Plaintiff made representations on his behalf to the Facility on January 2, 2019. See Ex. 4. Hallmark Healthcare had reason to believe that by allowing Ms. Walker to sign the admissions paperwork, including the documents providing for Mr. Walker's stay and the skilled nursing care provided at the Facility, Mr. Walker cloaked his wife with the authority to execute the various documents related to his admission, including the Arbitration Agreement. Further, neither Mr. Walker nor any member of his family repudiated or invalidated his wife's/Plaintiff's actions. Instead, Mr. Walker accepted the benefits of the contracts with Hallmark Healthcare by remaining at the Facility and receiving skilled nursing care and services.

It is clear that an apparent agency relationship existed between Mr. Walker and Ms. Walker such that the Arbitration Agreement should be deemed enforceable.

b. Inherent Agency Authority

Even if Plaintiff lacked apparent authority to enter into the terms of the Arbitration Agreement, she still possessed sufficient inherent agency powers to render the agreement enforceable. Such inherent powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions "accompany or are incidental to transactions which the agent is authorized to conduct...." See, §§ 8A, 161 Restatement (Second) of Agency (1958); Smith v. Fitton & Pittman, Inc., 264 S.C. 129, 212 S.E.2d 925 (1975)(*abrogated on unrelated grounds*)(examining whether party had properly demonstrated the existence of inherent agency powers); Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r, 309 P.3d 372 (Wash. 2013); Daly v. Aspen Ctr. for Women's Health, Inc., 134 P.3d 450, 452 (Colo. App. 2005); Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210-11 (Ind. 2000); Cange v. Stotler & Co., 826 F.2d 581, 591 (7th Cir. 1987)("[t]he powers of an agent are,

prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”)(citing to Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co., 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for the doctrine of inherent agency is that, as between an equally innocent principal and third party with reference to an agent's purportedly “unauthorized” actions, the third party should prevail. This well-established law follows from one of the cardinal principles of agency law: that third parties, such as Hallmark Healthcare, should not be disadvantaged because they dealt with an agent rather than a principal.

As set forth above, there is no dispute as to whether the Plaintiff was authorized to admit her husband to Hallmark Healthcare. *Plaintiff does not repudiate her authority to have admitted Mr. Walker – which is based on the very same authority that she had to enter into the Arbitration Agreement.* To the extent Plaintiff takes issue with her own authority to bind her husband to the Arbitration Agreement and the specific terms therein, such actions merely accompanied and were incidental to her authority to admit her husband as a resident at Hallmark Healthcare. Hallmark Healthcare should not be disadvantaged for acting in accordance with the express representations of Plaintiff regarding her authority to execute the various documents related to his admission, including the Arbitration Agreement, and her authority to act on behalf of Mr. Walker as his agent in communicating with Hallmark Healthcare.

c. Agency by Estoppel

“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, supra, 343

S.C. at 433, 540 S.E.2d at 118. To properly show estoppel in South Carolina, this Defendant must show: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” Boyd v. Bellsouth Tel.Co., 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

In Price, *supra*, this Court ruled that the Plaintiff was equitably estopped from denying that she was her husband’s authorized agent during the latter’s admission to the skilled nursing facility:

In the case at the bar, [the facility] had not knowledge or reason to believe that Plaintiff was not [her husband’s] authorized agent for purposes of executing the Arbitration Agreement or and other admissions paperwork. [The facility] relied on the affirmative representations of Plaintiff in admitting her husband to the Facility for the provision of the skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by [the facility] for years only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, agency by estoppel is present based upon the record before this Court such that the arbitration agreement is similarly enforceable.

(See Ex. 6, p. 9).

Similarly, in McCutcheon v. THI of S.C. at Charleston, LLC, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011), the facts are also substantially similar to the case at bar. (See McCutcheon – Order Granting Defendant’s Motion to Compel, attached hereto as Exhibit 9). There, the plaintiff was the husband of a resident of a nursing home facility in South Carolina who executed a number of documents on his wife’s behalf upon her admission to the facility, including an arbitration agreement. As is the case here, the husband signed the documents as his wife’s authorized representative but did not have a power of attorney for his wife at the time. Nevertheless, as in this case, the admissions agreement in McCutcheon provided that plaintiff

was his wife's legal representative for the purposes of admission as he was her next-of-kin and represented himself to be authorized to make health care decisions on her behalf. Also like here, the arbitration agreement in McCutcheon was a separate document and was not a condition of admission to the facility.

In McCutcheon, the United States District Court of South Carolina determined that the arbitration and admission agreements should be merged under general principles of contract law (See Sec. III.D below - merger argument). Id. at *4. In addition, the McCutcheon court concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration, holding:

Even if the Arbitration Agreement and Admissions Agreement constitute two separate contracts, plaintiff takes inconsistent positions regarding these contracts, which were executed by the same parties under the same purported authority. [Accordingly,] [i]t would be inequitable [] to allow plaintiff to assert that Elijah McCutcheon had authority to sign the Admissions Agreement on behalf of [his wife], but lacked such authority to sign the Arbitration Agreement. For these reasons, the court finds that plaintiff is estopped from denying the enforceability of the Arbitration Agreement.

Id. at *5.

As in Price and McCutcheon, it would be disingenuous and inequitable to allow Mr. Walker, by and through Plaintiff, to effectively admit that his wife was his authorized agent as to the Admission Agreement, but not the Arbitration Agreement.⁴ In the case at bar, Hallmark Healthcare had no knowledge or reason to believe that Plaintiff was not Mr. Walker's authorized agent for purposes of executing the Arbitration Agreement and other admissions paperwork.

⁴ To the extent Plaintiff argues that neither the Adult Health Care Consent Act, S.C. Code Ann. §§ 44-66-10 to -80 (the "AHCCA"), nor the Bill of Rights for Residents of Long-Term Care Facilities, S.C. Code Ann. §§ 44-81-10 to -70 (the "Resident's Bill of Rights"), gave Mrs. Walker authority to sign the Arbitration Agreement on Mr. Walker's behalf, these arguments would be of no moment because the instant Motion does not rely on the AHCCA or the Resident's Bill of Rights as having granted Ms. Walker the authority to sign the Arbitration Agreement for Mr. Walker.

Indeed, the facility record reflects ample reason to believe that she was his agent. Hallmark Healthcare relied on the affirmative representations of Plaintiff in admitting her husband to the Facility for the provision of the skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by Hallmark Healthcare, only for the Plaintiff through the instant lawsuit to seemingly ignore the binding agreement. It is simply not equitable for Plaintiff to hold herself out to Hallmark Healthcare as Mr. Walker's agent and representative, as further affirmed by Mr. Walker's own holding out of Plaintiff to Hallmark Healthcare, for the entirety of his residency and on the date of admission, but conveniently repudiate that she had any authority in response to this instant Motion. Accordingly, Plaintiff should be estopped from denying the validity of the Arbitration Agreement.

Relevant to the application of this equitable principle in the matter at bar is that there is an implied covenant of good faith and fair dealing in every contract, Adams v. G.J. Creel & Sons, Inc., and Plaintiff is no less bound by this covenant than Hallmark Healthcare. Plaintiff, on behalf of *herself*, agreed to be bound by the terms of the Arbitration Agreement. Indeed, above Plaintiff's signature on the Arbitration Agreement, she acknowledges and agrees: **"By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative."** See Ex. 2 (emphasis added).

There is no doubt, of course, that Plaintiff could and did bind herself to the Arbitration Agreement and there is no question here as to Plaintiff's own competency to have done so. Thus, Ms. Walker owes Hallmark Healthcare covenants of good faith and fair dealing, and it would be

inequitable, unfair and not in good faith to permit Mrs. Walker to bind Mr. Walker to the Admission Agreement, to bind herself to the Arbitration Agreement and hold herself out throughout Mr. Walker's residency as having authority to bind Mr. Walker to the Arbitration Agreement, yet succeed in repudiating that position now just because Hallmark Healthcare seeks to enforce the terms of the Arbitration Agreement. **As stated previously, Mrs. Walker claims the same basis for authority to enter into the Admission Agreement as she had to enter into the Arbitration Agreement.**⁵ To require good faith and fair dealing from Hallmark Healthcare as a contracting party, but not to require the same of Plaintiff, acting on her own behalf and on behalf of her husband, just because the contract in issue is an arbitration agreement would violate the FAA's requirement that arbitration agreements be placed "on *equal footing* with other contracts." Concepcion, 563 U.S. at 339. **This Defendant craves particular reference to this Court's recent order in Jeffery White, as personal representative of the Estate of Lizzie White v. Calhoun Convalescent Center, C.A. No. 2019-NI-09-00220 (Nov. 24, 2020), in support of this very principle. See Exhibit 10 – Lizzie White Order.**

C. Mr. Walker Ratified the Arbitration Agreement when he Executed the Durable Power of Attorney on January 16, 2019.

As independent and alternative grounds to compel this matter to arbitration, Hallmark Healthcare asserts that Mr. Walker, the principal, ratified the contract signed by his agent, Ms. Walker, when he executed the Durable Power of Attorney (the "Power of Attorney") just two weeks after his admission to the Facility. See Ex. 5. This Power of Attorney executed by Mr.

⁵ Mr. Walker was not determined to be incapacitated at the time of his admission and, therefore, Mrs. Walker was not acting pursuant to the Adult Healthcare Consent Act when she admitted him to the Facility and entered into the Admission Agreement. Plaintiff is not challenging her own authority to admit Mr. Walker to the Facility.

Walker on January 16, 2019 conferred *extremely broad powers* on Plaintiff, Mrs. Walker – expressly to include her ability to determine how any disputes with the Facility would be resolved. **Id.** Mrs. Walker, as Mr. Walker’s expressly appointed agent pursuant to the Power of Attorney, also *ratified* her own actions taken on January 2, 2019 by continuing to keep Mr. Walker admitted to the Facility and never repudiating the actions she took and mutual promises she made in connection with his admission – *including by entering into the Arbitration Agreement*. **Id.** Mrs. Walker continued to act on Mr. Walker’s behalf pursuant to the express powers granted by the Power of Attorney, including making decisions on behalf of Mr. Walker that she believed were in his interests. See **Exhibit 8 – Actions by Plaintiff after execution of PoA**; see also **Ex. 3 – Walker, 0000017-000020**.

Under South Carolina law, ratification means “the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent.” Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct.App.1989). “Ratification exists upon the occurrence of three elements: (1) acceptance by the principal of the benefits of the agent’s acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements.” **Id.** Having already established that Ms. Walker was acting as Mr. Walker’s agent when she signed the Arbitration Agreement on his behalf, the only question that remains is whether Mr. Walker’s actions and subsequent execution of the Durable Power of Attorney qualifies as “ratification” under the Lincoln factors.

a. Acceptance of the Benefits of Ms. Walker’s Acts

The most compelling evidence of Mr. Walker’s acceptance of the benefits of Ms. Walker’s actions is that neither Mr. Walker nor any member of his family have repudiated or

invalidated his wife's/Plaintiff's actions and the promises she made in consideration of Mr. Walker's admission to the Facility on January 2, 2019 and determining that alternative dispute resolution was in Mr. Walker's interests – namely, entering into the Admission Agreement and Arbitration Agreement. Mr. Walker ultimately left the Facility in June 2020. This means that, *for over 18 months after Plaintiff entered into the Arbitration Agreement and the Admission Agreement, and for over 17 ½ months after Mr. Walker affirmed Mrs. Walker's authority by executing the Power of Attorney (Ex. 5), Mr. Walker stayed at the Facility and Plaintiff never rejected the benefits Mr. Walker was receiving, including the provision of skilled nursing services and mutual promises to resolve any disputes during that time period pursuant to alternative dispute resolution.*

b. Full Knowledge of the Facts

Mr. Walker's chart indicates that he certainly had knowledge of the facts of his situation. On his initial nursing assessment on the date of his admission, Mr. Walker was speaking clearly, with distinct intelligible words, and he was able to make himself understood and to understand others. See Exhibit 14 – Evidence from Chart regarding Knowledge of Situation. Further, on that same day, Mr. Walker's nurses noted that he was oriented to the Facility's staff, call system, meals, time, common areas, visiting hours, his room, his bathroom, the dining room, activity calendar, his rights as a Resident, and that he was in a nursing home. See Id. Mr. Walker was present with Mrs. Walker while she was acting as his agent to Facility staff. **Ex. 4.**

Knowing that he was in a nursing home, that Mrs. Walker had admitted him to the Facility and was acting on his behalf, Mr. Walker knew or should have known that his wife, Ms. Walker, signed various contracts upon his entrance to the Facility pertaining to his financial obligations, the Facility's services, and dispute resolution procedures. Certainly by the time that

he executed the Durable Power of Attorney on January 16, 2019 – thereby ratifying the Mrs. Walker's actions in entering into the Arbitration Agreement - Mr. Walker had been made aware of the facts surrounding his admission to the Facility.

c. Circumstances Indicating an Intention to Adopt the Arrangements

As for the final prong, Mr. Walker executed the Durable Power of Attorney which gave Ms. Walker extremely broad powers as it relates to Mr. Walker's affairs, including the power to enter into the Arbitration Agreement at issue in this case:

"Claims and Litigation Matters

To institute, maintain, defend, compromise, arbitrate or otherwise dispose of, any and all actions, suits attachments or other legal proceedings for or against me. This power includes, but is not limited to, the power to: appear on my behalf, and the power to settle any claim against me in whichever forum or manner my Attorney-in-fact deems prudent, and to receive or pay any resulting settlement." See Ex. 5. (emphasis in original).

This Power of Attorney was entered into *just two weeks after his wife signed the Admission Agreement and Arbitration Agreement at issue in this case. It also conferred on Mrs. Walker the authority to discharge him from the Facility. She did not do so, with full knowledge of the Arbitration Agreement that she entered into. Ex. 5, ¶7.p.*

To appoint and employ any agents, servants, companions, or other persons, including nurses and other health care professionals for my care and the care of my spouse and dependent children . . . at such compensation and for such length of time as my Attorney-in-fact considers advisable.

Id.

When considering the timing and substance of the executed document *together with Mr. Walker's and Mrs. Walker's course of conduct following execution of the Power of Attorney with regard to the Admission Agreement and the Arbitration Agreement*, the Power of Attorney is indisputable evidence of Mr. Walker's intention to adopt the Admission Agreement and Arbitration Agreement signed by his agent, Ms. Walker. Moreover, once expressly

authorized to enter into agreements such as the Admission Agreement and Arbitration Agreement, Mrs. Walker as Mr. Walker's agent effectively *ratified* her own actions by never repudiating the Arbitration Agreement and affirmatively continuing to accept the benefits of the terms of Mr. Walker's admission (i.e. Arbitration Agreement and Admission Agreement entered into on January 2, 2019).

For the foregoing reasons, Hallmark Healthcare asks that this Court find that Mr. Walker ratified his agent's conduct and rendered the Arbitration Agreement in this case valid and enforceable.

D. The Arbitration Agreement and Admission Agreement Must be Construed Together, and Plaintiff Should Be Estopped from Denying the Parties' Mutual Right to Arbitration.

a. Merger

In the alternative, and as additional grounds to compel arbitration, Plaintiff presumably agrees that Ms. Walker possessed actual authority to admit Mr. Walker to the Facility and, it follows, to enter into the Admission Agreement. Therefore, the Admissions Agreement and Arbitration Agreement should be construed together and Plaintiff should be required to arbitrate her claims against the Facility. The Arbitration Agreement and Admission Agreement were executed by Ms. Walker on behalf of her husband, Mr. Walker. The validity of these agreements, including the Arbitration Agreement, must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. Herron v. Century BMW, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010).

The Arbitration Agreement provides that "any controversy or dispute between the parties *arising out of or relating to Facility's Admission Agreement . . . or relating in any way to Resident's stay at Facility*" shall be resolved by arbitration pursuant to the terms of the

Arbitration Agreement. **See Ex. 2 – Arbitration Agreement (emphasis added)**. As previously described, the Arbitration Agreement and the Admissions Agreement were both signed by Ms. Walker on behalf of her husband on the same day, at the same time, and in connection with the same subject matter and transaction - Mr. Walker's residency at Hallmark Healthcare and receipt of skilled nursing care there.

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, 232 S.E.2d 20 (1977). Absent some 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). Furthermore, 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).

As indicated previously, the court in *McCutcheon* analyzed facts almost identical to the case at bar 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 (See **Exhibit 9**). Indeed, this Court has 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 and Campsen attached hereto as **Exhibits 11 and 12, respectively**.

Accordingly, Mr. Walker, by and through the acts of his agent and representative, Ms. Walker, and the Facility, both contemplated that the terms of the agreement to admit Mr. Walker were contained in the Admissions Agreement and Arbitration Agreement. Ms. Walker executed the Arbitration Agreement and the Admissions Agreement at the same time – on January 2, 2019; the Arbitration Agreement and the Admissions Agreement both covered the same subject matter and transaction - Mr. Walker's residency at the Facility and receipt of residential and skilled nursing services; the Arbitration Agreement and Admissions Agreement were executed by the same parties; the Arbitration Agreement specifically makes citation to and incorporates the Admission Agreement; and thus the Arbitration Agreement and Admission Agreement should be construed as part and parcel of the same agreement between the parties.

b. Equitable Estoppel of Merged Agreement

“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 v. Willis, 426 S.C. 326, 339–345, 827 S.E.2d 167, 174–177 (2019) (discussing direct benefits test).

Because of the doctrine of merger referenced 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. Bev., 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 in part Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp., 659 F.2d 836, 839 (7th Cir. 1981) (citing in part Int'l Paper Co., 206 F.3d at 416) (internal quotations omitted)).⁶

Plaintiff, as Mr. Walker's wife, embraced all aspects of the Admission Agreement with the Facility. **Plaintiff does not dispute the validity of the Admission Agreement or her husband's admission to the Facility. She never removed Mr. Walker from the Facility and, by all accounts, approved of presence at the Facility/did not seek his discharge until eighteen months (18) following the execution of the agreement at issue.** Therefore, it would be manifestly inequitable to permit a party to claim the other is liable in tort 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, Plaintiff cannot "have it both ways" by relying upon certain terms of the Admission Agreement when it works to his advantage and repudiating the Arbitration Agreement when it works to her disadvantage.

⁶ 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).

