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Jun 17 2024

S.C. SUPREME COURT

Horry County Fifteenth Judicial Circuit Public Index



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Switch View

Scott F Duncan MD VS OrthoSC LLC , defendant, et al

Case Number:	2021CP2607488	Court Agency:	Common Pleas	Filed Date:	11/11/2021
Case Type:	Common Pleas	Case Sub Type:	Unfair Trade Pra 640	File Type:	Mediator - Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Duncan MD, Scott F	ADR/Notice of ADR	Action		02/05/2024-08:26		
OrthoSC LLC	NEF(01-17-2024 10:40:21 AM) Order/Protection from Court ...	Filing		01/17/2024-10:40		
OrthoSC LLC	Order/Protection from Court Appearance	Order		01/17/2024-10:40	01/17/2024-10:40	
OrthoSC LLC	NEF(01-16-2024 03:00:43 PM) Order/Order Cover Sheet \$25....	Filing		01/17/2024-10:14		
OrthoSC LLC	Order/Order Cover Sheet \$25.00	Filing		01/16/2024-15:00		
HCA Healthcare Inc	NEF(11-07-2023 04:53:24 PM) Order/Consent Order	Filing		11/07/2023-16:53		
HCA Healthcare Inc	Order/Consent Order Compelling Arbitration of Certain Claims	Order		11/07/2023-16:53		
HCA Healthcare Inc	NEF(11-06-2023 04:14:41 PM) Proposed Order/Consent Order	Filing		11/07/2023-07:42		
HCA Healthcare Inc	Order/Order Cover Sheet \$25.00	Filing		11/06/2023-16:14		
Duncan MD, Scott F	NEF(10-10-2023 09:26:11 AM) Appeal/Notice of Appeal to C...	Filing		10/10/2023-10:53		
Duncan MD, Scott F	Appeal/Notice of Appeal to Court of Appeals	Filing		10/10/2023-09:26		
Duncan MD, Scott F	Letter from Daniel F. Blanchard III ESQ	Filing		10/10/2023-09:26		
OrthoSC LLC	NEF(09-25-2023 04:13:12 PM) Order/Other	Filing		09/25/2023-16:13		
OrthoSC LLC	Order Denying Plaintiff's Motion to Partially Alter or Amend	Order		09/25/2023-16:13		
Duncan MD, Scott F	NEF(09-25-2023 11:30:29 AM) Order/Other	Filing		09/25/2023-11:30		
Duncan MD, Scott F	Order Denying Motion to Alter or Amend	Order		09/25/2023-11:30		
OrthoSC LLC	NEF(07-21-2023 10:56:11 AM) Proposed Order/Other	Filing		07/21/2023-11:08		

OrthoSC LLC	Order/Order Cover Sheet \$25.00	Filing		07/21/2023-10:56		
Duncan MD, Scott F	NEF(07-20-2023 03:26:34 PM) Letter/Letter	Filing		07/20/2023-15:51		
Duncan MD, Scott F	Letter to Judge Curtis	Filing		07/20/2023-15:26		
Duncan MD, Scott F	NEF(07-17-2023 03:15:28 PM) Order/Electronic Form 4	Filing		07/17/2023-15:15		
Duncan MD, Scott F	Order/Electronic Form 4-Motion/Alter and/or Amend	Order		07/17/2023-15:15		
Duncan MD, Scott F	NEF(07-07-2023 09:56:42 AM) Memo/Memo	Filing		07/07/2023-10:03		
Duncan MD, Scott F	Memo/Memo in Support Motion to Alter or Amend Order	Filing		07/07/2023-09:56		 
OrthoSC LLC	NEF(06-30-2023 04:15:40 PM) Memo/Memo in Opposition	Filing		06/30/2023-16:27		
OrthoSC LLC	Memo/Memo in Opposition	Filing		06/30/2023-16:15		
Duncan MD, Scott F	NEF(06-30-2023 02:35:53 PM) Memo/Memo in Support	Filing		06/30/2023-14:56		
Duncan MD, Scott F	Memo/Memo in Support	Filing		06/30/2023-14:35		  
OrthoSC LLC	NEF(06-20-2023 01:41:51 PM) Motion/Compel	Filing		06/20/2023-13:50		
OrthoSC LLC	Motion/Compel to Respond and Produce	Motion		06/20/2023-13:41	06/29/2023-13:41	 
Bruorton, James Atkinson IV	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Blanchard, Daniel Francis III	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
McQuillin, Stafford J III	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Dawson, Katon Edwards Jr.	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Werner, James Lynn	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Klett, Jonathan David	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Ipock, Charles Epps	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Thomas, William R.	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
Moore, Mary Harriet	7/10/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		06/06/2023-16:18		
HCA Healthcare Inc	NEF(04-10-2023 04:03:10 PM) Motion/Alter and/or Amend	Filing		04/10/2023-16:40		
HCA Healthcare Inc	Motion/Alter and/or Amend (DC)	Motion		04/10/2023-16:03	09/25/2023-16:03	
Duncan MD, Scott F	NEF(03-31-2023 11:57:10 AM) Order/Dismissal	Filing		03/31/2023-11:57		
Duncan MD, Scott F	Order Denying Motion To Dismiss Of HCA Healthcare, Inc	Order		03/31/2023-11:57		
Duncan MD, Scott F	NEF(03-06-2023 05:28:01 PM) Motion/Alter and/or Amend	Filing		03/07/2023-07:57		
Duncan MD, Scott F	Motion/Alter and/or Amend	Motion		03/06/2023-17:28	07/11/2023-17:28	  
Duncan MD, Scott F	NEF(03-06-2023 01:13:08 PM) Order/Scheduling Order	Filing		03/06/2023-13:13		
Duncan MD, Scott F	Order/Scheduling Order	Order		03/06/2023-13:13	03/06/2023-13:13	
Duncan MD, Scott F	NEF(03-03-2023 11:07:32 AM) Order/Order Cover Sheet \$25....	Filing		03/06/2023-08:58		

Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		03/03/2023-11:07		
OrthoSC LLC	NEF(02-28-2023 09:57:42 AM) Answer/Answer To Amended Com...	Filing		02/28/2023-11:36		
OrthoSC LLC	Answer/Answer To Amended Complaint	Filing		02/28/2023-09:57		
Duncan MD, Scott F	NEF(02-24-2023 02:27:52 PM) Order/Other	Filing		02/24/2023-14:40		
Duncan MD, Scott F	Order on Motions Heard 11-30-2022	Order		02/24/2023-14:27		
Duncan MD, Scott F	NEF(02-23-2023 11:07:49 AM) Order/Order Cover Sheet \$25....	Filing		02/23/2023-11:38		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		02/23/2023-11:07		
Duncan MD, Scott F	NEF(02-17-2023 11:20:02 AM) Letter/Letter	Filing		02/17/2023-13:44		
Duncan MD, Scott F	Letter of Daniel F. Blanchard, Esquire	Filing		02/17/2023-11:20		
Duncan MD, Scott F	NEF(02-17-2023 10:15:52 AM) Order/Electronic Form 4	Filing		02/17/2023-10:18		
Duncan MD, Scott F	Order/Electronic Form 4 - Motion to Dismiss is Denied	Order		02/17/2023-10:15		
Blanchard, Daniel Francis III	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Bruorton, James Atkinson IV	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Moore, Mary Harriet	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Thomas, William R.	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Ipock, Charles Epps	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Klett, Jonathan David	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Dawson, Katon Edwards Jr.	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Werner, James Lynn	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
McQuillin, Stafford J III	3/13/2023_ADRSANC_NOTICE ADR SANCTION ROSTER PUBLICATION	Action		02/14/2023-08:34		
Duncan MD, Scott F	NEF(02-08-2023 04:32:50 PM) Order/Electronic Form 4	Filing		02/08/2023-16:33		
Duncan MD, Scott F	Order/Electronic Form 4 - Motion/Dismiss Amended Complaint	Order		02/08/2023-16:32		
Duncan MD, Scott F	NEF(02-07-2023 05:11:15 PM) Affidavit/Affidavit of	Filing		02/08/2023-08:44		
Duncan MD, Scott F	Affidavit/Affidavit of Scott F. Duncan, MD	Filing		02/07/2023-17:11		 
HCA Healthcare Inc	NEF(02-03-2023 04:51:51 PM) Reply/Other	Filing		02/06/2023-08:11		
HCA Healthcare Inc	Reply to Memorandum in Opposition	Filing		02/03/2023-16:51		
HCA Healthcare Inc	NEF(01-27-2023 02:38:29 PM) Memo/Memo in Support	Filing		01/27/2023-14:56		
HCA Healthcare Inc	Memo in Support of Motion to Dismiss for Lack of Prosecution	Filing		01/27/2023-14:38		  
Duncan MD, Scott F	NEF(01-27-2023 11:25:04 AM) Filing/Other	Filing		01/27/2023-11:51		
Duncan MD, Scott F	NEF(01-27-2023 11:26:23 AM) Memo/Memo in Opposition	Filing		01/27/2023-11:48		

Duncan MD, Scott F	Memo in Opposition to Motion to Dismiss Amended Complaint	Filing		01/27/2023-11:26		
Duncan MD, Scott F	Appendices to Motion to Dismiss	Filing		01/27/2023-11:25		                                     
Blanchard, Daniel Francis III	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Bruorton, James Atkinson IV	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Moore, Mary Harriet	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Werner, James Lynn	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
McQuillin, Stafford J III	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Dawson, Katon Edwards Jr.	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Klett, Jonathan David	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Ipock, Charles Epps	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Thomas, William R.	2/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2023-09:12		
Duncan MD, Scott F	NEF(12-06-2022 04:44:59 PM) Order/Electronic Form 4	Filing		12/06/2022-16:45		
Duncan MD, Scott F	Order/Electronic Form 4 - Motions Heard 11-30-2022	Order		12/06/2022-16:44		
Duncan MD, Scott F	NEF(11-30-2022 01:08:23 PM) Order/Continuance	Filing		11/30/2022-13:08		
Duncan MD, Scott F	Order/Continuance	Order		11/30/2022-13:08	11/30/2022-13:08	
Duncan MD, Scott F	NEF(11-28-2022 01:10:28 PM) Motion/Continuance	Filing		11/29/2022-10:13		
Duncan MD, Scott F	NEF(11-23-2022 04:24:08 PM) Letter/Letter	Filing		11/28/2022-17:09		
Duncan MD, Scott F	Motion/Continuance	Motion		11/28/2022-13:10	11/30/2022-13:10	
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		11/28/2022-13:10		
Duncan MD, Scott F	Letter to Judge Curtis	Filing		11/23/2022-16:24		 
Duncan MD, Scott F	NEF(11-18-2022 03:55:31 PM) Memo/Memo in Opposition	Filing		11/18/2022-16:05		
Duncan MD, Scott F	Memo/Memo in Opposition to Motion to Dismiss	Filing		11/18/2022-15:55		
OrthoSC LLC	NEF(11-18-2022 02:13:37 PM) Memo/Memo in Support	Filing		11/18/2022-14:18		
OrthoSC LLC	NEF(11-18-2022 02:10:37 PM) Memo/Memo in Support	Filing		11/18/2022-14:14		
OrthoSC LLC	Memo/Memo in Support and in Opposition	Filing		11/18/2022-14:13		
OrthoSC LLC	Memo/Memo in Support of Motion to Dismiss Amended Complaint	Filing		11/18/2022-14:10		