As described, the Plaintiff's allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against this Defendant 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. Pursuant to numerous orders of this Court and numerous other courts on essentially identical facts and concerning identical arbitration agreement, where a non-signatory receives the benefits of the contract, which Plaintiff certainly did here, Plaintiff must be prevented from refusing to comply with the Arbitration Agreement merely because he did not sign it.

c. Coleman, Thompson, and Hodge are Distinguishable

To the extent Plaintiff argues the Admission Agreement and Arbitration Agreement are not merged pursuant to Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014), and Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016), such reliance is misplaced.

However, these cases are distinguishable as it relates to the issue of "separateness" and the doctrine of merger, as described further below.

In Coleman, Ann Coleman signed a number of documents, including arbitration agreements, when admitting her sister to a health care facility. 407 S.C. at 350, 755 S.E.2d at 452. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. In determining that the arbitration and admission agreements in the case had not merged, the Supreme Court found, "On its face, this clause recognizes the 'separatedness' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts. Moreover, the

[arbitration agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate.” Id. at 452. “By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply.” Id.

Similarly, in Hodge, the admission agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law. 422 S.C. 544, 813 S.E.2d at 302. Furthermore, like in Coleman, the arbitration agreement in Hodge recognized a separateness, as it referenced the two documents separately, stating “[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident’s Admission Agreement.” Id. Finally, the arbitration agreement in Hodge stated it could be revoked within thirty days, whereas the admission agreement contained no such indication. Id. In Thompson, the arbitration agreement also contained a disclaimer provision but the admission agreement did not.

Unlike the arbitration agreements in Coleman, Thompson, and Hodge, the Arbitration Agreement and Admission Agreement in the case at bar should not be considered “separate” for purposes of denying merger. Unlike Coleman, Thompson, and Hodge, the Arbitration Agreement in this case does not state that it can be revoked after it has been signed. Furthermore, it does not state that arbitration is a precondition to admission to the Facility.

Instead, in the present case, the agreements “were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction” and, therefore, the documents merged. Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (citing Klutts, *supra*, 268 S.C. at 88, 232 S.E.2d at 24).⁷ Specifically, the Admission and Arbitration Agreements were signed

⁷ To be clear, even though the Coleman Court found evidence of an intent contrary to merger on the particular facts before it, it nonetheless recognized as *correct* the general proposition of law on which the

by the Ms. Walker, on Mr. Walker's and her own behalf, and the Facility on January 2, 2019. The documents were signed by the exact same people: Ms. Walker as representative for her husband and by the Admissions Coordinator for the Facility. The documents were signed for the same purpose and transaction of establishing Mr. Walker's residency at the skilled nursing facility.

While the Admission Agreement in this case does contain an "Entire Agreement" clause, unlike the admission agreements in those other cases, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn't refer to it at all). Moreover, the Arbitration Agreement at issue contains no disclaimer provision, unlike Coleman, Thompson, and Hodge. Also, absent here is the type of discrepancy the Hodge Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (providing "This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.") *with* Arbitration Agreement (providing that, "because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action;" but also providing that arbitration shall be "as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules").)

Further still, it must be remembered that the merger question examines whether, "where instruments are executed at the same time, by the same parties, for the same purpose, and in the

Coleman Appellants' based their merger argument, i.e., the Coleman Court expressly observed that the admission agreements and arbitration agreements before it (which, in this respect, are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), "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).

course of the same transaction,”⁸ as indeed the admission and arbitration agreements were here, there is evidence to upset the *default presumption* that the contracting parties intended the instruments to be construed together as effectively one contract. As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties’ possessed a contrary intention. Such superficial things as the fact that the admission arbitration agreements have their own titles, are separately paginated, and/or are separately signed cannot suffice to show evidence of intent contrary to merger. 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.

Even though, as noted above, the Arbitration Agreement was not a precondition to admission, this does not mean that the two instruments did not work hand-in-hand once the arbitration agreement came into existence (i.e., once it was in fact entered into). While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true; the Admission Agreement is indeed necessary to the Arbitration Agreement. In other

⁸ Coleman, 407 S.C. at 355, 755 S.E.2d at 455.

words, 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, of course, and it was executed under circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction. 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.

It matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission; and, here, there can be no question that the Arbitration Agreement—once agreed upon—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. Walker’s relationship with Defendant. Indeed, this conclusion finds direct support in the Admission Agreement’s “Entire Agreement” provision, which states, “[t]he undersigned further acknowledges that he/she has received and read the Admission Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.” **See Ex. 1, p. 12** (emphasis added). Had the Arbitration Agreement not been executed, it would not constitute admissions material, but, of course, it was executed, and it does constitute admissions material; most respectfully, to conclude otherwise simply does not make sense.

Respectfully, the material facts of Coleman, Thompson, and Hodge, are different from the material facts of the instant case, and they do not control the outcome here. Under the particular facts of this case, an intent contrary to merger cannot reasonably be found.

E. The Arbitration Agreement is Not Unconscionable

“In analyzing claims of unconscionability of arbitration agreements, . . . [courts should] focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.” One Belle Hall Prop. Owners Ass’n, Inc. v. Trammell Crow Residential Co., 418 S.C. 51, 60, 791 S.E.2d 291 (Ct. App. 2016)(internal quotations omitted).

Should Plaintiff contend in any supplemental briefing that this Arbitration Agreement is unenforceable because it is unconscionable, the law and facts surrounding Ms. Walker entering into this Arbitration Agreement and the clear language of the Agreement demonstrates this is clearly not the case. As an initial matter, both state and federal courts in South Carolina have consistently ruled that arbitration agreements identical to the one *sub judice* are not unconscionable. See McCutcheon v. THI of S.C. at Charleston, LLC, *supra*, at 6* - *8; Benson v. THI of S.C. at Charleston, LLC, No. C.A. No. 7:11-CV-2613-HMH (D.S.C. Nov. 30, 2011)(attached hereto as **Exhibit 13**); 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).

Anyone who enters into a written contract has a duty to read the contract which she or he signs. Maw v. McAlister, 252 S.C. 280, 284-285, 166 S.E.2d 203, 204 (1969). Anyone who is capable of reading and understanding, but fails to read a contract before signing, is bound by the terms thereof. Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). Furthermore, arbitration clauses are not unconscionable and will be enforced if a person who can read fails to read the contract, regardless of whether he was advised of the arbitration terms by the contracting

party. Munoz v. Green Tree Financial Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (holding the plaintiff's failure to read an arbitration provision did not render it unconscionable even though the plaintiffs claimed they were not advised of those terms). Additionally, "inequality of bargaining power alone will not invalidate an arbitration agreement." *Id.*

The Arbitration Agreement clearly articulates that the resident entering into the Agreement is fully aware of his or her healthcare options and other potential providers of nursing home facilities. The Agreement states:

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where the Facility is located that are qualified to provide such care to Resident.

Furthermore, on that same signature page, the Arbitration Agreement states clearly in bold lettering in a separate heading: "**I understand and agree that I am giving up and waiving my right to a jury trial.**" See Ex. 2 (emphasis in original).

Since Mr. Walker's representative and agent, Ms. Walker, had a duty to read and understand the documents she was signing on her husband's behalf under proper authority, she also had a duty to communicate those terms to Mr. Walker as her agent. To the extent she did not, Plaintiff cannot now claim that Mr. Walker was unaware of the terms of the Arbitration Agreement that Ms. Walker voluntarily and with proper authority executed on her husband's behalf, and which Mr. Walker later ratified.

CONCLUSION

Defendant submits that arbitration should be compelled on the foregoing grounds. Mrs. Walker was Mr. Walker's apparent agent and acted pursuant to inherent authority in such agency. Mr. Walker should be estopped from maintaining her authority to enter into the Admission Agreement, yet denying her authority to enter into the Arbitration Agreement when

the power to do both of these acts is rooted in the same conference of authority by Mr. Walker. Further, Mr. Walker expressly conferred authority on Mrs. Walker to enter into the Arbitration Agreement as of January 16, 2019. Mrs. Walker, as Mr. Walker's attorney under the Power of Attorney ratified her actions in entering into the Arbitration Agreement for the reasons discussed above.

Finally, the doctrine of merger as between the Admission Agreement and the Arbitration Agreement should operate to bind Mr. Walker to the Arbitration Agreement. These documents were executed on the same date, by the same parties and with respect to the same transaction – the provision of nursing and other health care to Mr. Walker at the Facility. The Arbitration Agreement, by its terms, is binding on the personal representative of Mr. Walker and, therefore, is binding on Ms. Walker. Defendant respectfully requests that this Court enter an Order staying the pending action and compelling arbitration.

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Attorneys for the Defendant Hallmark Longterm
Care, LLC d/b/a Hallmark Healthcare Center

Charleston, South Carolina

Dated: February 5, 2021

ADMISSION AGREEMENT - SOUTH CAROLINA

RESIDENT NAME:

Albert Walker, Jr.

RESIDENT NUMBER:

DATE OF ADMISSION:

1-2-19

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among HALLMARK HEALTHCARE ("Facility"), Albert Walker Jr. ("Resident") and/or ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

WHEREAS, the parties wish to admit Resident to Facility and hereto agree as follows:

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.
2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aids and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.
3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.
4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.
5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

1. Admit Resident upon receipt of a physician's order; assist in obtaining physician services if a personal physician becomes unavailable; obtain emergency physician services when required. *Resident is not deemed admitted until such time as all agreements required by law and Facility have been appropriately executed.* This provision may be waived in writing by Facility, at its sole discretion.
2. Maintain written records of financial transactions with Resident and/or Representative responsible for payment. Resident has the right to have personal funds held in trust in accordance with applicable state and federal law, as may be amended from time-to-time.
3. Furnish room, routine meals, nursing care, personal care, or custodial care to Resident in accordance with applicable State and Federal law. This provision expressly excludes extraordinary services, including but not limited to, physician care, private duty nursing, private sitters, specialty foods and therapies not required by law. Resident will be placed in a semi-private room, absent medical need for a private room as determined by Facility staff. Residents residing in private rooms will be billed accordingly.
4. Assist in applying for private insurance benefits, but not to accept assignment thereof unless otherwise noted as an exception herein.
5. Assist Resident and/or Representative in applying for Medicare or Medicaid benefits where applicable.
6. Provide assistance in daily living and restorative nursing care in accordance with Resident's care plan, where appropriate. Resident and/or Representative reserve the right to refuse said treatment. If said treatment is refused, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
7. Arrange for transfer of Resident to a hospital upon physician's order or in an emergency situation. Expenses of transfer and care of Resident at the hospital are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment of those services.
8. Obtain and administer medication as prescribed. Expenses for the cost of obtaining the medications are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment for the medications. Resident and/or Representative have the right to refuse medication. If Resident refuses medication, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
9. Provide an activities program for Resident, components of which will be at the discretion of Facility.
10. Furnish Resident bed linens and hospital gowns. All personal clothing will be supplied by Resident or Representative and will be properly labeled as outlined in the *Admission Handbook* for identification purposes.

Original: Business File • Photocopy: Resident/Representative

B. RESIDENT AND/OR REPRESENTATIVE AGREE(S) TO:

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.
2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.
3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative have the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.
5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.
6. Provide and be responsible for personal items of clothing and property.
7. (a) Vacate/remove Resident from Facility within thirty (30) days upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.
8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.
9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.

11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.

12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.

13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.

14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.

15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.

16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.

17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.

18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.

19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

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20. Resident and/or Representative will be responsible for paying all costs, expenses and reasonable attorneys' fees, whether or not suit is brought, in the event costs, expenses, and/or attorneys' fees are incurred by Facility in the collection of sums due from and owed by Resident or any other party on Resident's behalf to Facility.

III. FINANCIAL AGREEMENT

Resident and/or Representative will be responsible for immediate payment of all charges incurred as follows:

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) ☒-semi-private accommodations, for a basic fee of \$ 210.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.
 - a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
 - b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
 - c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.
2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.
3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

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state and federal law. Any personal property belonging to Resident in Facility at the time of Resident's discharge or death will be released in accordance Section II-B-13 herein.

4. In the event Resident leaves Facility and has personal funds on account, Facility may deduct any outstanding monies due to Facility from said personal funds. The remainder will be distributed in accordance with applicable state and federal law.

5. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative shall pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

IV. TERMINATION

1. Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.

2. Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.

3. This Agreement may be terminate immediately upon the occurrence of any of the following:
- a. Resident's condition has improved sufficiently so that he/she no longer requires the services provided by Facility.
 - b. Resident's physical or mental condition changes and he/she requires a higher level of care which cannot be provided by Facility.
 - c. Resident's death.
 - d. The safety or health of individuals in the Facility is endangered.
 - e. Resident and/or his/her legal representative have failed to pay for his/her stay.
 - f. Facility ceases to operate or is no longer able to provide services to Resident.
 - g. Sanctions or remedies imposed by the Department.

4. In the event Facility terminates this Agreement through an involuntary transfer or Discharge, Facility shall provide appropriate notice and discharge planning as required by State and Federal law.

V. MEDICAID BENEFICIARIES

1. **Eligibility.** Eligibility for Medicaid-sponsored long-term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission. This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The Department may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid-sponsored long-term care services.

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2. **Covered Services.** If Resident is a Medicaid recipient, the Medicaid Program will reimburse Facility for certain skilled services ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to: hair hygiene supplies; comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies; towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, and basic personal laundry.

3. **Non-Covered Services.**

- a. Medicaid is a cost-sharing program. Resident's monthly income must be contributed to the cost of his or her care. Medicaid determines how much of the Resident's monthly income must be paid to the Facility (also called "patient liability"). To the extent permitted by law, Resident's monthly Social Security and pension funds, minus the personal allowance retained by Resident (or other allowance as set by law), will be paid to Facility.
- b. Resident and/or Representative may purchase from Facility certain miscellaneous products and services that are not covered by Medicaid. An itemized list of fees for these additional products and services is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office.

4. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicaid for services rendered by Facility and authorizes Facility to receive payments from Medicaid pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicaid refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative will remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from Medicaid.

5. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

6. **Application/ Appeals.** Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VI. MEDICARE BENEFICIARIES

1. **Covered Services.** If Resident is a Medicare recipient, the Medicare Program will reimburse Facility for certain skilled services such as nursing services and certain therapies ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies; comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream,

toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, basic personal laundry and medically related social services.

2. Non-Covered Services. Resident and/or Representative will be required to pay certain other "Allowable Charges" which include, but are not limited to:

- a. Fees for certain products and services not covered under the Medicare program. Fees for such services will be identical those charged to private pay residents of Facility for the same products and services.
- b. Fees for certain products and services that are more expensive than the products and services covered under the Medicare program (e.g., a private room), as requested by a Resident and/or Representative. Fees charged for the more expensive products and services will be based on the difference between the fees charged to private pay residents of Facility and the customary charge for the same products and services under Medicare. Facility staff will inform Resident and/or Representative requesting additional or more expensive products or services that there will be a specified charge.
- c. Certain deductibles and co-insurance amounts under the Medicare Program.

3. Assignment of Benefits. In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicare for services rendered by Facility and authorizes Facility to receive direct payments from Medicare pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicare refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from Medicare.

4. Benefit Disallowance. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. Application/ Appeals. Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VII. PRIVATE PAY/INSURANCE

1. Routine Services. If Resident is paying for his/her stay privately OR if he/she is having his/her stay paid for through a third-party insurance carrier, Resident and/or Representative will reimburse Facility for routine services ("Routine Services") which include: routine nursing services; routine dietary services; routine activities programs; and routine room and bed maintenance services. Beauty shop fees are not included in the daily rate. Resident and/or Representative shall pay a deposit of two months' basic room and board prior to admission. Each subsequent monthly payment is due on or before the 10th day of the month.

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2. **Ancillary Services.** Resident and/or Representative may purchase services and products that are not included in Routine Services from Facility. An Itemized list of fees for these additional services and products is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office. Resident and/or Representative shall pay for ancillary services at the end of the month in which such services are rendered.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from any insurance company paying benefits to Resident for services rendered by Facility and authorizes Facility to receive payments from such insurance company pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent such insurance company refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment for these services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from such insurance company.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not

6. Not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VIII. NOTICES

All notices, consents, approvals and the like required to be given hereunder shall be given in writing to Facility to the address below or such other address as Facility may designate:

HALLMARK HEALTHCARE
255 MIDLAND PARKWAY
SUMMERVILLE, SC 29485

All notices, consents, approvals and the like required to be given to Resident and/or Representative shall be given in writing to Resident and/or Representative to the address below or at such other address as he/she may designate:

HALLMARK HEALTHCARE
255 MIDLAND PARKWAY
SUMMERVILLE, SC 29485

Notice may be given via facsimile, e-mail or U.S. Mail, certified mail return receipt requested.

IX. GOVERNING LAW

This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located. This Agreement will be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

X. SEVERABILITY

If any provision(s) of this Agreement will be deemed to be illegal or otherwise unenforceable, all other provisions will remain in full force and effect as if the invalid provision had not been part of this Agreement.

XI. CAPTIONS

Captions are for the purpose of reference only and do not govern, limit, modify, enlarge or in any manner affect the scope, meaning and intent of the provisions of this Agreement, nor will such captions be given any legal effect.

XII. MODIFICATIONS

Facility reserves the right to unilaterally modify this Agreement to conform to law and regulations as may be passed from time to time. Reasonable notice, considering all of the circumstances, will be given to Resident and/or Representative when any change is made in accordance with this paragraph. Any other modification, except as otherwise specifically reserved herein, will be made in writing and signed by all relevant parties.

XIII. WAIVER

Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by Facility unless in writing, signed by Facility. Any waiver of any provision of this Agreement will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and/or Representative and this Agreement will remain in full force and effect.

XIV. RESIDENT

Use of the term "Resident" herein includes the Resident and any person with legal authority to handle Resident's funds or property and/or make medical decisions depending on the context in which the term is used.

XV. ASSIGNABILITY

This Agreement is fully assignable by Facility in the event that Facility is sold and/or the license is transferred such that a new licensee operates Facility. This Agreement, at Facility's option and without notice to Resident and/or Representative, may be automatically assigned to the new licensee and will be fully binding upon Resident and the new licensee.