Moore, Mary Harriet	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Moore, Mary Harriet	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Moore, Mary Harriet	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Moore, Mary Harriet	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Moore, Mary Harriet	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Blanchard, Daniel Francis III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Blanchard, Daniel Francis III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Blanchard, Daniel Francis III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Blanchard, Daniel Francis III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Blanchard, Daniel Francis III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Bruorton, James Atkinson IV	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Bruorton, James Atkinson IV	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
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Bruorton, James Atkinson IV	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Bruorton, James Atkinson IV	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Ipock, Charles Epps	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Ipock, Charles Epps	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Thomas, William R.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Thomas, William R.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Klett, Jonathan David	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Ipock, Charles Epps	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Ipock, Charles Epps	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Ipock, Charles Epps	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Thomas, William R.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Thomas, William R.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Thomas, William R.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Klett, Jonathan David	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Klett, Jonathan David	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		

Klett, Jonathan David	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Klett, Jonathan David	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
McQuillin, Stafford J III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
McQuillin, Stafford J III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
McQuillin, Stafford J III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
McQuillin, Stafford J III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Werner, James Lynn	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Werner, James Lynn	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Werner, James Lynn	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Werner, James Lynn	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Werner, James Lynn	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Dawson, Katon Edwards Jr.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Dawson, Katon Edwards Jr.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Dawson, Katon Edwards Jr.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Dawson, Katon Edwards Jr.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Dawson, Katon Edwards Jr.	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
McQuillin, Stafford J III	11/28/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/28/2022-08:09		
Duncan MD, Scott F	NEF(09-08-2022 12:10:34 PM) Motion/Compel	Filing		09/08/2022-12:33		
Duncan MD, Scott F	Motion/Compel Compliance with or Enforce Arbitration	Motion		09/08/2022-12:10	11/30/2022-12:10	   
HCA Healthcare Inc	NEF(08-30-2022 03:32:36 PM) Motion/Dismiss	Filing		08/30/2022-15:47		
HCA Healthcare Inc	Motion/Dismiss Amended Complaint	Motion		08/30/2022-15:32	02/08/2023-15:32	 
Duncan MD, Scott F	NEF(08-26-2022 04:46:28 PM) Motion/Compel	Filing		08/29/2022-08:53		
Duncan MD, Scott F	Motion/Compel Discovery Responses	Motion		08/26/2022-16:46	11/30/2022-16:46	       
OrthoSC LLC	NEF(08-25-2022 11:54:16 AM) Motion/Dismiss	Filing		08/25/2022-13:26		
OrthoSC LLC	NEF(08-25-2022 11:59:08 AM) Motion/Protection from Disco...	Filing		08/25/2022-13:23		
OrthoSC LLC	Motion/Protection from Discovery	Motion		08/25/2022-11:59	11/30/2022-11:59	
OrthoSC LLC	Motion/Dismiss	Motion		08/25/2022-11:54	11/30/2022-11:54	
HCA Healthcare Inc	NEF(08-15-2022 01:10:21 PM) Order/Substitution Of Course...	Filing		08/15/2022-13:10		

HCA Healthcare Inc	Order/Substitution Of Counsel	Order		08/15/2022-13:10		
OrthoSC LLC	NEF(08-15-2022 11:03:42 AM) Notice/Notice of Appearance	Filing		08/15/2022-11:04		
OrthoSC LLC	Notice/Notice of Appearance	Filing		08/15/2022-11:03		
HCA Healthcare Inc	NEF(08-12-2022 03:21:22 PM) Motion/Substitute Counsel by...	Filing		08/15/2022-10:38		
HCA Healthcare Inc	NEF(08-12-2022 03:12:06 PM) Notice/Notice of Appearance	Filing		08/12/2022-15:31		
HCA Healthcare Inc	Motion/Substitute Counsel by Consent	Motion		08/12/2022-15:21	08/15/2023-15:21	
HCA Healthcare Inc	Notice/Notice of Appearance	Filing		08/12/2022-15:12		
HCA Healthcare Inc	NEF(08-12-2022 03:07:31 PM) Notice/Notice of Appearance	Filing		08/12/2022-15:08		
HCA Healthcare Inc	Notice/Notice of Appearance	Filing		08/12/2022-15:07		
Duncan MD, Scott F	NEF(08-10-2022 02:54:56 PM) Amended/Amended Complaint	Filing		08/10/2022-16:02		
Duncan MD, Scott F	Amended/Amended Complaint	Filing		08/10/2022-14:54		   
OrthoSC LLC	NEF(08-08-2022 12:11:37 PM) Notice/Notice of Appearance	Filing		08/08/2022-12:12		
OrthoSC LLC	Notice/Notice of Appearance	Filing		08/08/2022-12:11		
Duncan MD, Scott F	NEF(07-21-2022 11:57:08 AM) Order/Amend	Filing		07/21/2022-11:57		
Duncan MD, Scott F	Order Resolving Motions	Order		07/21/2022-11:57		
Duncan MD, Scott F	NEF(07-15-2022 11:52:15 AM) Order/Order Cover Sheet \$25....	Filing		07/18/2022-08:09		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		07/15/2022-11:52		
Duncan MD, Scott F	NEF(06-21-2022 04:47:27 PM) Order/Electronic Form 4	Filing		06/21/2022-16:52		
Duncan MD, Scott F	Order/Electronic Form 4-Motion/Leave to Amend Complaint and	Order		06/21/2022-16:47		
HCA Healthcare Inc	NEF(06-21-2022 10:41:47 AM) Response	Filing		06/21/2022-11:25		
HCA Healthcare Inc	NEF(06-21-2022 10:44:17 AM) Response	Filing		06/21/2022-11:21		
HCA Healthcare Inc	Defendants HCA Healthcare Inc.'s Response in Opposition	Filing		06/21/2022-10:44		 
HCA Healthcare Inc	Defendants HCA Healthcare Inc.'s Response in Opposition	Filing		06/21/2022-10:41		 
HCA Healthcare Inc	NEF(06-15-2022 11:46:26 AM) Notice/Notice of Appearance	Filing		06/15/2022-11:46		
HCA Healthcare Inc	Notice/Notice of Appearance	Filing		06/15/2022-11:46		
Duncan MD, Scott F	NEF(06-13-2022 08:26:40 AM) ADR/Notice of ADR	Filing		06/13/2022-08:26		
Duncan MD, Scott F	ADR/Alternative Dispute Resolution (Workflow)	Action		06/09/2022-10:21	09/11/2022-10:21	

Duncan MD, Scott F	NEF(06-06-2022 10:28:53 AM) Order/Form 4	Filing		06/06/2022-10:29		
Duncan MD, Scott F	Order/Form 4 - Motions Heard on 3-29-2022	Order		06/06/2022-10:28		
Blanchard, Daniel Francis III	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Johnson, Ashley Wheeling	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Ipock, Charles Epps	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Thomas, William R.	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Moore, Mary Harriet	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Bruorton, James Atkinson IV	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/03/2022-08:07		
Duncan MD, Scott F	NEF(05-24-2022 04:44:46 PM) Order/Consent Order	Filing		05/24/2022-17:00		
Duncan MD, Scott F	Order/Consent Confidentiality Order	Order		05/24/2022-16:44		
Moore, Mary Harriet	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Moore, Mary Harriet	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Bruorton, James Atkinson IV	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Bruorton, James Atkinson IV	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Ipock, Charles Epps	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Ipock, Charles Epps	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Johnson, Ashley Wheeling	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Johnson, Ashley Wheeling	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Thomas, William R.	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Thomas, William R.	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Blanchard, Daniel Francis III	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Blanchard, Daniel Francis III	6/21/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2022-10:26		
Duncan MD, Scott F	NEF(05-02-2022 11:26:04 AM) Order/Other	Filing		05/02/2022-11:26		
Duncan MD, Scott F	Order Denying Motion For Stay Of Claims And Deferring	Order		05/02/2022-11:26		
Duncan MD, Scott F	NEF(04-28-2022 01:50:40 PM) Order/Order Cover Sheet \$25....	Filing		04/28/2022-15:33		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		04/28/2022-13:50		
Duncan MD, Scott F	NEF(04-26-2022 04:07:14 PM) Order/Order Cover Sheet \$25....	Filing		04/26/2022-16:28		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		04/26/2022-16:07		
Duncan MD, Scott F	NEF(04-08-2022 01:32:03 PM) Motion/Leave to Amend	Filing		04/08/2022-13:58		

Duncan MD, Scott F	Motion/Leave to Amend Complaint	Motion		04/08/2022-13:32	06/21/2022-13:32	
Duncan MD, Scott F	NEF(04-01-2022 12:20:37 PM) Order/Electronic Form 4	Filing		04/01/2022-12:20		
Duncan MD, Scott F	Order/Electronic Form 4	Order		04/01/2022-12:20		
Duncan MD, Scott F	NEF(04-01-2022 12:07:45 PM) Order/Other	Filing		04/01/2022-12:08		
Duncan MD, Scott F	Order/Consent Order	Order		04/01/2022-12:07		
Duncan MD, Scott F	NEF(04-01-2022 11:50:16 AM) Order/Other	Filing		04/01/2022-11:50		
Duncan MD, Scott F	Order Compelling Arbitration of Certain Claims & Staying the	Order		04/01/2022-11:50		
Duncan MD, Scott F	NEF(03-25-2022 04:28:38 PM) Order/Order Cover Sheet \$25....	Filing		03/28/2022-08:18		
Duncan MD, Scott F	NEF(03-25-2022 04:25:38 PM) Order/Order Cover Sheet \$25....	Filing		03/28/2022-08:18		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		03/25/2022-16:28		
Duncan MD, Scott F	Order/Order Cover Sheet \$25.00	Filing		03/25/2022-16:25		
HCA Healthcare Inc	NEF(03-25-2022 03:25:48 PM) Reply/Other	Filing		03/25/2022-16:08		
HCA Healthcare Inc	Reply To Plaintiff's Memo in opposition	Filing		03/25/2022-15:25		
Duncan MD, Scott F	NEF(03-18-2022 03:00:13 PM) Memo/Memo in Opposition	Filing		03/18/2022-15:16		
Duncan MD, Scott F	NEF(03-18-2022 03:07:08 PM) Memo/Memo in Opposition	Filing		03/18/2022-15:10		
Duncan MD, Scott F	Memo/Memo in Opposition	Filing		03/18/2022-15:07		
Duncan MD, Scott F	Memo/Memo in Opposition	Filing		03/18/2022-15:00		
Duncan MD, Scott F	NEF(03-16-2022 03:52:58 PM) Motion/Compel	Filing		03/16/2022-16:14		
Duncan MD, Scott F	Motion/Compel Discovery Responses	Motion		03/16/2022-15:52	06/21/2022-15:52	   
Bruorton, James Atkinson IV	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Bruorton, James Atkinson IV	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Bruorton, James Atkinson IV	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Moore, Mary Harriet	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Moore, Mary Harriet	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Moore, Mary Harriet	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Blanchard, Daniel Francis III	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Blanchard, Daniel Francis III	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Blanchard, Daniel Francis III	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Ipock, Charles Epps	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Ipock, Charles Epps	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		