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XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required or permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days' notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.
2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.
3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.
4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.
2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.
3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.
4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, and durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

5. In the event that an individual voluntarily agrees to become legally responsible for payment for the care and treatment of Resident, said Representative will be fully bound to the terms of this Agreement. Please note, Facility does not require a third-party guarantor.

6. Facility reserves the right to apply its indigent care policy, as appropriate, in its sole discretion.

XVIII. ENTIRE AGREEMENT

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

By signing below, I/we further acknowledge that I/we have made the above promises and representations in order to induce Facility to enter into this Agreement. The parties further understand that, by signing this Agreement, Facility is relying upon the truthfulness of the promises and representations I/we have made. The parties further agree that if any term or provision of the Agreement is found by a court or agency of competent jurisdiction to be legally unenforceable, the term and provision will be deemed severed from this Agreement and the remaining terms or provisions will be fully enforceable.

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

Signature of Resident

Date

Printed Name of Resident

Social Security Number

Witness Signature

Date

Printed Name of Witness

OR *Paulita Walker*
Signature of Representative, if any

1/2/19
Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

[Signature]
Signature of Facility Official

Printed Name of Facility Official & Title

1-2-19
Date

Original: Business File • Photocopy: Resident/Representative

Resident Face Sheet: Albert S Walker Jr (Full Code)

Unit:	Sunshine	Preferred Name:	
Room/Bed:	103/B	Attending:	Shantae Jenkins - (843) 696-7440
Status:	In House	Email:	

Diagnoses: D50.0 Iron deficiency anemia secondary to blood loss (chronic)(Primary, Admission), D50.0 Iron deficiency anemia secondary to blood loss (chronic), I69.898 Other sequelae of other cerebrovascular disease, R04.0 Epistaxis, J30.2 Other seasonal allergic rhinitis, K21.9 Gastro-esophageal reflux disease without esophagitis, B37.9 Candidiasis, unspecified, E11.9 Type 2 diabetes mellitus without complications, F01.50 Vascular dementia without behavioral disturbance, F01.51 Vascular dementia with behavioral disturbance, G81.91 Hemiplegia, unspecified affecting right dominant side, I10 Essential (primary) hypertension, I25.10 Atherosclerotic heart disease of native coronary artery without angina pectoris, K22.10 Ulcer of esophagus without bleeding, K22.10 Ulcer of esophagus without bleeding, K59.00 Constipation, unspecified, I69.351 Hemiplegia and hemiparesis following cerebral infarction affecting right dominant side, I69.898 Other sequelae of other cerebrovascular disease, K92.2 Gastrointestinal hemorrhage, unspecified, M62.59 Muscle wasting and atrophy, not elsewhere classified, multiple sites, N18.3 Chronic kidney disease, stage 3 (moderate), R26.89 Other abnormalities of gait and mobility, R26.80 Other lack of coordination, F32.89 Other specified depressive episodes, R19.7 Diarrhea, unspecified, R10.10 Upper abdominal pain, unspecified, E86.0 Dehydration, A56.00 Chlamydial infection of lower genitourinary tract, unspecified (History of), N39.0 Urinary tract infection, site not specified, F43.21 Adjustment disorder with depressed mood (History of), G89.29 Other chronic pain (History of), H40.89 Other specified glaucoma, F01.50 Vascular dementia without behavioral disturbance, I10 Essential (primary) hypertension, I25.10 Atherosclerotic heart disease of native coronary artery without angina pectoris, I69.351 Hemiplegia and hemiparesis following cerebral infarction affecting right dominant side, E11.9 Type 2 diabetes mellitus without compl

Alerts:**Face Sheet Notes:****Contacts**

Relationship	Name	Responsibilities	Call Order	Home	Mail	Address	Notes
Spouse	Paulette Walker	Emergency Contact Resident Representative Responsible Party	1	Primary Home	REDACTED	REDACTED	
Daughter	Cathy Walker	Emergency Contact		Primary Home	REDACTED	- - SC 11111	

Providers

Provider Name	Specialty	Contact	Phone/Email	Address
	Physician	Shantae Jenkins MD	Primary (843) 696-7440 Pager (843) 696-7440 Fax (843) 821-5005 Email sjenkins@elitepatientcare.com	3901 Spicewood, Austin, TX 78759
		-Attending		
Simplicity	Funeral Home		Primary (843) 996-4426	281 Treeland Dr C, Ladson, SC 29456
	NP/PA	Mary Arntz NP	Primary (737) 226-6700 Pager (737) 226-6700 Fax (737) 226-6777 Email A.GILSON@FUNDLTC.COM	3901-A SPICEWOOD SPRINGS RD. STE 201, AUSTIN, TX
Remedi SeniorCare of Charlotte	Pharmacy		Primary (844) 312-3469 Fax (000) 000-0000	7504 E Independence Blvd Suite 112, Charlotte, NC 28227

Walker, Albert - 82yrs
Sex - Male

Progress Note
Jan 2, 2019

Elite Patient Care
(737) 226-6700

Patient: Walker, Albert - 82yrs
Sex: Male
DOB: REDACT
Location: Hallmark Health Care Center, 201B
Admit/Discharge Date: 01/02/2019
Supervising Provider: Randi Popp



CC/HPI THIS VISIT

Patient is a poor historian due to cognitive/psychiatric impairment.
Chief Complaint/Reason for this Visit

New visit for right hemiparesis 2/2 left thalamic stroke, metabolic encephalopathy, HTN, DM2, CAD, anemia, debility.

HPI Relating to this Visit

Pt seen in his bed today, wife is present. Pt is alert to person but unable to tell me much possibly due to somnolence and poor historian, difficult to tell at this time. Per wife she was unaware that pt was on seroquel at encompass and thought he was only on melatonin. Per wife pt has had no chest pain, no SOB, eats well, difficulty with drinking fluids some times. Pt was on insulin at home and she is confused at why he was taken off at encompass. Per wife pt was working the day he had a hemorrhagic stroke and has residual right sided weakness and hemiparesis that has improved. Wife reports his HTN was not controlled at home and he took his medications when he wanted sometimes. Per wife pt lives with her and will return home when he is stronger. VSS.

ADMISSION INFORMATION RELATING TO THIS STAY

Admit History - Reason for Admission for this Stay

Pt is an 82 year old male with hx of a left thalamic intraparenchymal hemorrhage, HTN, previously uncontrolled, DM2, CAD. Pt comes to us from encompass; pt was sent to Highland for one day on 11/5 after being hospitalized for a left thalamic stroke on 10/26. Per his wife he was working at the mechanic shop where he is employed and lost his balance and fell and was taken to the ER and found to have an evolving hemorrhagic stroke. He was sent to rehab for one day then became combative and was sent to the hospital and found to have improving hemorrhage but reported metabolic encephalopathy in chart. Pt has residual right sided weakness improved over his course of rehab at encompass.

Acute left basal ganglia intraparenchymal hemorrhage with cerebral edema and mass effect on the left lateral ventricle and third ventricle. F/U head imaging showed improvement in bleed edema and mass effect. Pt was seen by neurosurgery and Neurology with no surgical intervention recommended. Pt was put back on ASA and statin.

Metabolic encephalopathy, only mention in chart about use of seroquel. Pt had reported severe agitation on admit to encompass but improved s/p IVF. Pt had increase in qHS Seroquel 12/5 and required daytime and PRN Seroquel. On 12/12 seroquel was increased and CT HAD. On 12/12 per therapy the wife agreed that patient was baseline agitation and admitted to prior episodes prior to CVA (this was denied in our first meeting at hallmark). Pt required PRN IV fr. dehydration.

CAD with stent placement x 1 per old medical records with recent non ST elevation MI, pt seen by cardiology. ASA approved by Neurology, continue statin BB/AR, recent echo was normal EF and stable renal fx per chart.

HTN with diastolic dysfunction s/p symptomatic hypotension 12/17, 12/20, hypotension resolved. Attempt to taper clonidine was not successful and resulted in significant HTN. Cardura was added 12/28 then increased. PO fluid intake complicates BP management.

DM2, non insulin dependent, recent A1C 8.1. On 12/7 pt was changed to glipizide.

Electronically signed by: Ginger Arntz on Jan 3, 2019 at 7:21 PM CST

1 of 4

WALKER, A. 001407

SOCIAL SERVICE PROGRESS NOTES		
DATE/TIME	PROGRESS NOTES & COMMENTS	SIGNATURE
1-8-19 2:45pm	Admission / 5 Day Assessment Resident Albert Walker Jr. was admitted to Hallmark on 1-02-19 from Healthsouth Rehab Hospital. He & his RR desire for Mr. Walker to be a Full Code status. His primary diagnoses include CVA & Right Hemiparesis. Mr. Walker is an 82 year old black male. His D.O.B. is REDACTED. He is married, speaks English & endorses Methodist as his religious preference. Mr. Walker was alert during time of assessment. He received a BIMS score of 4 & a PTHQ score of 0. This resident displays no evidence of mood or behavior issues & denies any suicidal or homicidal thoughts. SS will continue to observe & assist as needed. Mr. Walker is currently receiving PT, OT & ST five times per week. He expresses motivation to participate in therapy & return to his home in the community after completing rehab. SS will assist with all discharge planning.	Albert Walker Jr. SS
Resident Name: Walker Jr., Albert Room #: 201B Physician: Dr. Pops		

WALKER, A. 003271

Page Two

SHORT STAY ACTIVITY ASSESSMENT

OBSERVATION DETAIL (Continued)			
GENERAL ACTIVITY PREFERENCES		IDENTIFIED NEEDS	
Reading: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	Spending time with groups of people: ☐ Current ☒ Past ☐ Future ☐ None ☐ Comment	Focused Programming: ☒ 1:1 Activities ☐ Creative / Expressive Activities ☐ Community Outings ☒ Large Group ☐ Independent Activities ☐ Intellectually Stimulating Activities ☐ Outdoor Activities ☐ Physical Activities	
Music: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	Favorite Activities: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	☐ Projects ☒ Rehab-Oriented Activities ☐ Relaxation Activities ☐ Religious Activities ☐ Resident Council ☒ Small Groups ☒ Social Interaction Activities ☐ Other:	
Animals/Pets: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	Outdoor Activities/Interests: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	Adaptive Devices: ☒ Glasses ☐ Magnifying glasses ☐ Large print books ☐ Talking books ☐ Hearing aide(s) ☐ Dentures ☐ Communication devices ☐ Eating or drinking devices ☐ Other: ☒ None	
News: ☒ Current ☐ Past ☐ Future ☐ None ☐ Comment	Other Interests: 	Modified activities for special needs related to: ☒ Vision ☐ Hearing ☐ Cognition ☐ Range of motion ☐ Communication ☐ Pain ☐ Mood/behavior ☐ No activity modification needed	
Comments/Additional Information/Referrals * Fall Risk *			
ADDITIONAL OBSERVATION INFORMATION Family is very involved in his care.			
Completed By: Sierra S. Fenton, RDC Act. Director		Date: 1/11/19	

Resident Name: Walker Jr., Albert

MR#: REDACTED

Room/Bed: 201-B

SHORT STAY ACTIVITY ASSESSMENT

WALKER, A. 003282

CONSENT FOR PSYCHOACTIVE MEDICATION THERAPY

Date: 1/3/19

Resident: <u>Walker, Albert</u>	Physician: <u>Pope</u>
Psychotropic Medication Ordered: <u>Seroquel</u>	Diagnosis: <u>REDACTED</u>

The specific condition to be treated:

☐ Adjustment disorder	☐ Delusions	☐ Obsessive-compulsive	☐ Socially withdrawn
☐ Angers easily	☐ Dementia w/psychotic features	☐ Panic	☐ Stress disorder
☐ Anxiety	☐ Depression	☐ Paranoia	☐ Other: _____
☐ Agitation	☐ Hallucinations	☐ Schizophrenia	
☐ Bipolar disorder	☐ Huntington's disorder	☐ Sexual disorder	
☐ Catatonia	☐ Involuntary swearing	☐ Sleeping disorder	
☐ Combative			

The beneficial effects expected from this medication:

☐ Improved functionability ☐ Reduced adverse behaviors ☐ Other: _____

The clinical significant side effects or risks associated with the medication includes:

☐ Antipsychotic	☐ Antidepressant	☐ Anti-anxiety	☐ Hypnotics	☐ Anti-manic
• Neck stiffness	• Dry mouth	• Hypotension	• Syncope	• Confusion
• Confusion	• Blurred vision	• Sedation	• Dizziness	• Drowsiness
• Muscle rigidity	• Constipation	• Dizziness	• Confusion	• Hypotension
• Involuntary movements	• Urinary retention	• Dry mouth	• Nightmares	• Nausea/vomiting
• Drooling	• Hypotension	• Blurred vision	• Daytime anxiety	• Nephrotic syndrome
• Tremors	• Appetite changes	• Urinary retention	• Hallucinations	• Seizures
• Restlessness	• Headache	• Drowsiness	• Fatigue	• Impaired cognition
• Sleep disturbances	• Insomnia	• Slurred speech	• Headache	• Tremors
• Dry mouth	• Dyspepsia	• Confusion	• Sedation	• Visual impairment
• Blurred vision	• Weight changes	• Fatigue		• Reduced heart rate
• Constipation		• Nightmares		
• Sedation		• Appetite changes		

The proposed course of the medication is:

☐ 1 month ☐ 6 months ☐ 12 months ☐ Prolonged treatment

☒ Consent is given to use psychoactive medications: It is understood that consent may be revoked at any time.

☐ Consent to use psychoactive medication is NOT given. I realize the dangers of not taking this med may result in uncontrolled behaviors or conditions which may make it impossible for the nursing staff to appropriately provide care.

☐ Telephone consent obtained Date: _____

The above consent was obtained from the appropriate person being:

☒ The resident: Walker, Albert (Print name)

☐ The person authorized by law to consent on behalf of the resident (guardian) and the circumstances under which the consent was obtained is: _____ (Print name)

Signature of Resident, Guardian, Legal Representative: <u>Pauline Walker</u>	Date: 1/3/19
Signature of person obtaining permission: (nurse, etc.) <u>Candice Wilson</u>	Date: 1/3/19

WALKER, A. 000009

INFORMED CONSENT FOR INFLUENZA VACCINE Inactivated or Recombinant

Why should you get an influenza vaccine?

Influenza (flu) is a contagious disease which spreads from person to person through coughing, sneezing and close contact. Symptoms come on suddenly and may last several days. Symptoms can include:

- Fever/Chills
- Sore throat
- Muscle aches
- Runny or stuffy nose
- Cough
- Headache
- Fatigue

Complications of influenza can include: • Pneumonia • Worsening of existing medical conditions

The influenza vaccine is recommended for everyone 6 months and older. It's especially important that a person gets vaccinated if he/she is at risk for complications from influenza or he/she can spread influenza to those at risk. People at higher risk for complications from influenza include:

- People 65 and older
- People with a weakened immune system
- People with certain health conditions, such as heart, lung or kidney disease

For most people, the influenza vaccine prevents serious influenza-related illness. The vaccine will not prevent disease from other viruses, including influenza viruses not contained in the vaccine.

When should you get vaccinated?

Influenza viruses are always changing, so the vaccine is updated every year. **An annual vaccination is recommended.** Get the vaccine as soon as it is available. This should provide protection if the flu season comes early. It takes about 2 weeks for protection to develop after the vaccination and lasts through the flu season.

Potential Adverse Effects/Negative Outcomes of Receiving the Vaccine

Most people who get a flu shot do not have any problems; however, as with any medicine, there is a very remote chance of a vaccine causing serious reaction, injury or death. **If you have a severe egg allergy, severe allergy to any vaccine component, or have had a severe reaction to a previous dose of influenza vaccine, tell your doctor.** Also, tell your doctor if you have ever had Guillain-Barre Syndrome (GBS) or you are presently ill.

The following **mild side effects** may occur soon after the shot and last 1 to 2 days:

- Hoarseness
- Cough
- Red or itchy eyes
- Fever
- Aches
- Fatigue
- Headaches
- Itching
- Soreness, redness, or swelling where the shot was given

Signs of severe allergic reaction can include: hives, swelling of face and throat, difficulty breathing, a fast heartbeat, dizziness and weakness. If these reactions occur, call your doctor or seek medical attention immediately.

INFORMED CONSENT

I have read the above information or it has been explained to me, and I understand the potential adverse effects and negative outcomes. Understanding the benefits, potential negative outcomes and side effects of receiving an **influenza vaccine**:

Initial appropriate response

☐ I hereby **GIVE** the facility permission to administer an **influenza vaccination**, unless medically contraindicated.

☒ I hereby **DO NOT GIVE** the facility permission to administer an **influenza vaccination**.

Resident Signature:

☒ Resident Representative and/or ☐ Durable Power of Attorney for Healthcare Signature/Relationship.

Facility Representative Signature/Title

Date:

Date:

Date:

Resident Name:

ID #

Room #

Physician

Albert Walker, Sr.

1234
0016

Dr. Papp

See reverse for Pneumococcal Vaccine Consent

WALKER, A. 000010

INFORMED CONSENT FOR PNEUMOCOCCAL VACCINE

Why should you get a pneumococcal vaccine?

Pneumococcal disease is an infection caused by a type of bacteria and can lead to serious infections including:

- Pneumococcal Pneumonia (lungs)
- Pneumococcal Meningitis (covering of the brain)
- Otitis media (middle ear infection)
- Pneumococcal Bacteremia (bloodstream infection)

Symptoms of pneumococcal pneumonia can include:

- Fever
- Shortness of breath
- Cough
- Chest pain

Symptoms of otitis media can include:

- Painful ear
- Red or swollen eardrum
- Sometimes sleeplessness, fever and irritability

Symptoms of pneumococcal meningitis can include:

- Stiff neck
- Fever
- Visual sensitivity to light
- Mental confusion and disorientation

Symptoms of pneumococcal bacteremia may be similar to some of the symptoms of pneumonia and meningitis, along with joint pain and chills.

Drugs such as penicillin were once effective in treating pneumococcal infections; but some strains of the disease have become resistant to these drugs, making treatment of pneumococcal infections more difficult. This makes prevention, through vaccination, even more important.

When should you get vaccinated?

The Advisory Committee on Immunization Practices recommends two pneumococcal vaccines for adults 65 years of age or older. Recent studies have shown that both the pneumococcal conjugate (PCV13) and the pneumococcal polysaccharide (PPSV23) vaccines are needed for the best protection against pneumococcal disease.