Thomas, William R.	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Thomas, William R.	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Thomas, William R.	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Johnson, Ashley Wheeling	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Johnson, Ashley Wheeling	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Johnson, Ashley Wheeling	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
Ipock, Charles Epps	3/28/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/28/2022-15:42		
OrthoSC LLC	NEF(01-20-2022 02:45:01 PM) Motion/Dismiss	Filing		01/20/2022-15:02		
OrthoSC LLC	Motion/Dismiss	Motion		01/20/2022-14:45	06/21/2022-14:45	
OrthoSC LLC	Notice/Notice of Appearance	Filing		01/20/2022-14:45		
OrthoSC LLC	Memo/Memo in Support	Filing		01/20/2022-14:45		 
Grand Strand Regional Medical Center LLC	NEF(01-14-2022 01:08:33 PM) Motion/Compel	Filing		01/14/2022-13:25		
Grand Strand Regional Medical Center LLC	Memo/Memo in Support	Filing		01/14/2022-13:08		 
Grand Strand Regional Medical Center LLC	Motion/Compel	Motion		01/14/2022-13:08	03/25/2022-13:08	
HCA Healthcare Inc	NEF(01-14-2022 11:49:07 AM) Motion/Dismiss	Filing		01/14/2022-11:55		
HCA Healthcare Inc	Motion/Dismiss	Motion		01/14/2022-11:49	03/25/2022-11:49	
HCA Healthcare Inc	Memo/Memo in Support	Filing		01/14/2022-11:49		
HCA Healthcare Inc	Affidavit/Affidavit of Michael Bray	Filing		01/14/2022-11:49		
HCA Healthcare Inc	NEF(01-12-2022 10:02:58 AM) Notice/Notice of Appearance	Filing		01/12/2022-10:03		
HCA Healthcare Inc	Notice/Notice of Appearance	Filing		01/12/2022-10:02		
Duncan MD, Scott F	NEF(12-02-2021 12:35:30 PM) Service/Affidavit Of Service	Filing		12/02/2021-13:02		
Duncan MD, Scott F	Service/Affidavit Of Service on HCA Healthcare Inc	Filing		12/02/2021-12:35		
Duncan MD, Scott F	NEF(11-30-2021 08:58:14 AM) Service/Affidavit Of Service	Filing		11/30/2021-09:01		
Duncan MD, Scott F	NEF(11-30-2021 08:56:15 AM) Service/Affidavit Of Service	Filing		11/30/2021-08:59		
Duncan MD, Scott F	Service/Affidavit Of Service on ORTHOSC LLC	Filing		11/30/2021-08:58		
Duncan MD, Scott F	Service/Affidavit Of Service on Gene M Massey	Filing		11/30/2021-08:56		
Duncan MD, Scott F	NEF(11-19-2021 03:14:10 PM) Letter/Letter	Filing		11/22/2021-11:54		

Duncan MD, Scott F	Letter In Reference To Filing of Confidential Exhibit A	Filing		11/19/2021- 15:14		 
Duncan MD, Scott F	NEF(11-19-2021 10:54:44 AM) Service/Affidavit Of Service	Filing		11/19/2021- 11:27		
Duncan MD, Scott F	NEF(11-19-2021 10:55:44 AM) Service/Affidavit Of Service	Filing		11/19/2021- 11:02		
Duncan MD, Scott F	NEF(11-19-2021 10:52:01 AM) Service/Affidavit Of Service	Filing		11/19/2021- 11:01		
Duncan MD, Scott F	Service/Affidavit Of Service on Grand Strand Surgical Specia	Filing		11/19/2021- 10:55		
Duncan MD, Scott F	Service/Affidavit Of Service on HCA Physician Services Inc	Filing		11/19/2021- 10:54		
Duncan MD, Scott F	Service/Affidavit Of Service on Scott F Duncan	Filing		11/19/2021- 10:52		
Duncan MD, Scott F	Summons & Complaint	Filing		11/11/2021- 10:21		 

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
 DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	MOTION TO COMPEL
vs.	)	COMPLIANCE WITH OR
	)	ENFORCE ARBITRATION
ORTHOSC, LLC, a South Carolina limited	)	SUBPOENAS AND/OR FOR ORDER
liability company; DR. GENE M. MASSEY,	)	OF CONTEMPT
M.D.; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
_____	)	

PLEASE TAKE NOTICE THAT the Petitioner Scott F. Duncan, M.D. (“Petitioner”), through the undersigned attorneys, pursuant to Section 5.8 of the American Health Lawyers Association’s Rules for Employment Arbitration, S.C. CODE ANN. § 15-48-80(a), and S.C. R. CIV. PRO. 37 and 45, hereby moves the Court to compel compliance with or enforce the document subpoenas issued by the Arbitrator to Respondents OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Dr. Massey”), to deem Respondents OrthoSC and Dr. Massey to be in contempt of Court, and to require Respondents OrthoSC and Dr. Massey to reimburse or pay Petitioner’s attorney’s fees and costs incurred in enforcing the subpoenas as follows:

1. On November 11, 2021, Petitioner filed the Summons and Complaint in this action against several named defendants, including Respondents OrthoSC and Dr. Massey.
2. On April 1, 2022, the Court entered an Order under which Petitioner agreed to submit his claims against Defendants Grand Strand Surgical Specialists, LLC (“GSSS”); Grand Strand Regional Medical Center, LLC (“GSRMC”); and HCA Physician Services, Inc. (“HCA-PS”) to arbitration pursuant to an arbitration provision contained in a Physician Employment

Agreement executed by the Petitioner and Defendant GSSS. The Order provides in pertinent part as follows:

IT IS ORDERED that Plaintiff and Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. shall pursue arbitration of Plaintiff's claims against said Defendants pursuant to the arbitration rules and procedures as called for in the Physician Employment Agreement dated May 2, 2017. The Plaintiff will file his demand for arbitration involving the above-referenced claims with the American Health Lawyers Association (AHLA) no later than thirty (30) days after entry of this Order and said claims will be administered by the AHLA pursuant to the rules and procedures established by the Alternative Dispute Resolution Service of the AHLA; and

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. are hereby stayed pending arbitration of these claims; and

IT IS FURTHER ORDERED that this Order shall not be deemed or construed to stay or affect Plaintiff's claims against any of the other Defendants in this action, which shall proceed in this Court; and

AND IT IS SO ORDERED!

See 4.1.22 Order p.2. As a result, the Order did not stay or affect the Petitioner's claims against Respondents OrthoSC and Dr. Massey.

3. Defendants OrthoSC and Massey did file a motion asking this Court to stay the Petitioner's causes of action asserted against them until the arbitration involving Defendants GSSS, GSRMC, and HCA-PS is completed. However, by Order dated May 2, 2022, Circuit Judge J. Cordell Maddox, Jr. denied Respondents OrthoSC's and Massey's motion seeking a stay of the claims against them pending the outcome of the arbitration. Thus, Petitioner's claims against Respondents OrthoSC and Massey are proceeding in this Court.¹

¹ On August 10, 2022, Petitioner filed his Amended Complaint against Respondents OrthoSC and Massey in this case. On August 25, 2022, in response to the Amended Complaint, Respondents OrthoSC and Massey filed a Motion to Dismiss pursuant to S.C. R. CIV. PRO. 12(b)(6). On that

4. In accordance with the April 1, 2022 Order, Petitioner's claims against Defendants GSSS, GSRMC, and HCA-PS have been proceeding in the arbitration, which is being administered by the American Health Lawyers Association ("AHLA") pursuant to the AHLA's Rules for Employment Arbitration. The arbitration has been assigned AHLA Claim No. 7029. Henry L. Parr, Jr. is the Arbitrator who was appointed by the AHLA for the claim.

5. Section 5.8(a) of the AHLA's Rules for Employment Arbitration provides:

To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena.

6. S.C. CODE ANN. § 15-48-80(a) further provides:

(a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

S.C. CODE ANN. § 15-48-80(a).

7. South Carolina Rule of Civil Procedure 45(e) also states that the "[f]ailure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued." S.C. R. CIV. PRO. 45(e).

8. Respondents OrthoSC and Dr. Massey are parties to this lawsuit in the Circuit Court, but they are not parties to the arbitration proceeding pending before the AHLA.

same date, OrthoSC and Massey also filed a Motion for Protective Order claiming they are not required to respond to Petitioner's interrogatories and requests for production of documents served on them in this action on July 22, 2022. OrthoSC and Massey have refused to provide responses to Petitioner's interrogatories and requests for production of documents while their Motion to Dismiss is pending. On August 26, 2022, Petitioner filed a Motion to Compel Discovery Responses against Respondents OrthoSC and Massey.

9. Because Respondents OrthoSC and Dr. Massey are not parties to the arbitration proceeding pending before the Arbitrator, on August 3, 2022, the Arbitrator issued a subpoena to OrthoSC ordering the production of various documents and records as described in the attachment to the subpoena. The subpoena was served on OrthoSC via certified mail and was received on August 15, 2022. True and correct copies of the subpoena and delivery confirmation from the U.S. Postal Service are attached hereto as Exhibit “A” and are incorporated herein by reference.

10. On that same day (August 3, 2022), the Arbitrator also issued a separate subpoena to Dr. Massey ordering the production of various documents and records as described in the attachment to the subpoena. The subpoena was served on Dr. Massey via certified mail and was on August 15, 2022. True and correct copies of the subpoena and delivery confirmation from the U.S. Postal Service are attached hereto as Exhibit “B” and are incorporated herein by reference.²

11. The due date for OrthoSC and Dr. Massey’s responses to the subpoenas expired on September 2, 2022.

12. Despite service of the subpoenas and the expiration of the due date, neither OrthoSC nor Dr. Massey have responded to the subpoenas or served or made any objections to the subpoenas.

13. OrthoSC and Dr. Massey have failed or refused to produce or provide any of the documents as ordered in either of the subpoenas issued by the Arbitrator.

14. Petitioner submits the documents sought are relevant to the pending claims, or calculated to lead to discovery of relevant evidence, that the information is not subject to any

² On August 10, 2022, Petitioner’s counsel asked counsel representing Respondents OrthoSC and Massey in the Circuit Court action to agree to accept service of the document subpoenas on behalf of Respondents OrthoSC and Massey in the arbitration. Counsel responded he would check with Respondents OrthoSC and Massey, but no acceptance of service was received, thus the subpoenas were served via certified mail. See Exhibit “C” attached hereto.

privilege, and that the information and documents are, on information and belief, within the knowledge and possession, custody, or control of OrthoSC or its employees, agents, or attorneys and Dr. Massey and his employees, agents, or attorneys.

15. OrthoSC and Dr. Massey have altogether failed and refused and continue to fail and refuse to produce the documents requested in Petitioner's subpoenas. Accordingly, Petitioner moves the Court to compel and require OrthoSC and Dr. Massey to both produce all of the documents requested by Petitioner as set forth in the attached subpoenas and/or for an Order deeming them to be in contempt of Court.

16. Because the Arbitrator has required discovery in the arbitration to be completed in accordance with a scheduling order, Petitioner moves the Court to consider this motion on an expedited basis.

17. S.C. R. CIV. PRO. 37(a) authorizes a party to apply for an order compelling discovery. Rule 37(a)(4) states that "[i]f the motion [to compel] is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." S.C. R. CIV. PRO. 37(a)(4).

18. Petitioner requests an order awarding attorney's fees and costs incurred in enforcing the above-referenced subpoenas and in preparing and prosecuting this motion in an amount to be determined by the Court.

WHEREFORE, Petitioner respectfully moves this Court:

1. to conduct an expedited hearing and to compel and require OrthoSC and Dr.