If you are 65 or older and have not had a pneumonia vaccine, you should receive one dose of PCV13 now, and in 6-12 months get a dose of PPSV23. If you have had a pneumonia vaccine after the age of 65, then you received the PPSV23 and should receive the second vaccine, PCV13.

Potential Adverse Effects/Negative Outcomes of Receiving the Vaccine

A vaccine, like any medicine, could possibly cause serious problem, such as severe allergic reaction. The risk of a vaccine causing serious harm, or death, is extremely small. However, if you have a severe allergy to any vaccine component or you've had a severe reaction after a previous dose of a pneumococcal vaccine, you should tell your doctor. You should also talk with your doctor if you are presently ill. The vaccine may be less effective in some people, especially those with lower resistance to infection. These people should still be vaccinated, because they are more likely to have serious complications if they get pneumococcal disease.

The following mild side effects may occur after the vaccination:

- Fever
- Muscle aches
- Soreness/redness where the shot was given
- Fatigue
- Headache

If you experience more severe side effects including: a high fever, difficulty breathing, wheezing, hives, paleness, weakness, fast heart beat or dizziness report these to your doctor immediately.

INFORMED CONSENT

I have read the above information or it has been explained to me and I understand the adverse effects and potential negative outcomes. Understanding the benefits, adverse effects and potential negative outcomes of receiving a pneumococcal vaccine:

Initial appropriate response

☐ I hereby GIVE the facility permission to administer a pneumococcal vaccination, unless medically contraindicated. To the best of my knowledge, I have not received a pneumococcal vaccination in the past five years.

☒ I hereby DO NOT GIVE the facility permission to administer a pneumococcal vaccination.

Resident Signature

☒ Resident Representative and/or ☐ Durable Power of Attorney for Healthcare Signature/Relationship

Facility Representative Signature/Title

Date

Date

Date

1-2-19

WALKER, A. 000011

Influenza (Flu) Vaccine (Inactivated or Recombinant): *What you need to know*

Many Vaccine Information Statements are available in Spanish and other languages. See www.imz.unz.gov.
Hojas de información sobre vacunas están disponibles en español y en muchos otros idiomas. Visite www.imz.unz.gov.

1 Why get vaccinated?

Influenza ("flu") is a contagious disease that spreads around the United States every year, usually between October and May.

Flu is caused by influenza viruses, and is spread mainly by coughing, sneezing, and close contact.

Anyone can get flu. Flu strikes suddenly and can last several days. Symptoms vary by age, but can include:

- fever/chills
- sore throat
- muscle aches
- fatigue
- cough
- headache
- runny or stuffy nose

Flu can also lead to pneumonia and blood infections, and cause diarrhea and seizures in children. If you have a medical condition, such as heart or lung disease, flu can make it worse.

Flu is more dangerous for some people. Infants and young children, people 65 years of age and older, pregnant women, and people with certain health conditions or a weakened immune system are at greatest risk.

Each year thousands of people in the United States die from flu, and many more are hospitalized.

Flu vaccine can:

- keep you from getting flu,
- make flu less severe if you do get it, and
- keep you from spreading flu to your family and other people.

2 Inactivated and recombinant flu vaccines

A dose of flu vaccine is recommended every flu season. Children 6 months through 8 years of age may need two doses during the same flu season. Everyone else needs only one dose each flu season.

Some inactivated flu vaccines contain a very small amount of a mercury-based preservative called thimerosal. Studies have not shown thimerosal in vaccines to be harmful, but flu vaccines that do not contain thimerosal are available.

There is no live flu virus in flu shots. They cannot cause the flu.

There are many flu viruses, and they are always changing. Each year a new flu vaccine is made to protect against three or four viruses that are likely to cause disease in the upcoming flu season. But even when the vaccine doesn't exactly match those viruses, it may still provide some protection.

Flu vaccine cannot prevent:

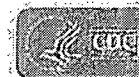
- flu that is caused by a virus not covered by the vaccine, or
- illnesses that look like flu but are not.

It takes about 2 weeks for protection to develop after vaccination, and protection lasts through the flu season.

3 Some people should not get this vaccine

Tell the person who is giving you the vaccine:

- **If you have any severe, life-threatening allergies.**
If you ever had a life-threatening allergic reaction after a dose of flu vaccine, or have a severe allergy to any part of this vaccine, you may be advised not to get vaccinated. Most, but not all, types of flu vaccine contain a small amount of egg protein.
- **If you ever had Guillain-Barré Syndrome (also called GBS).**
Some people with a history of GBS should not get this vaccine. This should be discussed with your doctor.
- **If you are not feeling well.**
It is usually okay to get flu vaccine when you have a mild illness, but you might be asked to come back when you feel better.



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention

WALKER, A. 000012

4 Risks of a vaccine reaction

With any medicine, including vaccines, there is a chance of reactions. These are usually mild and go away on their own, but serious reactions are also possible.

Most people who get a flu shot do not have any problems with it.

Minor problems following a flu shot include:

- soreness, redness, or swelling where the shot was given
- hoarseness
- sore, red or itchy eyes
- cough
- fever
- aches
- headache
- itching
- fatigue

If these problems occur, they usually begin soon after the shot and last 1 or 2 days.

More serious problems following a flu shot can include the following:

- There may be a small increased risk of Guillain-Barre Syndrome (GBS) after inactivated flu vaccine. This risk has been estimated at 1 or 2 additional cases per million people vaccinated. This is much lower than the risk of severe complications from flu, which can be prevented by flu vaccine.
- Young children who get the flu shot along with pneumococcal vaccine (PCV13) and/or DTaP vaccine at the same time might be slightly more likely to have a seizure caused by fever. Ask your doctor for more information. Tell your doctor if a child who is getting flu vaccine has ever had a seizure.

Problems that could happen after an injected vaccine:

- People sometimes faint after a medical procedure, including vaccination. Sitting or lying down for about 15 minutes can help prevent fainting, and injuries caused by a fall. Tell your doctor if you feel dizzy, or have vision changes or ringing in the ears.
- Some people get severe pain in the shoulder and have difficulty moving the arm where a shot was given. This happens very rarely.
- Any medication can cause a severe allergic reaction. Such reactions from a vaccine are very rare, estimated at about 1 in a million doses, and would happen within a few minutes to a few hours after the vaccination.

As with any medicine, there is a very remote chance of a vaccine causing a serious injury or death.

The safety of vaccines is always being monitored. For more information, visit: www.cdc.gov/vaccinesafety/

5 What if there is a serious reaction?

What should I look for?

- Look for anything that concerns you, such as signs of a severe allergic reaction, very high fever, or unusual behavior.

Signs of a severe allergic reaction can include hives, swelling of the face and throat, difficulty breathing, a fast heartbeat, dizziness, and weakness. These would start a few minutes to a few hours after the vaccination.

What should I do?

- If you think it is a severe allergic reaction or other emergency that can't wait, call 9-1-1 and get the person to the nearest hospital. Otherwise, call your doctor.
- Reactions should be reported to the Vaccine Adverse Event Reporting System (VAERS). Your doctor should file this report, or you can do it yourself through the VAERS web site at www.vaers.hhs.gov, or by calling 1-800-822-7967.

VAERS does not give medical advice.

6 The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) is a federal program that was created to compensate people who may have been injured by certain vaccines.

Persons who believe they may have been injured by a vaccine can learn about the program and about filing a claim by calling 1-800-338-2382 or visiting the VICP website at www.hrsa.gov/vaccinecompensation. There is a time limit to file a claim for compensation.

7 How can I learn more?

- Ask your healthcare provider. He or she can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):
 - Call 1-800-232-4636 (1-800-CDC-INFO) or
 - Visit CDC's website at www.cdc.gov/flu

Vaccine Information Statement
Inactivated Influenza Vaccine

08/07/2015

42 U.S.C. § 300aa-26



WALKER, A. 000013

VACCINE INFORMATION STATEMENT

Pneumococcal Polysaccharide Vaccine

What You Need to Know

Many Vaccine Information Statements are available in Spanish and other languages. See www.imzmuniz.org/via.
Haber de información sobre vacunas en español y en otros idiomas. Visite www.imzmuniz.org/via.

1 Why get vaccinated?

Vaccination can protect older adults (and some children and younger adults) from pneumococcal disease.

Pneumococcal disease is caused by bacteria that can spread from person to person through close contact. It can cause ear infections, and it can also lead to more serious infections of the:

- Lungs (pneumonia),
- Blood (bacteremia), and
- Covering of the brain and spinal cord (meningitis). Meningitis can cause deafness and brain damage, and it can be fatal.

Anyone can get pneumococcal disease, but children under 2 years of age, people with certain medical conditions, adults over 65 years of age, and cigarette smokers are at the highest risk.

About 18,000 older adults die each year from pneumococcal disease in the United States.

Treatment of pneumococcal infections with penicillin and other drugs used to be more effective. But some strains of the disease have become resistant to these drugs. This makes prevention of the disease, through vaccination, even more important.

2 Pneumococcal polysaccharide vaccine (PPSV23)

Pneumococcal polysaccharide vaccine (PPSV23) protects against 23 types of pneumococcal bacteria. It will not prevent all pneumococcal disease.

PPSV23 is recommended for:

- All adults 65 years of age and older,
- Anyone 2 through 64 years of age with certain long-term health problems,
- Anyone 2 through 64 years of age with a weakened immune system,
- Adults 19 through 64 years of age who smoke cigarettes or have asthma.

Most people need only one dose of PPSV. A second dose is recommended for certain high-risk groups. People 65 and older should get a dose even if they have gotten one or more doses of the vaccine before they turned 65.

Your healthcare provider can give you more information about these recommendations.

Most healthy adults develop protection within 2 to 3 weeks of getting the shot.

3 Some people should not get this vaccine

- Anyone who has had a life-threatening allergic reaction to PPSV should not get another dose.
- Anyone who has a severe allergy to any component of PPSV should not receive it. Tell your provider if you have any severe allergies.
- Anyone who is moderately or severely ill when the shot is scheduled may be asked to wait until they recover before getting the vaccine. Someone with a mild illness can usually be vaccinated.
- Children less than 2 years of age should not receive this vaccine.
- There is no evidence that PPSV is harmful to either a pregnant woman or to her fetus. However, as a precaution, women who need the vaccine should be vaccinated before becoming pregnant, if possible.



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WALKER, A. 000014

4 Signs of a vaccine reaction

With any medicine, including vaccines, there is a chance of side effects. These are usually mild and go away on their own, but serious reactions are also possible.

- About half of people who get PPSV have mild side effects, such as redness or pain where the shot is given, which go away within about two days.

Less than 1 out of 100 people develop a fever, muscle aches, or more severe local reactions.

Problems that could happen after any vaccine:

- People sometimes faint after a medical procedure, including vaccination. Sitting or lying down for about 15 minutes can help prevent fainting, and injuries caused by a fall. Tell your doctor if you feel dizzy, or have vision changes or ringing in the ears.
- Some people get severe pain in the shoulder and have difficulty moving the arm where a shot was given. This happens very rarely.
- Any medication can cause a severe allergic reaction. Such reactions from a vaccine are very rare, estimated at about 1 in a million doses, and would happen within a few minutes to a few hours after the vaccination.

As with any medicine, there is a very remote chance of a vaccine causing a serious injury or death.

The safety of vaccines is always being monitored. For more information, visit: www.cdc.gov/vaccinesafety/

5 What if there is a serious reaction?

What should I look for?

Look for anything that concerns you, such as signs of a severe allergic reaction, very high fever, or unusual behavior.

Signs of a severe allergic reaction can include hives, swelling of the face and throat, difficulty breathing, a fast heartbeat, dizziness, and weakness. These would usually start a few minutes to a few hours after the vaccination.

What should I do?

If you think it is a severe allergic reaction or other emergency that can't wait, call 9-1-1 or get to the nearest hospital. Otherwise, call your doctor.

Afterward, the reaction should be reported to the Vaccine Adverse Event Reporting System (VAERS). Your doctor might file this report, or you can do it yourself through the VAERS web site at www.vaers.hhs.gov, or by calling 1-800-332-7967.

VAERS does not give medical advice.

6 How can I learn more?

- Ask your doctor. He or she can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):
 - Call 1-800-232-4636 (1-800-CDC-INFO) or
 - Visit CDC's website at www.cdc.gov/vaccines

Pauline Walker
Vaccine Information Statement
PPSV Vaccine

4/24/2015



WALKER, A. 000015

CONSENT FOR PSYCHOACTIVE MEDICATION THERAPY

Date:

Resident: <u>Albert Walker</u>	Physician: <u>Popp</u>																												
Psychotropic Medication Ordered: <u>Cetapropam 10 mg po qd</u>	Diagnosis: <u>REDACTED</u>																												
The specific condition to be treated: <table border="0"> <tr> <td>☐ Adjustment disorder</td> <td>☐ Delusions</td> <td>☐ Obsessive-compulsive</td> <td>☐ Socially withdrawn</td> </tr> <tr> <td>☐ Angers easily</td> <td>☐ Dementia w/psychotic features</td> <td>☐ Panic</td> <td>☐ Stress disorder</td> </tr> <tr> <td>☐ Anxiety</td> <td>☐ <u>REDACTED</u></td> <td>☐ Paranoia</td> <td>☐ Other: _____</td> </tr> <tr> <td>☐ Agitation</td> <td>☐ Hallucinations</td> <td>☐ Schizophrenia</td> <td></td> </tr> <tr> <td>☐ Bipolar disorder</td> <td>☐ Huntington's disorder</td> <td>☐ Sexual disorder</td> <td></td> </tr> <tr> <td>☐ Catatonia</td> <td>☐ Involuntary swearing</td> <td>☐ Sleeping disorder</td> <td></td> </tr> <tr> <td>☐ Combative</td> <td></td> <td></td> <td></td> </tr> </table>		☐ Adjustment disorder	☐ Delusions	☐ Obsessive-compulsive	☐ Socially withdrawn	☐ Angers easily	☐ Dementia w/psychotic features	☐ Panic	☐ Stress disorder	☐ Anxiety	☐ <u>REDACTED</u>	☐ Paranoia	☐ Other: _____	☐ Agitation	☐ Hallucinations	☐ Schizophrenia		☐ Bipolar disorder	☐ Huntington's disorder	☐ Sexual disorder		☐ Catatonia	☐ Involuntary swearing	☐ Sleeping disorder		☐ Combative			
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☐ Combative																													
The beneficial effects expected from this medication: ☐ Improved functionability ☐ Reduced adverse behaviors ☐ Other: _____																													
The clinical significant side effects or risks associated with the medication includes: <table border="0"> <tr> <td> ☐ Antipsychotic • Neck stiffness • Confusion • Muscle rigidity • Involuntary movements • Drooling • Tremors • Restlessness • Sleep disturbances • Dry mouth • Blurred vision • Constipation • Sedation </td> <td> ☐ Anti-anxiety • Hypotension • Sedation • Dizziness • Dry mouth • Blurred vision • Urinary retention • Drowsiness • Slurred speech • Confusion • Fatigue • Nightmares • Appetite changes </td> <td> ☐ Hypnotics • Syncope • Dizziness • Confusion • Nightmares • Daytime anxiety • Hallucinations • Fatigue • Headache • Sedation </td> <td> ☐ Anti-manic • Confusion • Drowsiness • Hypotension • Nausea/vomiting • Nephrotic syndrome • Seizures • Impaired cognition • Tremors • Visual impairment • Reduced heart rate </td> </tr> </table>		☐ Antipsychotic • Neck stiffness • Confusion • Muscle rigidity • Involuntary movements • Drooling • Tremors • Restlessness • Sleep disturbances • Dry mouth • Blurred vision • Constipation • Sedation	☐ Anti-anxiety • Hypotension • Sedation • Dizziness • Dry mouth • Blurred vision • Urinary retention • Drowsiness • Slurred speech • Confusion • Fatigue • Nightmares • Appetite changes	☐ Hypnotics • Syncope • Dizziness • Confusion • Nightmares • Daytime anxiety • Hallucinations • Fatigue • Headache • Sedation	☐ Anti-manic • Confusion • Drowsiness • Hypotension • Nausea/vomiting • Nephrotic syndrome • Seizures • Impaired cognition • Tremors • Visual impairment • Reduced heart rate																								
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The proposed course of the medication is: ☐ 1 month ☐ 6 months ☐ 12 months ☒ Prolonged treatment																													
☐ Consent is given to use psychoactive medications: It is understood that consent may be revoked at any time. ☐ Consent to use psychoactive medication is NOT given. I realize the dangers of not taking this med may result in uncontrolled behaviors or conditions which may make it impossible for the nursing staff to appropriately provide care. ☐ Telephone consent obtained Date: _____																													
The above consent was obtained from the appropriate person being: ☐ The resident: _____ (Print name) ☒ The person authorized by law to consent on behalf of the resident (guardian) and the circumstances under which the consent was obtained is: <u>Paulette Walker</u> (Print name)																													
Signature of Resident, Guardian, Legal Representative: <u>Paulette Walker</u>	Date: <u>4-9-19</u>																												
Signature of person obtaining permission: (nurse, etc.) <u>J. Youngs RN</u>	Date: <u>4-9-19</u>																												

WALKER, A. 000016

Physicians Certification of Inability to Consent

Resident: Walker, AlbertDate of Admission: 1-02-19

According to the South Carolina Adult Health Care Consent Act, Section 44-66-20, a patient's inability to consent must be certified by two licensed physicians.

As defined by the Act, "healthcare" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. "Unable to consent" means: unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision concerning the proposed health care, or to communicate that decision in an unambiguous manner.

I, Shantae J. Jenkins, do hereby certify that Albert Walker
(Attending Physician) (Resident)

is unable to provide consent regarding health care decisions as defined by South Carolina Adult Health Care Consent Act. My decision is based upon the following cause and nature: (condition that is responsible for inability to consent & degree of intellectual or related disability; i.e. non-verbal, unable to follow commands)

patient has history of CVA with residual cognitive deficits and the inability to comprehend and make reasoned medical decisions due to his debility

I believe the extent of this inability is: (specific areas where resident cannot make informed decisions):

the patient lacks the ability to make informed decisions nor can he interpret what is being said regarding his medical care

I believe that the probable duration of this inability is:

☒ Permanent ☐ Temporary

This declaration is made following examination of this resident and review of the medical record.