Massey to produce all of the documents requested by Petitioner as set forth in the attached subpoenas and/or for an Order deeming them to be in contempt of Court;

2. to award Petitioner his costs and attorneys' fees incurred in enforcing the subpoenas and in preparing and prosecuting this motion in an amount to be determined by the Court, and

3. for such other and further relief as the Court may deem just and proper.

ROSEN HAGOOD, LLC

/s/ Daniel F. Blanchard, III

Daniel F. Blanchard, III, SC Bar 65342

dblanchard@rosenhagood.com

James A. Bruorton, IV, SC Bar 71300

cbruorton@rosenhagood.com

Mary Harriet Moore, SC Bar 105312

mhmoore@rosenhagood.com

40 Calhoun Street, Suite 450

P. O. Box 893 (29402)

Charleston, SC 29401

(843) 577-6726 telephone

(843) 724-8036 facsimile

ATTORNEYS FOR PETITIONER

Charleston, South Carolina

September 7, 2022.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2022 a true and correct copy of the Motion to Compel Compliance with Subpoenas and/or for Order of Contempt in the above-captioned action was deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

Charles E. Ipock, Esquire
Haynsworth Sinkler Boyd, P.A.
135 S. Dargan Street, Suite 300
Florence, SC 29506

Stafford John McQuillin, III, Esquire
Haynsworth Sinkler Boyd, P.A.
P.O. Box 340
Charleston, SC 29402

Jonathan D. Klett, Esquire
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, SC 29602

ATTORNEYS FOR ORTHOSC, LLC AND
DR. GENE M. MASSEY, M.D.

William R. Thomas, Esquire
James L. Werner, Esquire
Katon E. Dawson, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
1221 Main Street, Suite 1100
Columbia, SC 29201

ATTORNEYS FOR HCA HEALTHCARE, INC.;
GRAND STRAND SURGICAL SPECIALISTS, LLC;
GRAND STRAND REGIONAL MEDICAL CENTER, LLC; and
HCA PHYSICIAN SERVICES, INC.

/s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III, Esquire
Rosen Hagood, LLC
ATTORNEYS FOR PETITIONER

EXHIBIT A

STATE OF SOUTH CAROLINA

ISSUED BY THE ARBITRATOR

DR. SCOTT F. DUNCAN, M.D., Claimant.

v.

SUBPOENA

GRAND STRAND SURGICAL SPECIALISTS, LLC,
a South Carolina limited liability company; HCA
PHYSICIAN SERVICES, INC., a Tennessee
corporation; and GRAND STRAND REGIONAL
MEDICAL CENTER, LLC, a Delaware limited
liability company, Respondents.

ALHA Arbitration Case No. 7029

Circuit Case Number: 2021-CP-26-07488

Pending in Horry County before the Arbitrator

TO: **Records Custodian,
OrthoSC, LLC
210 Village Center Boulevard, Suite 140
Myrtle Beach, SC 29579**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

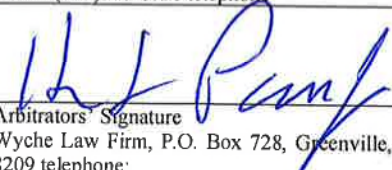
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE ATTACHMENT A

PLACE Rosen Hagood, LLC 40 Calhoun Street, Suite 450 Charleston, SC 29401	DATE AND TIME September 2, 2022, 9:00 AM
---	--

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature Rosen Hagood, LLC, 40 Calhoun Street, Suite 450, Charleston, SC 29401 (843)577-6726 telephone	August 3, 2022 Date	Daniel F. Blanchard, III Print Name
 Arbitrator's Signature Wyche Law Firm, P.O. Box 728, Greenville, SC 29602, (864) 242- 8209 telephone:	August 3, 2022 Date	Henry L. Parr, Jr., Arbitrator Print Name

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A
(Document Subpoena – OrthoSC, LLC)

DEFINITIONS

The following definitions apply to this subpoena:

- (i) "OrthoSC" refers OrthoSC, LLC (or its parent, subsidiary, or affiliated entities) and shall embrace and include, in addition to said entity, its attorneys, agents, representatives (including, but not limited to, Dr. Gene M. Massey, M.D., Dr. Thomas J. Chambers, M.D. and Dr. Justin G. Brothers, M.D.), and its predecessor or affiliated entities, including Strand Orthopaedics, Strand Orthopedics, and Strand Orthopaedic Consultants, LLC.
- (ii) "Massey" refers to Dr. Gene M. Massey, M.D.
- (iii) "Duncan" means Dr. Scott F. Duncan, M.D. or his attorneys, agents, and representatives.
- (iv) "Grand Strand Regional" refers individually, collectively, and/or alternatively to Grand Strand Regional Medical Center, LLC, its attorneys, agents, employees, and representatives.
- (v) "Grand Strand Surgical" refers individually, collectively, and/or alternatively to Grand Strand Surgical Specialists, LLC, its attorneys, agents, employees, and representatives.
- (vi) "HCA Physician Services" refers individually, collectively, and/or alternatively to HCA Physician Services, Inc., its attorneys, agents, employees, and representatives.
- (vii) "HCA" refers individually, collectively, and/or alternatively to HCA Healthcare, Inc., its attorneys, agents, employees, and representatives (including, but not limited to, Mark Sims, Hugh Tappan, Dr. John Lucas, Bruce Deighton, Randall "Randy" Owen, John Rodgers, Robert "Ali" Faile, Kim Smith, and/or Todd Gallati) and its predecessor or affiliated entities, including Grand Strand Regional Medical Center, LLC; Grand Strand Surgical Specialists, LLC, and HCA Physician Services, Inc.
- (viii) "GME orthopedic surgery residency program" refers to the graduate medical education orthopedic surgery residency program at the Grand Strand Medical Center hospital facility or medical facilities for which Duncan was hired to start and direct.
- (ix) "Sims" refers to Mark Sims.
- (x) "Tappan" refers to Hugh Tappan.
- (xi) "Lucas" refers to Dr. John Lucas.
- (xii) "Deighton" refers to Bruce Deighton.
- (xiii) "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, government agencies, or any other kind of entity.
- (xiv) "Document" means documents and other tangible things as defined in the broadest sense permitted by the South Carolina Rules of Civil Procedure and shall include any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character, including without limitation: Originals or, if not available, true copies of all letters, memoranda, emails, text messages, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, announcements, agreements, contracts, deeds, plats, studies, photographs, statements, invoices, checks, journals, ledgers, telegrams, handwritten notes, periodicals, pamphlets, reports, computer or business machine printouts, accountants' work papers, accountants' statements and writings, notations or records of meetings, printers' galleys, books, papers, calendars, diary entries, speeches, public