Shantae J. Jenkins
Signature of Attending Physician

Date 8/28/19

I, Mona Anita FINE, do hereby certify that Albert Walker
(Consulting Physician) (Resident)

is unable to provide consent regarding health care decisions as defined by South Carolina Adult Health Care Consent Act. My decision is based upon the following cause and nature: (condition that is responsible for inability to consent & degree of intellectual or related disability; i.e. non-verbal, unable to follow commands)

patient has CVA hx and recent cognitive decline and lacks the ability to make reasoned medical decisions

I believe the extent of this inability is: (specific areas where resident cannot make informed decisions):

I believe that the probable duration of this inability is:

☒ Permanent ☐ Temporary

This declaration is made following examination of this resident and review of the medical record.

Mona Anita FINE
Signature of Consulting Physician

Date 9/28/19

WALKER, A. 000017

INFORMED CONSENT FOR INFLUENZA VACCINE Inactivated or Recombinant

Why should you get an influenza vaccine?

Influenza (flu) is a contagious disease which spreads from person to person through coughing, sneezing and close contact. Symptoms come on suddenly and may last several days. Symptoms can include:

- Fever/Chills • Sore throat • Muscle aches • Runny or stuffy nose
- Cough • Headache • Fatigue

Complications of influenza can include: • Pneumonia • Worsening of existing medical conditions

The influenza vaccine is recommended for everyone 6 months and older. It's especially important that a person gets vaccinated if he/she is at risk for complications from influenza or he/she can spread influenza to those at risk. People at higher risk for complications from influenza include:

- People 65 and older • People with a weakened immune system
- People with certain health conditions, such as heart, lung or kidney disease

For most people, the influenza vaccine prevents serious influenza-related illness. The vaccine will not prevent disease from other viruses, including influenza viruses not contained in the vaccine.

When should you get vaccinated?

Influenza viruses are always changing, so the vaccine is updated every year. **An annual vaccination is recommended.** Get the vaccine as soon as it is available. This should provide protection if the flu season comes early. It takes about 2 weeks for protection to develop after the vaccination and lasts through the flu season.

Potential Adverse Effects/Negative Outcomes of Receiving the Vaccine

Most people who get a flu shot do not have any problems; however, as with any medicine, there is a very remote chance of a vaccine causing serious reaction, injury or death. **If you have a severe egg allergy, severe allergy to any vaccine component, or have had a severe reaction to a previous dose of influenza vaccine, tell your doctor.** Also, tell your doctor if you have ever had Guillain-Barre Syndrome (GBS) or you are presently ill.

The following **mild side effects** may occur soon after the shot and last 1 to 2 days:

- Hoarseness • Cough • Red or itchy eyes • Fever • Aches • Fatigue
- Headaches • Itching • Soreness, redness, or swelling where the shot was given

Signs of severe allergic reaction can include: hives, swelling of face and throat, difficulty breathing, a fast heartbeat, dizziness and weakness. If these reactions occur, call your doctor or seek medical attention immediately.

INFORMED CONSENT

I have read the above information or it has been explained to me, and I understand the potential adverse effects and negative outcomes. Understanding the benefits, potential negative outcomes and side effects of receiving an **influenza vaccine**:

Initial appropriate response

☐ I hereby **GIVE** the facility permission to administer an **influenza vaccination**, unless medically contraindicated.

☒ I hereby **DO NOT GIVE** the facility permission to administer an **influenza vaccination**.

Resident Signature	Date
Resident Representative and/or Durable Power of Attorney for Healthcare Signature/Relationship Roseauette Walker - Spouse L. Kinde - RW	Date 10/3/19 Date 10/3/19

Resident Name Walker, Albert	ID #	Room #	Physician Dr. Jenkins
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See reverse for Pneumococcal Vaccine Consent

WALKER, A. 000018

VACCINE INFORMATION STATEMENT

Influenza (Flu) Vaccine (Inactivated or Recombinant): What you need to know

Many Vaccine Information Statements are available in Spanish and other languages. See www.immunize.org/vis

Hojas de información sobre vacunas están disponibles en español y en muchos otros idiomas. Visite www.immunize.org/vis

1 Why get vaccinated?

Influenza vaccine can prevent influenza (flu).

Flu is a contagious disease that spreads around the United States every year, usually between October and May. Anyone can get the flu, but it is more dangerous for some people. Infants and young children, people 65 years of age and older, pregnant women, and people with certain health conditions or a weakened immune system are at greatest risk of flu complications.

Pneumonia, bronchitis, sinus infections and ear infections are examples of flu-related complications. If you have a medical condition, such as heart disease, cancer or diabetes, flu can make it worse.

Flu can cause fever and chills, sore throat, muscle aches, fatigue, cough, headache, and runny or stuffy nose. Some people may have vomiting and diarrhea, though this is more common in children than adults.

Each year thousands of people in the United States die from flu, and many more are hospitalized. Flu vaccine prevents millions of illnesses and flu-related visits to the doctor each year.

2 Influenza vaccine

CDC recommends everyone 6 months of age and older get vaccinated every flu season. Children 6 months through 8 years of age may need 2 doses during a single flu season. Everyone else needs only 1 dose each flu season.

It takes about 2 weeks for protection to develop after vaccination.

There are many flu viruses, and they are always changing. Each year a new flu vaccine is made to protect against three or four viruses that are likely to cause disease in the upcoming flu season. Even when the vaccine doesn't exactly match these viruses, it may still provide some protection.

Influenza vaccine does not cause flu.

Influenza vaccine may be given at the same time as other vaccines.

3 Talk with your health care provider

Tell your vaccine provider if the person getting the vaccine:

- Has had an allergic reaction after a previous dose of influenza vaccine, or has any severe, life-threatening allergies.
- Has ever had Guillain-Barré Syndrome (also called GBS).

In some cases, your health care provider may decide to postpone influenza vaccination to a future visit.

People with minor illnesses, such as a cold, may be vaccinated. People who are moderately or severely ill should usually wait until they recover before getting influenza vaccine.

Your health care provider can give you more information.



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention

WALKER, A. 000019

4 Risks of a vaccine reaction

- Soreness, redness, and swelling where shot is given; fever, muscle aches, and headache can happen after influenza vaccine.
- There may be a very small increased risk of Guillain-Barré Syndrome (GBS) after inactivated influenza vaccine (the flu shot).

Young children who get the flu shot along with pneumococcal vaccine (PCV13), and/or DTaP vaccine at the same time might be slightly more likely to have a seizure caused by fever. Tell your health care provider if a child who is getting flu vaccine has ever had a seizure.

People sometimes faint after medical procedures, including vaccination. Tell your provider if you feel dizzy or have vision changes or ringing in the ears.

As with any medicine, there is a very remote chance of a vaccine causing a severe allergic reaction, other serious injury, or death.

5 What if there is a serious problem?

An allergic reaction could occur after the vaccinated person leaves the clinic. If you see signs of a severe allergic reaction (hives, swelling of the face and throat, difficulty breathing, a fast heartbeat, dizziness, or weakness), call 9-1-1 and get the person to the nearest hospital.

For other signs that concern you, call your health care provider.

Adverse reactions should be reported to the Vaccine Adverse Event Reporting System (VAERS). Your health care provider will usually file this report, or you can do it yourself. Visit the VAERS website at www.vaers.hhs.gov or call 1-800-822-7967. VAERS is only for reporting reactions, and VAERS staff do not give medical advice.

6 The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) is a federal program that was created to compensate people who may have been injured by certain vaccines. Visit the VICP website at www.hrsa.gov/vaccinecompensation or call 1-800-338-2382 to learn about the program and about filing a claim. There is a time limit to file a claim for compensation.

7 How can I learn more?

- Ask your healthcare provider.
- Call your local or state health department.
- Contact the Center for Disease Control and Prevention (CDC):
 - Call 1-800-232-4636 (1-800-CDC-INFO) or
 - Visit CDC.gov or cdc.gov/flu

Educated via phone call on 10/3/19
by L. Rundle RN

T.O. Paulette Walker - Spouse
Vaccine Information Statement (Interim)
Inactivated Influenza
Vaccine



8/15/2019 | 42 U.S.C. § 300aa-26

WALKER, A. 000020



BP0773035

PGS:

12

DURABLE POWER OF ATTORNEY FOR FINANCIAL MANAGEMENT

WARNING TO PERSON EXECUTING THIS DOCUMENT - THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE SHOULD YOU BECOME DISABLED OR INCOMPETENT

CAUTION: This is an important legal document and upon proper execution will create a Durable Power of Attorney. This gives the person whom you designate as your attorney-in-fact broad powers to handle your property during your lifetime, which may include powers to mortgage, sell, or otherwise dispose of any real or personal property without advance notice to you or approval by you.

These powers will continue to exist even if you become disabled or incompetent. You do have the right to terminate or revoke the Power of Attorney and any or all powers granted within at any time up to the point of your incapacity.

This document does not authorize anyone to make medical or other health care decisions. You may execute a health care proxy (also known as a health care or medical power of attorney) to do this.

If there is anything about this document that you do not understand, you should ask a lawyer to explain it to you.

THIS DURABLE POWER OF ATTORNEY for financial management is given by me, Albert Walker Jr. (the "Principal"), presently of **REDACTED** on this

16th day of January, 2019.

Nature of Power

1. **THIS IS A DURABLE POWER OF ATTORNEY** and the authority of my Attorney-in-fact shall not terminate if I become disabled or incapacitated.

Power of Attorney

Page 2 of 11

Previous Power of Attorney

2. I REVOKE any previous durable power of attorney granted by me.

Attorney-in-fact

3. I APPOINT Paulette Walker, of 127 Keaton Brook Dr., Summerville, SC 29485, to act as my Attorney-in-fact.

Governing Law

4. This document will be governed by the laws of the State of South Carolina. Further, my Attorney-in-fact is directed to act in accordance with the laws of the State of South Carolina at any time he or she may be acting on my behalf.

Liability of Attorney-in-fact

5. My Attorney-in-fact will not be liable to me, my estate, my heirs, successors or assigns for any action taken or not taken under this document, except for willful misconduct or gross negligence.

Effective Date

6. This Power of Attorney will start immediately and will continue notwithstanding a finding of my mental incapacity or mental infirmity which may occur after my execution of this Power of Attorney.

Powers of Attorney-in-fact

7. My Attorney-in-fact will have the following power(s):

Initials

- a. ☒ Real Estate Transactions

To deal with any interest I may have in real property and sign all documents on my behalf concerning my interest, including, but not limited to, real property I may subsequently acquire or receive. These powers include, but are not limited to, the ability to:

- i. Purchase, sell, exchange, accept as gift, place as security on loans, convey with or without covenants, rent, collect rent, sue for and receive rents, eject and remove tenants or other persons, to pay or contest taxes or assessments, control any legal claim in favor of or against me, partition or consent to partitioning, mortgage, charge, lease, surrender, manage or otherwise deal with real estate and any interest therein; and
- ii. Execute and deliver deeds, transfers, mortgages, charges, leases, assignments, surrenders, releases and other instruments required for any such purpose.

b. X **Maintain Property and Make Investments**

To retain any assets owned by me at the date this Durable Power of Attorney becomes effective, and the power to reinvest those assets in similar investments. In addition, my Attorney-in-fact may invest my assets in any new investments, of his or her choosing, regardless of whether or not they are authorized by any applicable legislation.

c. X **Banking Transactions**

To do any act that I can do through an Attorney-in-fact with a bank or other financial institution. This power includes, but is not limited to, the power to:

- i. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, retirement plan accounts, and other similar accounts with financial institutions;

- ii. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, negotiating or endorsing any checks or other instruments with respect to any such accounts, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity;
- iii. Borrow money from any banking or financial institution if deemed necessary by my Attorney-in-fact, and to manage all aspects of the loan process, including the placement of security and the negotiation of terms;
- iv. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities;
- v. Have access to any safe deposit box that I might own, including its contents; and
- vi. Create and deliver any financial statements necessary to or from any bank or financial institution.

d. ☒ Business Operating Transactions

To take any action my Attorney-in-fact deems necessary with any business that I may own or have an interest in by doing any act which can be done through an Attorney-in-fact. This power includes, but is not limited to, the power to execute, seal and deliver any instrument; participate in any legal business of any kind; execute partnership agreements and amendments; to incorporate, reorganize, consolidate, merge, sell, or dissolve any business; to elect or employ officers, directors and agents; and to exercise voting rights with respect to any stock I may own, either in person or by proxy.

e. ☒ **Insurance Transactions**

To do any act that I can do through an Attorney-in-fact with any insurance policy. This power includes, but is not limited to, the power to pay premiums, start, modify or terminate policies, manage all cash payouts, borrow from insurers and third parties using insurance policies as collateral, and to change the beneficiaries on any insurance policies on my life. Unless my Attorney-in-fact was already a beneficiary of any policy before the signing of this document, my Attorney-in-fact cannot name himself or herself as a beneficiary of such policy.

f. ☒ **Claims and Litigation Matters**

To institute, maintain, defend, compromise, arbitrate or otherwise dispose of, any and all actions, suits, attachments or other legal proceedings for or against me. This power includes, but is not limited to, the power to: appear on my behalf, and the power to settle any claim against me in whichever forum or manner my Attorney-in-fact deems prudent, and to receive or pay any resulting settlement.

g. ☒ **Tax Matters**

To act for me in all matters that affect my local, state and federal taxes and to prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authority to:

- i. Prepare, sign and file income and other tax returns with federal, state, local and other governmental bodies, and to receive any refund checks; and
- ii. Obtain information or documents from any government or its agencies, and represent me in all tax matters, including the authority to negotiate, compromise, or settle any matter with such government or agency.

h. ☒ **Government Benefits**

To act on my behalf in all matters that affect my right to allowances, compensation and reimbursements properly payable to me by the Government of the United States or any agency or department thereof. This power includes, but is not limited to, the power to prepare, file, claim, defend or settle any claim on my behalf and to receive and manage, as my Attorney-in-fact sees fit, any proceeds of any claim.

i. ☒ **Retirement Benefit Transactions**

To act for me and represent my interests in all matters affecting any retirement savings or pension plans I may have. This power includes, but is not limited to, the power to continue contributions, change contribution amounts, change investment strategies and options, move assets to other plans, receive and manage payouts, and add or change existing beneficiaries. My Attorney-in-fact cannot add himself or herself as a beneficiary unless he or she is already a designated beneficiary as of the signing of this document.

j. ☒ **Family Care**

To make whatever expenditures are required for the maintenance, education, benefit, medical care and general advancement of me, my spouse and dependent children, and other persons that I have chosen or which I am legally required to support, any of which may include my Attorney-in-fact. This power includes, but is not limited to, the power to pay for housing, clothing, food, travel and other living costs.

k. ☒ **Chattel and Goods Transactions**

To purchase, sell or otherwise deal with any type of personal property I may currently or in the future have an interest in. This includes, but is not limited to, the power to purchase, sell, exchange, accept as gift, place as security on loans, rent, lease, to pay or contest taxes or assessments, mortgage or pledge.

l. X Estate Transactions

To do any act that I can do through an Attorney-in-fact with regard to all matters that affect any trust, probate estate, conservatorship, or other fund from which I may receive payment as a beneficiary. This power includes the power to disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate. However, my Attorney-in-fact cannot disclaim assets to which I would be entitled, if the result is that the disclaimed assets pass directly or indirectly to my Attorney-in-fact or my Attorney-in-fact's estate.

m. X Living Trust Transactions

To transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer. This property can include real property, stocks, bonds, accounts, insurance policies or other property.

n. X Gift Transactions

To make gifts to my spouse, children, grandchildren, great grandchildren, and other family members on special occasions, including birthdays and seasonal holidays, including cash gifts, and to such other persons with whom I have an established pattern of giving (or if it is appropriate to make such gifts for estate planning and/or tax purposes), in such amounts as my Attorney-in-fact may decide in his or her absolute discretion, having regard to all of the circumstances, including the gifts I made while I was capable of managing my own estate, the size of my estate and my income requirements.

o. ☒ Charity Transactions

To continue to make gifts to charitable organizations with whom I have an established pattern of giving (or if it is appropriate to make such gifts for estate planning and/or tax purposes), in such amounts as my Attorney-in-fact may decide in his or her absolute discretion, having regard to all of the circumstances, including the gifts I made while I was capable of managing my own estate, the size of my estate and my income requirements.

p. ☒ Employ Required Professionals

To appoint and employ any agents, servants, companions, or other persons, including nurses and other health care professionals for my care and the care of my spouse and dependent children, and accountants, attorneys, clerks, workers and others for the management, preservation and protection of my property and estate, at such compensation and for such length of time as my Attorney-in-fact considers advisable.

Attorney-in-fact Compensation

8. My Attorney-in-fact will receive no compensation except for the reimbursement of all out of pocket expenses associated with the carrying out of my wishes.

Co-owning of Assets and Mixing of Funds

9. My Attorney-in-fact may continue to co-own assets and have any funds owned by him or her mixed with my funds to the same extent that the co-owning of assets and mixing of funds existed before operation of this Power of Attorney.

Delegation of Authority

10. My Attorney-in-fact may delegate any authority granted under this document to a person of his or her choosing. Any delegation must be in writing and state the extent of the power delegated and the period of time in which the delegation will be effective.

Nomination of Guardian or Conservator

11. In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate my Attorney-in-fact to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

Attorney-in-fact Restrictions

12. This Power of Attorney is not subject to any conditions or restrictions other than those noted above.

Notice to Third Parties

13. Any third party who receives a valid copy of this Power of Attorney can rely on and act under it. A third party who relies on the reasonable representations of my Attorney-in-fact as to a matter relating to a power granted by this Power of Attorney will not incur any liability to the Principal or to the Principal's heirs, assigns, or estate as a result of permitting the Attorney-in-fact to exercise the authority granted by this Power of Attorney up to the point of revocation of this Power of Attorney. Revocation of this Power of Attorney will not be effective as to a third party until the third party receives notice and has actual knowledge of the revocation.

Severability

14. If any part of any provision of this document is ruled invalid or unenforceable under applicable law, such part will be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this document.

Acknowledgment

15. I, **Albert Walker Jr.**, being the Principal named in this Durable Power of Attorney hereby acknowledge:
- a. I have read and understand the nature and effect of this Durable Power of Attorney;
 - b. I recognize that this document gives my Attorney-in-fact broad powers over my assets, and that these powers will continue past the point of my incapacity;
 - c. I am of legal age in the State of South Carolina to grant a Durable Power of Attorney; and
 - d. I am voluntarily giving this Durable Power of Attorney and recognize that the powers given in this document will become effective as of the date of my incapacity or as specified within.

IN WITNESS WHEREOF I hereunto set my hand and seal at the City of Summerville in the State of South Carolina, this 16 day of 1, 2019.

MARION HODGES
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 11-17-26

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness: [Signature] (Sign)

Witness Name: Guinevere Brice

Address: REDACTED

Witness: [Signature] (Sign)

Witness Name: Guinevere Brice

Address: REDACTED

Albert Walker Jr. [Signature]

By His Mark

NOTARY ACKNOWLEDGMENT

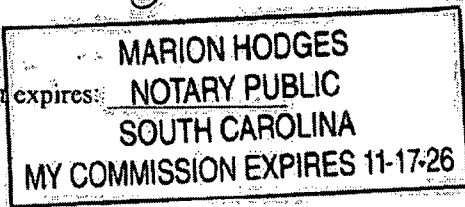
STATE OF SOUTH CAROLINA

COUNTY OF Berkley

The foregoing instrument was acknowledged before me this 16 day of 1,
2019, by Albert Walker Jr..

Marion Hodges
Notary Public

My commission expires:



RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:
COUNTER CUSTOMER
PAULETTE WALKER
REDACTED

RECORDED		
Date:	January 18, 2019	
Time:	10:41:39 AM	
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0773	035	P/Atty
Michael Miller, Register Charleston County, SC		

MAKER:
WALKER ALBERT JR

of Pages: 12
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Note:

RECIPIENT:
WALKER PAULETTE

Recording Fee	\$ 15.00
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Instructions:

Identify all items below that were discussed during the care plan conference by placing an "A" for Agree or "D" for Disagree in the "Discussed with Resident/Resident Representative" column. Use the "Comments" area to document special notes or items of specific concern.

CARE PLAN CONFERENCE SUMMARY

Date of Care Plan Conference: 1.23.14 1:30

TOPICS DISCUSSED	DISCUSSED WITH		COMMENTS
	Resident	Res. Rep.	
Diagnosis			CVA, CAB, Aphasia, hemi
Cognitive			usually understood. usually understand
Visual			usually understood. usually understand
Communication			usually understood. usually understand
ADLs/Rehab			usually understood. usually understand
Continence			usually understood. usually understand
Mood/Behavior			usually understood. usually understand
Activities			usually understood. usually understand
Falls/Safety			usually understood. usually understand
Nutrition			usually understood. usually understand
Skin			usually understood. usually understand
Pain			usually understood. usually understand
Medication Issues			usually understood. usually understand
Risk/Consequences			usually understood. usually understand
Discharge Potential			usually understood. usually understand
Special Requests			usually understood. usually understand
Adv. Dir./Code Status			usually understood. usually understand

SUMMARIZE DISCUSSION OF CARE PLAN CONFERENCE

11am. LBS met & reviewed POC. A has edema glove to Right hand along & Right Side half tray for shoulder positioning. RR has concerns about resident wearing same clothes x 2 days. When asking for the answer "I don't know". Baseline up and current POC reviewed to RR copy of baseline OP, Diet & medication not given to RR.

ATTENDEES OF CARE PLAN CONFERENCE

Signature	Title	Relationship
Schappel	RNAC	Understand ☒ Agree ☒ Disagree with the plan of care: ☐
Paula Walker	SSN	Relationship
Kenab	Act. Dir.	Relationship
Marie Smith, CM	Diet Mgr	Relationship

Resident Representative attendance at care plan conference:
☐ Invited, but chose not to participate.
☒ Attended: ☒ In person ☐ Via phone ()
☐ Other

Clinical Record #

Room #

Physician

213 Dr. Popp

WALKER, A. 001209

CARE PLAN CONFERENCE SUMMARY

Instructions:

Identify all items below that were discussed during the care plan conference by placing an "A" for Agree or "D" for Disagree in the "Discussed with Resident/Resident Representative(s)" column. Use the "Comment" area to document special notes or items of specific concern.

Date of Care Plan Conference: 4-4-19

TOPICS DISCUSSED	DISCUSSED WITH		COMMENTS
	Resident	Res. Rep.	
Diagnosis			
Cognitive			
Visual			
Communication			
ADLs/Rehab			
Continence			
Mood/Behavior			
Activities			
Falls/Safety			
Nutrition			
Skin			
Pain			
Medication Issues			
Risk/Consequences			
Discharge Potential			
Special Requests			
Adv. Dir./Code Status			

SUMMARIZE DISCUSSION OF CARE PLAN CONFERENCE

Discharge Planning Meeting 11:00am

- LCO: 4/11/19
- DC plan is LHC
- ABN/NOMNC delivered + signed
- 1718 consent signed

OK Starting 4/4/19 Mrs. Walker has agreed that all past issues have been addressed and any future issues she will contact DOM SS. And they will give the appropriate notice to the Resp Party to contact her + follow with in 24hrs

ATTENDEES OF CARE PLAN CONFERENCE

Facility Staff		Resident / Family	
Signature: <i>Alma Allen</i>	Title: LMSW	Signature: <i>Paulette Walker</i>	Relationship: wife
Signature: <i>David Polyzou</i>	Title: COTA/L	Signature: _____	Relationship: _____
Signature: <i>Chris Pl</i>	Title: RNAC	Signature: _____	Relationship: _____
Signature: _____	Title: _____	Resident Representative attendance at care plan conference:	
Signature: _____	Title: _____	☐ Invited, but chose not to participate. ☒ Attended: ☒ In person ☐ Via phone (_____)	
Signature: _____	Title: _____	☐ Other: _____	

Resident Name: Walker, Jr., Albert

Chart Record: REDACTED

Room #: 3018

Physician:

Dr. Popp

WALKER, A. 001210

Instructions:

Identify all items below that were discussed during the care plan conference by placing an "A" for Agree or "D" for Disagree in the "Discussed with Resident/Resident Representative(s)" column. Use the "Comment" area to document special notes or items of specific concern.

CARE PLAN CONFERENCE SUMMARY

Date of Care Plan Conference: 8/19/19

TOPICS DISCUSSED	DISCUSSED WITH		COMMENTS
	☐ Resident Agree/Disagree	☒ Res. Rep. Agree/Disagree	
Diagnosis			Anemia, Chronic pain, adjustment disorder & depression
Cognitive			BIMS: 4
Visual			glaucoma: adequate & glasses
Communication			usually understood, usually understands
ADLs/Rehab			(A) for ABL's
Continence			Frequently incontinent of B+B
Mood/Behavior			PHQ-9: 0
Activities			1:1 visits, family very involved, not participating as much
Falls/Safety			0 falls
Nutrition			CCHD, NAS, Regular Texture; Wt @ 114.4 lbs (7/16/19)
Skin			intact
Pain			frequent pain / tramadol and tylenol prn
Medication Issues			0
Risk/Consequences			
Discharge Potential			LTC
Special Requests			
Adv. Dir./Code Status			Full code

SUMMARIZE DISCUSSION OF CARE PLAN CONFERENCE

11AM IDT met & reviewed updated POC for quarterly assessment.
 Pt has had improvement with no clostridia pain x 3 days. Amb 80 feet with hemi walker and min (A)
 3:30 Keep water pitcher and urinal within reach AAT. Encourage fluids per spouse request. Spouse updated on POC

Stephanie Odum cns

ATTENDEES OF CARE PLAN CONFERENCE

Facility Staff		Resident/Family	
Signature: [Signature]	Title: NAC	Signature: [Signature]	Relationship: [Blank]
Signature: [Signature]	Title: Diet. Mgr.	Signature: [Signature]	Relationship: [Blank]
Signature: [Signature]	Title: SSIS	Signature: [Signature]	Relationship: [Blank]
Signature: [Signature]	Title: Act. Dir.	Signature: [Signature]	Relationship: [Blank]
Signature: [Signature]	Title: Rehab	Signature: [Signature]	Relationship: [Blank]
Signature: [Signature]	Title: [Blank]	Signature: [Signature]	Relationship: [Blank]

Understand ☒ Agree ☐ Disagree with the plan of care:

Resident Representative attendance at care plan conference:
☐ Invited, but chose not to participate
☒ Attended: ☒ In person ☐ Via phone ()
☐ Other: [Blank]

Resident Name: Walker, Albert

Clinical Record #

Room #

Physician

103B

Jenkins

WALKER, A. 001213

NURSING DATA COLLECTION TOOL

Evaluation Date: 12/19

☐ Admission/Readmission - Entire form must be completed by Licensed Nurse within 24 hours of Admission. Complete based on items that are evident on Admission.

Admission Date: 1, 2, 19

Time of Arrival: 3:30 am

☐ Quarterly - Entire form must be completed by Licensed Nurse (Start with Section 2: Identified Prior Risks)
☐ Annual - Entire form must be completed by Licensed Nurse (Start with Section 2: Identified Prior Risks)

SECTION 1: FACILITY ORIENTATION

- (Check all that apply)
- | | | |
|--|---|---|
| ☒ Staff | ☒ Room | ☐ Roommate |
| ☒ Call System | ☒ Bathroom | ☐ Shower |
| ☒ Meals/Time | ☒ Dining Room | ☐ Smoking Policy |
| ☒ Canteen/Arms | ☒ Activity Calendar | ☐ Telephone |
| ☒ Visiting Hours | ☒ Resident Rights | |

SECTION 2: IDENTIFIED PRIOR RISKS

- (Check all that apply)
- | | | |
|--|--|---|
| ☐ Swallowing Problems | ☐ Smoker | ☐ Unplanned Wt. Change |
| ☐ Fluid Restriction | ☐ Chewing Problems | ☐ Palliative Care |
| ☐ Wandering/Exit Seeker | ☐ Seizure Precautions | ☐ Behavior Problems |
| ☐ Crush Medications | ☐ ID Bands | |

SECTION 3: VITAL SIGNS

Temp: 97.6 Pulse: 68 Respirations: 18
 B/P Sitting: 137/54 B/P Standing:

SECTION 4: ACTIVE DIAGNOSIS IN LAST 7 DAYS

- (Check all that apply)
- ☐ Cancer (with or without metastasis)
 - ☐ Anemia (e.g., aplastic, iron deficiency, pernicious, and sickle cell)
 - ☐ Atrial Fibrillation or Other Dysrhythmias (e.g., bradycardia and tachycardia)
 - ☐ Coronary Artery Disease (CAD) (e.g., angina, myocardial infarction, and atherosclerotic heart disease (ASHD))
 - ☐ Deep Venous Thrombosis (DVT), Pulmonary Embolus (PE), or Pulmonary Thrombo-Embolism (PTE)
 - ☐ Heart Failure (e.g., congestive heart failure (CHF) and pulmonary edema)
 - ☒ Hypertension
 - ☐ Orthostatic Hypotension
 - ☐ Peripheral Vascular Disease (PVD) or Peripheral Arterial Disease (PAD)
 - ☐ Cirrhosis
 - ☐ Gastroesophageal Reflux Disease (GERD) or Ulcer (e.g., esophageal, gastric, and peptic ulcers)
 - ☐ Ulcerative Colitis, Crohn's Disease, or Inflammatory Bowel Disease
 - ☐ Benign Prostatic Hyperplasia (BPH)
 - ☐ Renal Insufficiency, Renal Failure, or End-Stage Renal Disease (ESRD)
 - ☐ Neurogenic Bladder
 - ☐ Obstructive Uropathy
 - ☐ Multidrug-Resistant Organism (MDRO)
 - ☐ Pneumonia
 - ☐ Septicemia
 - ☐ Tuberculosis
 - ☐ Urinary Tract Infection (UTI) (LAST 30 DAYS)
 - ☐ Viral Hepatitis
 - ☐ Wound Infection (other than foot)
 - ☐ Diabetes Mellitus (DM)
 - ☐ Hyponatremia
 - ☐ Hyperkalemia
 - ☐ Hyperlipidemia (e.g., hypercholesterolemia)
 - ☐ Thyroid Disorder
 - ☐ Arthritis
 - ☐ Osteoporosis
 - ☐ Hip Fracture
 - ☐ Other fracture
 - ☐ Alzheimer's Disease
 - ☐ Aphasia
 - ☐ Cerebral Palsy

SECTION 4: ACTIVE DIAGNOSIS IN LAST 7 DAYS (continued)

- ☐ Cerebrovascular Accident (CVA), Transient Ischemic Attack (TIA), or Stroke
- ☐ Dementia
- ☐ Hemiplegia/hemiparesis
- ☐ Paraplegia
- ☐ Quadriplegia
- ☐ Multiple Sclerosis (MS)
- ☐ Huntington's Disease
- ☐ Parkinson's disease
- ☐ Tourette's Syndrome
- ☐ Seizure Disorder or Epilepsy
- ☐ Traumatic Brain Injury (TBI)
- ☐ Malnutrition (protein, caloric)
- ☐ Anxiety Disorder
- ☐ Depression (other than bipolar)
- ☐ Manic depression (bipolar disorder)
- ☐ Psychotic Disorder (other than schizophrenia)
- ☐ Schizophrenia (e.g., schizoaffective and schizophreniform disorders)
- ☐ Post Traumatic Stress Disorder (PTSD)
- ☐ Asthma, Chronic Obstructive Pulmonary Disease (COPD), or Chronic Lung Disease
- ☐ Respiratory Failure
- ☐ Cataracts, Glaucoma, or Macular Degeneration
- ☐ None of the above active diagnoses within the last 7 days

Comments:

SECTION 5: ALLERGIES

- (Check all that apply)
- ☐ Drugs: NEDA ☐ Food:
- ☐ Other:
- ☐ Allergy sticker on chart ☐ Allergy identification on Patient/Resident
- ☐ No known allergies

SECTION 6: PATIENT/RESIDENT/FAMILY EDUCATION NEEDS

- (Check all that apply)
- Specific barriers to learning:
- | | | |
|---|---|---|
| ☐ Physical | ☐ Motivation | ☐ Reading |
| ☐ Emotional | ☐ Language | ☐ Cultural |
| ☐ Age-related issues | ☐ Religious | ☐ Sensory (visual) |
| ☐ Cognitive | ☐ Sensory (auditory) | ☐ Financial |
- Comments:

SECTION 7: DISCHARGE POTENTIAL

- What is the resident's goal toward discharge?
- ☒ Expects to be discharged to the community
 - ☐ Expects to remain in this facility
 - ☐ Expects to be discharged to another facility/institution
 - ☐ Unknown or uncertain
- What is the source of discharge information?
- ☐ Resident
 - ☒ If not resident, then family or significant other
 - ☐ If not resident, family, or significant other, then guardian or legally authorized representative
 - ☐ None of the above
- Comments:

Resident Name: Walker Albert Attending Physician: Pepp Record #: Room/Bed:

NURSING DATA COLLECTION TOOL

Page 1 of 5

WALKER, A. 001930

SECTION 8: PHYSICAL EVALUATION			
NEUROLOGICAL/COGNITION (Check all that apply, in last 7 days or since admission)			
1) Comatose ☐ Persistent vegetative state/no discernible consciousness (If checked, skip to Musculoskeletal)			
2) Memory ☐ Short-term memory problem ☐ Long-term memory problem			
3) Memory/Recall - Patient/Resident can normally recall: ☐ Current season ☐ That he/she is in a nursing home ☐ Staff name/face ☐ None of the above are recalled ☐ Location of room			
4) Decision Making ☐ Independent - decisions consistent/reasonable ☐ Modified independent - some difficulty in new situations ☐ Moderately impaired - decisions poor, cues/supervision required ☐ Severely impaired - never made decisions			
5) Comments: _____			
HEARING/COMMUNICATION/SPEECH/VISION (Check all that apply, in last 7 days or since admission)			
1) Hearing (with hearing aid or hearing appliances if normally used) ☐ Adequate - no difficulty in normal conversation, social interaction, listening to TV ☐ Minimal difficulty - difficulty in some environments (e.g., when person speaks softly or setting is noisy) ☐ Moderate difficulty - speaker has to increase volume and speak distinctly ☐ Highly impaired - absence of useful hearing			
2) Communication Devices ☐ Hearing aid, present and used: ☐ R ☐ L ☐ Hearing aid, present and not used regularly ☐ R ☐ L Why? _____ ☐ Hearing amplifier: ☐ Yes ☐ No			
3) Speech Pattern ☐ Clear speech - distinct intelligible words ☐ Unclear speech - slurred or mumbled words ☐ No speech - absence of spoken words			
4) Modes of Expression ☐ Speech ☐ Signs/gestures/sounds ☐ Communication board ☐ Other: _____ ☐ Writing messages ☐ None of the above ☐ American sign language/Braille			
5) Makes Self Understood ☐ Understood ☐ Usually understood - difficulty communicating some words or finishing thoughts but is able if prompted or given time ☐ Sometimes understood - ability is limited to making concrete requests ☐ Rarely/never understood			
6) Ability to Understand Others ☐ Understands clear comprehension ☐ Usually understands - misses some part/intent of message but comprehends most conversation ☐ Sometimes understands - responds adequately to simple, direct communication only ☐ Rarely/never understands			
7) Vision (with glasses or other visual appliances) <i>Glaucoma</i> ☐ Adequate - sees fine detail, including regular print in newspapers/books ☐ Impaired - sees large print, but not regular print in newspapers/books ☐ Moderately impaired - limited vision; not able to see newspaper headlines but can identify objects ☐ Highly impaired - object identification in question, but eyes appear to follow objects ☐ Severely impaired - no vision or sees only light, colors or shapes; eyes do not appear to follow objects			
8) Pupils: ☒ Equal ☐ Eye drainage ☐ R ☐ L ☒ React to light Describe: _____			
HEARING/COMMUNICATION/SPEECH/VISION (continued) 9) Visual Appliances ☐ Glasses/Magnifying glass ☐ Contact lenses ☐ Eye prosthesis ☐ R ☐ L ☐ Eye appliance(s) present but not used regularly Why? _____ ☐ None of the above			
10) Last Eye Exam, if known: _____			
11) Comments: _____			
MOOD (Check all that apply, in the last 7 days or since admission)			
1) Indicators of Depression - Check all that apply from resident observation, staff, and/or family interview ☐ Little interest or pleasure in doing things ☐ Feeling or appearing down, depressed or hopeless ☐ Trouble falling or staying asleep ☐ Sleeping too much ☐ Feeling tired or having little energy ☐ Loss of appetite or overeating ☐ Feeling bad about self is a failure, or has let family/self down ☐ Trouble concentrating on things, such as reading the newspaper or watching television ☐ Moving or speaking so slowly that other people have noticed ☐ Being so restless or restless that resident has been moving around a lot more than usual ☐ Being short-tempered, easily annoyed ☐ States that life isn't worth living, wishes for death, or attempts to harm self ☐ None of the above			
2) Safety Notification Was responsible staff or provider informed that there is a potential for resident self harm? ☒ No ☐ Yes ☐ NA NAME: _____			
3) Comments: _____			
BEHAVIOR (Check all that apply, in the last 7 days or since admission) (Monitor using Behavior/Side Effect Tracking Record)			
1) Behavioral Symptoms ☐ WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety) (Proceed to Care Plan for elopement prevention management) (Complete Fall Risk Evaluation) ☐ Places resident at significant risk of getting to a potentially dangerous place? (e.g., stairs, outside of the facility) ☐ Significantly intrudes on the privacy or activities of others? ☐ PHYSICAL BEHAVIOR SYMPTOMS were directed toward others? (e.g., hitting, kicking, pushing, scratching, grabbing, abusing others sexually) ☐ VERBAL BEHAVIOR SYMPTOMS were directed toward others? (e.g., threatening others, screaming at others, cursing at others) ☐ BEHAVIORAL SYMPTOMS NOT directed toward others? (e.g., physical symptoms such as hitting or scratching self, pacing, rummaging, public sexual acts, disrobing in public, throwing or smearing food or bodily wastes, or verbal/vocal symptoms like screaming, disruptive sounds) ☐ REJECTION OF CARE or evaluation (e.g., bloodwork, taking medications, ADL assistance) that is necessary to achieve the resident's goals for health and well-being? ☐ HALLUCINATIONS ☐ DELUSIONS ☒ None of the above per history and/or observation			

Resident Name: Walker Albert

Attending Physician: Pope

Record #: _____

Room/Bed: _____

NURSING DATA COLLECTION TOOL
 Date: 2-15-

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of the	)	
Estate of Albert Walker,	)	
	)	
	)	PLAINTIFF'S MEMORANDUM IN
Plaintiff,	)	OPPOSITION OF DEFENDANTS'
	)	MOTION TO DISMISS AND COMPEL
Versus	)	ARBITRATION
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center and Durena Stinson,	)	
	)	
Defendants.	)	

The Plaintiff, Paulette Walker as Personal Representative of the Estate of Albert Walker, hereby serves her Memorandum in Opposition to the Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Durena Stinson's Motion to Dismiss, Compel Arbitration, and Stay State Court Proceedings.

FACTS

The Defendants operate a skilled nursing facility in Dorchester County, South Carolina. The facility is licensed by the South Carolina Department of Health and Environmental Control, pursuant to R. 61-17, *Standards for Licensing Nursing Homes*. Albert Walker was admitted to the Defendants' facility on or about January 2, 2019. Mr. Walker's wife, Paulette Walker signed several documents upon admission, including an arbitration agreement which is the subject of Defendants' Motion. At this time, Paulette Walker did not have legal authority to contractually bind her husband to arbitration, by way of a Power of Attorney nor any Court appointed Guardianship. While a resident in the Defendants' facility, Mr. Walker was allowed to suffer from numerous falls, one of which ultimately led to him being diagnosed with compression spinal fractures on or about June 16, 2019. Following Mr. Walker's admission, he executed a Durable Power of Attorney, naming his wife to serve as his agent. The Power of Attorney was acknowledged on January 16, 2019 and recorded with the Charleston County Register of Deeds on January 18, 2019.

PROCEDURAL HISTORY

Plaintiff filed his Notice of Intent on January 4, 2020. The Summons and Complaint was filed on July 7. Defendants filed their Answer on August 17. Following service of Defendants' Answer, Plaintiff served its first discovery requests on August 19 [Exhibit A]. Defendants responded to Plaintiff's Requests to Admit on September 18 [Exhibit B]. Defendants served their Interrogatories and Requests for Production on September 24 [Exhibit C]. Defendants later filed the present Motion to Dismiss, Compel Arbitration, and Stay State Court Proceedings on October 2. Ten days later on October 12, Defendants responded to Plaintiff's Interrogatories and Requests for Production with thirty-four (34) pages of objections, refusing to answer based on their motion to dismiss [Exhibit D]. Plaintiff served her responses to Defendants Interrogatories and Requests for Production on November 19 [Exhibit E]. During this time, Mr. Walker unfortunately passed away, and the Complaint was amended to reflect the same.

STANDARD OF REVIEW

A parties' right to a jury trial in South Carolina is governed by state law. Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978). The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. 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 (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 to arbitrate 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, 22, 644 S.E.2d 663, 667 (2007) citing S.C. Code Ann. § 15-48-20(a) (2005). 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).

In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524

S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. The Arbitration Provision is not enforceable because Paulette Walker lacked the capacity to contract on behalf of her husband, and Albert Walker did not sign the Arbitration Agreement

Of utmost importance in this matter, it is undisputed that Albert Walker never signed the arbitration agreement. Paulette Walker executed an Admission Agreement on behalf of her husband upon his entry to the Defendants' facility on January 2, 2019. Mrs. Walker did not have any legal authority to sign on behalf of Mr. Walker though a Power of Attorney or Court Ordered Guardianship or Conservatorship. At the time of admission, Mrs. Walker was not Mr. Walker's Power of Attorney nor did she have legal guardianship over Mr. Walker. At the time of admission, Mr. Walker had never been declared incapacitated.

The mere fact that an arbitration exists does not automatically refer any dispute to arbitration. Like any contract, the agreement must be valid to be enforceable, signed by the parties who had the express and legal authority to do so. Paulette Walker was not the court appointed legal guardian of Albert Walker, nor did she have a durable power of attorney which would confer her authority to make legal decisions on his behalf. There is no evidence that Albert Walker was incapacitated or unable to sign the agreements himself. In fact, several days later on January 16, 2019, Albert Walker executed a valid durable power of attorney. This power of attorney was properly witnessed and notarized and was subsequently filed with the Charleston County Register of Deeds on January 18, 2019 [Exhibit F]. Mr. Walker had legal capacity to enter into contracts following his admission to Defendant's facility as evidenced by the power of attorney; therefore Mrs. Walker's signature on the residency agreement is invalid as to the arbitration agreement.

The Defendant facility is a sophisticated business entity frequently interacting with residents and their families during the admission process. It should be well aware of the differences between a durable power of attorney, a healthcare power of attorney, and other forms of guardianship, or in this case, the lack thereof.

The undersigned has on multiple occasions argued a similar set of fact patterns. In the case of Dawson v. Brookdale, 2018-CP-32-01644, Judge Walton McLeod issued an Order denying the Defendant's Motion to Dismiss and/or Compel Arbitration under a near exact set of facts that are at issue in the present matter. Judge Roger Young similarly denied a Defendant's Motion to Compel arbitration under similar facts in Davis v. BKD Charleston South Carolina, LLC, 2020-CP-10-02811. A copy of those Orders are attached [Exhibit G & H] for the Court's review.

a. A Residency Agreement and an Arbitration Agreement are two separate agreements and one cannot be bound by the other.

Our South Carolina Supreme Court has ruled the difference between a residency contract and an arbitration agreement, and that just because the two agreements are contained in one document does not make them one in the same. The Supreme Court has ruled that:

Assent to this contract [the admission agreement] was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). A decision to admit a resident to a community residential care facility such as the Defendants is a healthcare decision. As such, signing an admission agreement to a skilled nursing facility is a healthcare related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on

the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

b. Plaintiff did not Possess Statutory Authority to Bind Mr. Walker under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care." Id. A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

- (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:
- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
 - (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
 - (3) a person given priority to make health care decision by another statutory provision;
 - (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;
 - b. formal signing of a written property or marital settlement agreement; or
 - c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
 - (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
 - (6) a parent of the patient;
 - (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
 - (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
 - (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendant has put forth no evidence that Mr. Walker was unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent, as required by the statute. In fact, based upon the evidence provided, Mr. Walker was capable of making his own decisions at the time of the admission to the facility. Additionally, the AHCCA only deals “health care” related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word “legal” or “arbitration” mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The Defendants cite the case of Coleman v. Mariner Health Care, et al., 407 S.C. 346, 755 S.E.2d 450 (2014), which addresses the AHCCA. The Court in Coleman held that the sister of a nursing home resident could not bind the resident to an arbitration agreement at the time of admission, and that the arbitration agreement was not valid because it exceeded the scope of the sister’s authority under the AHCCA. According to the Court, AHCCA specifically limited surrogates’ authority to making health care decisions and associated financial arrangements. Arbitration is not a health care or related financial decision, and thus exceeds the authority granted by the AHCCA. Id. At 351-52, 755, S.E. 2d at 453.

ii. ¹S.C. Bill of Rights for Residents of Long-Term Care Facilities

South Carolina Bill of Rights for Residents of Long-Term Care Facilities is codified in S.C. Code Ann. §44-81-10, et seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin, or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(3). This is substantially the same as the AHCCA. Under the Bill of Rights, decision making is limited to health care decisions, not legal decisions.

II. The Federal Arbitration Act (FAA) Does Not Mandate Enforcement of this Agreement.

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed above in Section I, there is no valid arbitration agreement because Paulette Walker did not have the legal authority to execute a valid arbitration. Second, Plaintiff’s claims include negligence,

negligence per se, fraud and misrepresentation, violations of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship. Nowhere in the Defendants' arbitration agreement are those causes of action listed. Accordingly, the FAA does not apply.

III. Attorney's Fees and Costs

The Plaintiff respectfully requests the Court award attorney's fees and costs associated with the preparation and arguing of this motion. The undersigned has communicated with opposing counsel on multiple occasions regarding the invalidity of the arbitration agreement, and the Defendant's failure to meet their burden of proof to compel arbitration. Despite the Defendant's failure to meet its burden of proof, it has insisted on going forward with the present motion

CONCLUSION

Based on the reasons set forth above, the Plaintiff respectfully requests the Defendant's Motion to Compel Arbitration be denied, Defendant be Ordered to respond fully and completely to Plaintiff's discovery requests, and any other such relief the Court so sees fit.

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Attorneys for the Plaintiff

February 5, 2021
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ electronic filing, ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 5th day of February, 2021.

s/Bradley H. Banyas

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2020-CP-18-01027
PAULETTE WALKER	)	
as Personal Representative	)	
of the Estate of Albert Walker,	)	
	)	
Plaintiff,	)	MOTION TO ALTER, AMEND, AND/OR
	)	RECONSIDER ORDER DENYING
vs.	)	MOTION TO COMPEL ARBITRATION
	)	
HALLMARK LONGTERM CARE, LLC	)	
d/b/a HALLMARK HEALTHCARE CENTER	)	
and DURENA STINSON,	)	
	)	
Defendants.	)	

TO: THE HONORABLE MAITE MURPHY, Presiding Judge, and D. NATHAN HUGHEY, ESQUIRE, A. STUART HUDSON, ESQUIRE, and BRADLEY H. BANYAS, ESQUIRE, HUGHEY LAW FIRM, Attorneys for Plaintiff

NOW COMES Defendant Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center (the "Facility"), by and through its undersigned counsel, pursuant to Rule 59(e), SCRCp, and, on the grounds set forth below, hereby moves this Honorable Court to alter, amend, and/or reconsider its Order Denying Defendant's Motion to Stay Action and Compel Arbitration, filed March 19, 2021 (the "Subject Order").

1. **The Motion to Compel Arbitration¹ was *not* made by the Facility and Durena Stinson, but by the Facility only.**

The Subject Order refers to "Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Durena Stinson's" Motion to Compel Arbitration. (Subject Order p. 1 (emphasis added).) While Ms. Stinson is named as a defendant in this case, personal jurisdiction

¹ The "Motion to Compel Arbitration" refers to the motion disposed of via the Subject Order, i.e., the Facility's Motion to Dismiss Plaintiff's Complaint, Compel Arbitration and Stay State Court Proceedings, filed October 2, 2020.

has not been obtained over her via service of process, and she has not appeared in the action. The Motion to Compel Arbitration was *not* made by the Facility *and Durena Stinson*, but by *the Facility only*—however, assuming, *arguendo*, personal jurisdiction is obtained over Ms. Stinson, she is covered by the Arbitration Agreement as an “agent,” “employee,” and/or “servant” of the Facility. (See Arbitration Agreement (“This Agreement is made between [the Facility], its agents, employees, and servants, and”); *see also* Am. Compl. ¶ 3 (alleging Ms. Stinson “is the administrator of [the Facility]”).)

2. The Court erred in finding that “the FAA^[2] does not apply.”³

Without question, the Arbitration Agreement is governed by the FAA. First off, the Arbitration Agreement expressly states that the FAA applies,⁴ 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 parties had agreed contract involved interstate commerce)). Additionally, 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*,

² The “FAA” refers to the Federal Arbitration Act, 9 U.S.C §§ 1–16.

³ (Subject Order p. 11; *see also id.* at pp. 2–3 (erroneously citing the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 to -240, which does not apply).)

⁴ (Arbitration Agreement (“The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the [FAA], notwithstanding any contrary provision of this Agreement or contrary state law.”).)

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 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).

3. To the extent the Court has done so, it is erroneous to view Plaintiff’s claims as being outside the scope of the Arbitration Agreement.

The Subject Order states, “Plaintiff’s claims include negligence, negligence per se, fraud and misrepresentation, violations of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship. Nowhere in the Defendants’ arbitration agreement are those causes of action listed.” (Subject Order p. 11; *see also id.* at 4 (“The Defendants’ argument that all of the Plaintiff’s claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed”).) To the extent the Court views Plaintiff’s claims as being outside the scope of the Arbitration Agreement, it is erroneous.

Without question, Plaintiff’s claims against the Facility are within the scope of the Arbitration Agreement. The plain language of the Arbitration Agreement clearly embraces the subject matter of Plaintiff’s claims. (*See* Arbitration Agreement (“It is the intention of the parties to this [Arbitration] Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of [Mr. Walker].”); *id.* (“It is . . . understood that in the event of any controversy or dispute between the parties arising out of or relating to [the] Facility’s Admission Agreement, or breach thereof, or relating in any way to [Mr. Walker’s] stay at [the] Facility, or to the provisions of care or services to [Mr. Walker] . . . and the parties are unable to resolve such through negotiation, then the parties

agree that such Dispute(s) shall be resolved by arbitration . . .”). The Facility is aware of no requirement that an arbitration agreement must specifically state the causes of action that are within its scope, and the Subject Order cites none. (*See* Subject Order p. 11.) And even were there “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).

4. **The Subject Order (A) incorrectly states, “a review of the admissions and arbitration documents by the Defendants would have informed them that Paulette Walker did not have actual authority by way of a Durable Power of Attorney, nor Court Appointed Guardianship to bind Albert Walker, nor did she ever indicate that she had any apparent authority to enter contracts on behalf of Mr. Walker,”⁵ and (B) violates the FAA’s mandate that arbitration agreements be placed on equal footing with all other contracts when it charges the Facility with a heightened duty to determine the existence or scope of Ms. Walker’s authority to sign the Arbitration Agreement for Mr. Walker and/or absolves Ms. Walker of the legal consequences of her act of signing the Arbitration Agreement and/or of her reciprocal duty of good faith and fair dealing.**

The Arbitration Agreement itself reflects (by virtue of her signature upon it) Ms. Walker’s express representation that she had all due authority to sign it for Mr. Walker. (Arbitration Agreement (“By . . . her signature below, the executing party [(i.e., Ms. Walker)] represents that . . . she has the authority to sign on [Mr. Walker’s] behalf so as to bind [Mr. Walker] as well as [herself].”).) There is no question raised as to Ms. Walker’s competency. She is thus “presumed

⁵ (*See* Subject Order p. 7; *see also id.* at p. 4 (“The Defendant facility is a sophisticated business entity frequently interacting with residents and their families during the admission process. It should be well aware of the differences between a durable power of attorney, a healthcare power of attorney, and other forms of guardianship, or in this case, the lack thereof.”); *id.* at p. 8 (“[T]he evidence shows Defendants cannot meet possibly its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. . . . In this case, the Defendants had the capacity to determine whether Ms. Walker had the authority to sign an arbitration agreement on Mr. Walker’s behalf. Stated again, the Defendants should be familiar with these requirements as they frequently interact with residents and their families during the nursing home admission process. The Defendants are or should be familiar with the legal concepts of guardianship and powers-of-attorney.”).)

to have read, understood, and assented to [the] terms” of the Arbitration Agreement,⁶ including, of course, the terms whereby she represented herself to the Facility as having authority to act on Mr. Walker’s behalf. Moreover, there is an implied covenant of good faith and fair dealing in every contract,⁷ and Ms. Walker is no less bound by this covenant than the Facility. To require anything more from the Facility as a contracting party just because the contract in issue is an arbitration agreement would violate the FAA’s requirement that arbitration agreements be placed on equal footing with all other contracts under South Carolina law. *AT&T Mobility, L.L.C. v. Concepcion*, 563 U.S. 333, 339 (2011) (“[C]ourts *must* place arbitration agreements on *equal footing with other contracts*”); *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (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.”) (citing *Concepcion*, 563 U.S. at 339); *see also* 9 U.S.C. § 2 (“Under the FAA, 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.”); *Allied-Bruce*, 513 U.S. at 270 (“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”).

5. To the extent the Court has done so, it is erroneous to view the Arbitration Agreement as lacking consideration or any material terms.

To be clear, the Subject Order does not actually state that the Arbitration Agreement lacks consideration or any material terms, but out of an abundance of caution, the Facility would make clear that any notion that it does that may be gleaned from the Subject Order is erroneous.

⁶ *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.”).

⁷ *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 86 (1995).

The Arbitration Agreement sets forth all necessary terms. It contains the parties' mutual and concurrent promises to submit a certain defined scope of "Disputes" to binding arbitration,⁸ before an arbitrator who is either agreed upon by the parties themselves or selected by the Court, in a proceeding to be conducted pursuant to the South Carolina ADR Rules,⁹ which will result in a decision that is enforceable in a court of competent jurisdiction. To require more just because the contract in issue is an arbitration agreement would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *See Concepcion*, 563 U.S. at 339.

6. To the extent the Court has done so, it is erroneous to view the Arbitration Agreement as unconscionable.

To be clear, the Subject Order does not actually state that the Arbitration Agreement is unconscionable, but out of an abundance of caution, the Facility would make clear that any notion of unconscionability that may be gleaned from the Subject Order is erroneous.

Unconscionability is a two-part test. 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 that 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 of these is present here. The first part of the test (absence of meaningful choice) is undermined by the express acknowledgement in the Arbitration Agreement itself that the

⁸ The parties' mutual and concurrent promises to arbitrate constitute sufficient consideration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) ("A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.") (citing *Rickborn v. Liberty Life Insurance Co.*, 321 S.C. 291, 468 S.E. 292 (1996)).

⁹ In this regard, the Court would note that the South Carolina ADR Rules, which do apply to the conduct of arbitration proceedings under the Arbitration Agreement, should not be confused with the South Carolina Arbitration Act, which, as addressed above (in explaining the applicability of the FAA), does not apply here.

“Resident/Representative is not required to use the . . . Facility for Resident’s healthcare needs and . . . there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.” As for the second part of the test (unreasonably oppressive terms), the agreement simply binds the parties (both sides) to submit to arbitration. Not only is this not oppressive “both state and federal policy favor arbitration of disputes.” *Id.* at 24, 644 S.E.2d at 668. And there is nothing about the Arbitration Agreement that suggests it is not geared towards achieving an unbiased decision by a neutral decision-maker. *Id.* at 25, 644 S.E.2d at 668 (“In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.”); *see also* Rule 1, SCADR (“These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.”).

7. The “presumption against arbitration”¹⁰ that the Court cites violates the FAA’s “equal footing” rule.”

The Subject Order cites *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), 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. 2.) Again, 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

¹⁰ (Subject Order p. 2.)

applies to enforcement of all other contracts against nonsignatories. The Facility is aware of no such general presumption under South Carolina law, and the Subject Order cites none. Indeed, in recognizing “a presumption *against* arbitration . . . where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate,” the *Wilson* Court cited authority, none of which was in fact South Carolina authority, that addressed arbitration in particular, not contracts generally. 426 S.C. at 337–38, 827 S.E.2d at 173 (“*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 presumption against arbitration that the Subject Order cites violates the FAA’s equal footing rule and cannot be applied in this case.

8. **The merger/equitable estoppel analysis in the Subject Order is erroneous, to include the Subject Order’s use of the wrong test for equitable estoppel. The Court erred in rejecting the Facility’s merger/equitable estoppel argument, i.e., it erred in failing to find (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Walker effectively embraced and directly benefitted from the Admission Agreement, Plaintiff should be estopped to deny the enforceability of the Arbitration Agreement.**

The Facility’s merger/equitable estoppel argument is not an argument for the enforceability of the Arbitration Agreement but rather an argument for Plaintiff to be estopped to deny the enforceability of the Arbitration Agreement. In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and Mr. Walker having effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Arbitration Agreement merged therewith. Accordingly, as to Plaintiff’s merger/equitable estoppel argument, any analysis by the Court regarding the Arbitration Agreement’s supposed lack of

enforceability—e.g., that, under the common law of agency (to include not only true agency but also agency by estoppel, as well as ratification)¹¹ and/or under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. §§ 44-66-10 to -80, and/or under the South Carolina Bill of Rights for Residents of Long-Term Care Facilities, S.C. Code. Ann. 44-81-10 to -70,¹² and/or because Ms. Walker did not hold power of attorney, guardianship, or conservatorship over Mr. Walker,¹³ Ms. Walker lacked authority to sign the Arbitration Agreement on behalf of Mr. Walker—is beside the point and unavailing to refute the Facility’s merger/equitable estoppel argument, which, again, turns not on the question of whether the Arbitration Agreement is enforceable but whether Plaintiff is estopped to deny its enforceability.

Re: Merger

South Carolina law recognizes numerous viable theories under which a nonsignatory can be bound to an arbitration agreement. *See Wilson*, 426 S.C. at 338, 827 S.E.2d at 174 (“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.”); *see also Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel).

¹¹ (See, e.g., Subject Order p. 3 (“Like any contract, the agreement must be valid to be enforceable, signed by the parties who had the express and legal authority to do so.”); *id.* at pp. 6–7 (regarding actual or apparent authority).)

¹² (See, e.g., *Id.* at pp. 5–6 (regarding statutory authority).)

¹³ (See, e.g., *Id.* at p. 1 (“[Ms.] Walker did not have legal authority to bind her husband to arbitration, by way of a Power of Attorney nor any Court appointed Guardianship.”).)

In *Coleman*, even though our Supreme Court found against merger on the *particular facts* then before it, the Court 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 AA under the Act, she is nevertheless equitably estopped to deny the AA'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 AAs 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. at 354–355, 755 S.E.2d at 455 (emphasis added).

Here, the Court has erred in rejecting the Facility's merger argument, failing to recognize material differences between the facts and arguments involved in the instant case and those that controlled (or were simply not 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 Subject Order wrongfully concludes that the Admission Agreement and the Arbitration Agreement are separate contacts that do not merge. (Subject Order p. 9.) 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,”¹⁴ as indeed the Admission Agreement and the Arbitration Agreement were here,¹⁵ 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). “[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. The assertion in the Subject Order that “multiple executed writings relating to the same general subject matter will not be viewed as a single or merged agreement if either their language or the circumstances *even hint* that the parties actually intended the writings to be distinct, separate contracts”¹⁶ is an incorrect statement of law.

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,

¹⁴ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

¹⁵ To be clear, *Coleman* unequivocally answers the question of whether the instant 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 observes 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).

¹⁶ (Subject Order pp. 9–10 (emphasis added).)

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

Unlike the arbitration agreements at issue in *Coleman*, *Hodge*, and *Thompson*, all of which provided that they could be disclaimed or revoked within 30 days of their signing (while the corresponding admission agreements contained no such provision), the instant Arbitration Agreement has no such disclaimer/revocation provision. (*See* Arbitration Agreement.) Moreover, while the instant Admission Agreement does contain an “Entire Agreement” clause, it does not reference the Arbitration Agreement as a separate contract. (Admission Agreement p. 12.) Indeed, directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court¹⁷), the “Entire Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” (Admission Agreement p. 12.) And without question, the Arbitration Agreement is among these other Admissions materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed

¹⁷ 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the “Entire Agreement” clause expressly referred to a separate arbitration agreement and, thus, “recognize[d] the ‘separatedness’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.”) (emphasis added).

White Oak's *admission documentation—including the Arbitration Agreement.*") (emphasis added) (internal footnote omitted).

To be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for Mr. Walker to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was in fact agreed to. 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).

Moreover, 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. That is, the Admission Agreement *could* have stood on its own, i.e., 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 particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or 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. (*See* Arbitration Agreement (providing for arbitration of "any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's

stay at Facility, or to the provisions of care or services to Resident”); *id.* (“This [Arbitration] Agreement shall remain in effect for all care rendered at Facility”).)

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. Walker’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. (*Compare* Admission Agreement (setting forth the terms of Mr. Walker’s admission to the Facility) *with* Arbitration Agreement (providing for arbitration of disputes arising out of Mr. Walker’s admission in the Facility).)

Also absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (providing “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration Agreement (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action;” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules”).) Essentially, both instruments provide that South Carolina law applies except where displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

Similarly, the termination provisions provide no evidence of “separatedness.” The only reason for the Arbitration Agreement is the Admission Agreement, i.e., the Arbitration Agreement

covers disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. This is simply how arbitration agreements work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13(D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

The fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out 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.

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 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.” 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 Court’s finding against merger relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding the contracting parties’ intent. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130. It 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. Walker’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 the contracting parties’ intent.

Re: Equitable Estoppel

The view of equitable estoppel reflected in the Subject Order misapprehends our Supreme Court’s decision in *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174 (observing that South Carolina has recognized a number of theories that could bind nonsignatories to arbitration agreements, including estoppel). The *Wilson* Court favorably discussed 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 v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and under which the Facility contends Plaintiff is estopped from refusing to comply with the Arbitration Agreement here, where Mr. Walker received direct benefits (in the form of his admission 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, contrary to the Court's analysis in the Subject Order, *Wilson* supports the use of the direct benefits test to answer the question of equitable estoppel in an arbitration case like this, not the six-factor test identified in the Subject Order. (*See* Subject Order pp. 7–8.)

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Mr. Walker received the benefit of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein. Not even Plaintiff herself alleges that every single aspect of the residency (every meal, every instance of care/treatment delivered, essentially every moment at the Facility) was deficient. (*See* Comp.; Am. Compl.)

Respectfully, the Court should have found that the Arbitration Agreement merged with the Admission Agreement (the validity of which Plaintiff does not challenge¹⁸) and that Plaintiff is

¹⁸ Although the dispute here is about the Arbitration Agreement, as opposed to the Admission Agreement, to the extent there were any question about the enforceability of the Admission Agreement, the Facility's equitable estoppel argument applies with equal for to the Admission Agreement.

estopped to deny the Arbitration Agreement's enforceability, Mr. Walker having effectively embraced the contract with the Facility for the purpose of his admission and receipt of the benefits thereof only to later, via his estate, attempt to repudiate the Arbitration Agreement with which his Admission Agreement merged.

- 9. Most respectfully, the Facility asks the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Motion to Compel Arbitration, i.e., each and every distinct issue/argument set forth in the Motion to Compel Arbitration, Memo in Support¹⁹, and via oral argument, all of which 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).

- 10. Subject to and without waiving or otherwise lessening the all-encompassing scope of its above request (No. 9), the Facility respectfully asks the Court to (re)consider and expressly rule on in full, i.e., to directly address and rule on all material aspects of, the following issues/arguments in support of the Motion to Compel Arbitration, all of which are incorporated herein by reference.**

- (a) The Facility's argument based on the actual authority Ms. Walker attested to having to sign the Arbitration Agreement on Mr. Walker's behalf (*see* Memo in Support pp. 2–6, 8–11), including, but not limited to, the effect of Mr. Walker unquestionably having contractual capacity as of at least January 16, 2019, when he granted Ms. Walker power of attorney, and the

¹⁹ The “Memo in Support” refers to the Facility's Memorandum in Support of Motion to Compel Arbitration and Stay State Court Proceedings, filed February 5, 2021.

evidence that Mr. Walker was physically present with Ms. Walker and Facility staff on January 2, 2019, when Ms. Walker signed the Arbitration Agreement on his behalf and represented her actual authority to do so, without Mr. Walker indicating any problem with/objection to the same;

- (b) The Facility's arguments based on apparent authority, inherent authority, and agency by estoppel (*see* Memo in Support pp. 2–6, 11–20), including, but not limited to, the effect of Mr. Walker unquestionably having contractual capacity as of at least January 16, 2019, when he granted Ms. Walker power of attorney, and the evidence that Mr. Walker was physically present with Ms. Walker and Facility staff not only on January 2, 2019, when Ms. Walker signed the Admission Agreement and Arbitration Agreement on his behalf, but also at other times when Ms. Walker did in fact act on his behalf and communicate his needs and decisions to the Facility, without Mr. Walker indicating any problem with/objection to the same; and
- (c) The Facility's argument based on ratification (*see* Memo in Support pp. 2–6, 20–24), including, but not limited to, the effect of Mr. Walker unquestionably having contractual capacity as of at least January 16, 2019, when he granted Ms. Walker power of attorney, and the evidence that Mr. Walker was physically present with Ms. Walker and Facility staff not only on January 2, 2019, when Ms. Walker signed the Admission Agreement and Arbitration Agreement on his behalf, but also at other times when Ms. Walker did in fact act on his behalf and communicate his needs and

decisions to the Facility, without Mr. Walker indicating any problem with/objection to the same or attempting to repudiate or cancel the Arbitration Agreement up until the time he granted Ms. Walker power of attorney on January 16, 2019, and thereafter without Ms. Walker, who stepped into Mr. Walker's shoes as of January 16, 2019, and who undoubtedly knew of the Arbitration Agreement she had signed on behalf of Mr. Walker, never attempting to repudiate or cancel the Arbitration Agreement.

WHEREFORE, for the foregoing reasons (and, again, for that matter, for all of the reasons previously advanced to the Court in support of the Motion to Compel Arbitration (both those advanced in writing and those advanced via oral argument), all of which the Facility incorporates by reference herein and asks the Court to (re)consider and expressly rule upon in full), the Facility asks that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Motion to Compel Arbitration.

PLEASE NOTE: the Facility reserves 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.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
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*Attorneys for Defendant Hallmark Longterm
Care, LLC d/b/a Hallmark Healthcare Center*

Charleston, South Carolina

March 29, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2020-CP-18-01027
	)	
Paulette Walker as Personal Representative of the	)	
Estate of Albert Walker,	)	
	)	
	)	PLAINTIFF'S RESPONSE TO
Plaintiff,	)	DEFENDANTS' MOTION RECONSIDER
	)	THE COURT'S ORDER DENYING
Versus	)	DEFENDANTS' MOTION TO DISMISS
	)	AND COMPEL ARBITRATION
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center and Durena Stinson,	)	
	)	
Defendants.	)	

The Plaintiff, Paulette Walker as Personal Representative of the Estate of Albert Walker, hereby serves her response to the Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Durena Stinson's Motion to Dismiss and Compel Arbitration.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "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." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

ARGUMENT

Plaintiff respectfully requests the Court deny the Defendant's Motion and find that the Court's Order filed March 19, 2021 sufficiently addresses all issues that were raised by both parties' written submissions, as well as those issues raised at oral argument. Albert Walker himself did not sign the arbitration agreement. Paulette Walker, who signed the arbitration agreement, did not have actual or apparent authority to bind Albert Walker to arbitration. The Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. If the Defendants wished to have an enforceable arbitration agreement, they should have asked for supporting legal documentation for any signatory other than Albert Walker himself. They failed to do so, and as such, the arbitration agreement is invalid.

Defendants have put forth no evidence that Albert Walker was unable or lacked capacity to execute the arbitration agreement or admissions paperwork himself. In fact, in the days after his admission to the Defendants facility, Mr. Walker executed a valid durable power of attorney. As such, the presumption is that Mr. Walker had the capacity to sign the arbitration agreement himself, which did not happen. Further, Defendants have put forth no evidence that Paulette Walker had authority to execute the arbitration agreement at the time it was signed. As such, all other issues raised should be considered moot. Defendant's Motion to Compel Arbitration was correctly decided based on the Court's initial Order.

CONCLUSION

The Court was correct in finding that the Defendant's Motion to Dismiss and Compel Arbitration should be denied. The Plaintiff respectfully requests the Court deny the Defendant's Motion to Reconsider.

[SIGNATURE PAGE TO FOLLOW]

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Attorneys for the Plaintiff

April 6, 2021
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ electronic filing, ☐ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6th day of April, 2021.

s/Bradley H. Banyas

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Case No. 2020-CP-18-01027

RECEIVED

Jun 04 2021

SC Court of Appeals

Paulette Walker
as Personal Representative of the Estate of Albert Walker,
Respondent,

v.

Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center
and Durena Stinson,

Defendants,

Of whom Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center is

Appellant.

NOTICE OF APPEAL

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Attorneys for Respondent

Defendant, Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center (“Appellant”), hereby appeals the following orders of the Honorable Maite Murphy, Circuit Court Judge:

- **Order Denying Defendant’s Motion to Stay Action and Compel Arbitration**, filed March 19, 2021, and
- **Order Denying Defendant’s Motion for Reconsideration**, filed May 5, 2021.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on May 5, 2021.

Respectfully submitted,
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June 4, 2021

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jun 04 2021

SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2020-CP-18-01027

Paulette Walker
as Personal Representative of the Estate of Albert Walker,

Respondent,

v.

Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center
and Durena Stinson,

Defendants,

Of whom Hallmark Longterm Care, LLC
d/b/a Hallmark Healthcare Center is

Appellant.

PROOF OF SERVICE

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Attorneys for Appellant

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that Appellant's **NOTICE OF APPEAL** was served on Respondent, Paulette Walker, as Personal Representative of the Estate of Albert Walker, on June 4, 2021, by emailing (see attached) a copy of the same to Respondent's counsel of record:

D. Nathan Hughey, Esquire
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Attorneys for Respondent

I also certify that a copy of this **NOTICE OF APPEAL** is this day, June 4, 2021, being E-Filed with the lower court (which will also, i.e., in addition to service by email, effect service of the notice today on Respondent's above-identified counsel of record via the E-Filing System).

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
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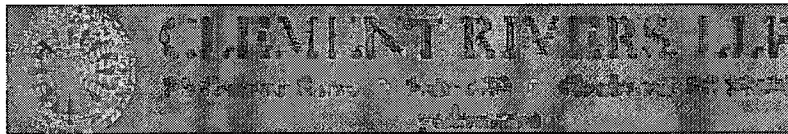
June 4, 2021

Hines, Russell

From: Hines, Russell
Sent: Friday, June 4, 2021 9:33 AM
To: 'nate@hugheyfirm.com'; 'stuart@hugheyfirm.com'; 'Brad Banyas'
Cc: 'Brown, Steve'; Davis, Jay; Gandy, III, James D. (Tripp); Mettler, Kate C.; Phillips, Ashton; Wakeham, Rebecca (Becky); McNeil, Tasha; Justman, Aimee; Bell, Pollyana (Polly)
Subject: Walker v. Hallmark (Circuit Court Case No. 2020-CP-18-01027) -- Notice of Appeal
Attachments: Walker v. Hallmark -- Notice of Appeal.pdf; Walker v. Hallmark -- Appealed Order filed 3-19-21.pdf; Walker v. Hallmark -- Appealed Order filed 5-5-21.pdf

Attached please find Appellant's **Notice of Appeal** in the above-referenced matter, along with copies of the **Appealed Orders** referenced in the notice.

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Certificate of Counsel

The undersigned counsel for Appellant certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

CLEMENT RIVERS, LLP

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January 13, 2022