relations issues, advertising, annual and other reports including financial statements filed with appropriate state and federal authorities, documents filed with governmental agencies, office manuals, employee manuals, company rules and regulations, reports of experts, drafts and preliminary copies of any of the foregoing where such document is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual reproduction materials and any other written matter, tangible or physical objects however produced or reproduced upon which words or phrases are affixed or from which by appropriate transcription such written matter or tangible thing may be produced, in the possession, custody or control of the person herein served or his agents, attorneys, or employees.

The term "Document" also includes any other written, recorded, digital, transcribed, punched, taped, filmed, video, or graphic matter, however produced or reproduced.

DOCUMENTS REQUESTED

1. Any meeting minutes, committee or subcommittee minutes, board of directors minutes, resolutions, audio or video recordings of meetings, summaries, or reports of OrthoSC's executive board, partners, board of directors, or managing members discussing or concerning Duncan or the GME orthopedic surgery residency program.

2. Any written or electronic contracts, agreements, letters of intent, memoranda of understandings, understandings, offers, or solicitations (including any amendments, addenda, modifications, and documents referred or incorporated by reference into the foregoing) between (a) Massey or OrthoSC and (b) HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical concerning the GME orthopedic surgery residency program.

3. Any documents, statements, notes, records, reports, memoranda, correspondence, or other tangible things memorializing any conversations, meetings, or communications between or among (a) Massey or OrthoSC (including, but not limited to, its current or former members, officers, executives, managers, personnel, staff, contractors, or employees including Dr. Thomas J. Chambers, M.D. and Dr. Justin G. Brothers, M.D.) and (b) Tappan, Sims, Lucas, Deighton, Randall "Randy" Owen, John Rodgers, Robert "Ali" Faile, Kim Smith, Todd Gallati, HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical regarding Duncan; the GME orthopedic surgery residency program; Duncan's directorship, position, employment, or tenure with HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical; OrthoSC's potential involvement or participation in the GME orthopedic surgery residency program and any decisions regarding same; OrthoSC's refusal, declination, or noncommittal to become involved in or have a relationship with the GME orthopedic surgery residency program; the cancellation or termination of the GME orthopedic surgery residency program; and/or Duncan's employment with HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical.

4. Any documents, statements, notes, records, reports, memoranda, correspondence, or other tangible things memorializing any refusal, declination, or noncommittal by Massey or OrthoSC to become involved in, participate in, or have a relationship with the GME orthopedic surgery residency program.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>[Signature]</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: Orthosc, LLC c/o Dr. Michael N. Bohan, M.D. 210 Village Center Blvd. Suite 140 Myrtle Beach, SC 29579		B. Received by (Printed Name) Kara Finkle C. Date of Delivery 8/15/22	
2. Article Number (Transfer from service label) 7021 2720 0002 6640 4850		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
9590 9402 6990 1225 3366 33		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☒ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

USPS TRACKING#



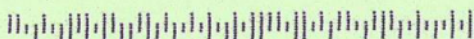
9590 9402 6990 1225 3366 33

United States
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Chas, SC 29401

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DPB
10114.000

EXHIBIT B

STATE OF SOUTH CAROLINA

ISSUED BY THE ARBITRATOR

DR. SCOTT F. DUNCAN, M.D., Claimant.

v.

SUBPOENA

GRAND STRAND SURGICAL SPECIALISTS, LLC,
a South Carolina limited liability company; HCA
PHYSICIAN SERVICES, INC., a Tennessee
corporation; and GRAND STRAND REGIONAL
MEDICAL CENTER, LLC, a Delaware limited
liability company, Respondents.

ALHA Arbitration Case No. 7029

Circuit Case Number: 2021-CP-26-07488

Pending in Horry County before the Arbitrator

TO: **Dr. Gene M. Massey, M.D.**
210 Village Center Boulevard, Suite 140
Myrtle Beach, SC 29579

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

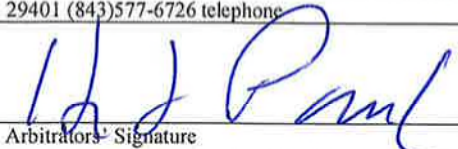
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE ATTACHMENT A

PLACE Rosen Hagood, LLC 40 Calhoun Street, Suite 450 Charleston, SC 29401	DATE AND TIME September 2, 2022, 9:00 AM
---	--

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature Rosen Hagood, LLC, 40 Calhoun Street, Suite 450, Charleston, SC 29401 (843)577-6726 telephone	August 3, 2022 Date	Daniel F. Blanchard, III Print Name
 Arbitrator's Signature Wyche Law Firm, P.O. Box 728, Greenville, SC 29602, (864) 242- 8209 telephone:	August 3, 2022 Date	Henry L. Parr, Jr., Arbitrator Print Name

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A
(Document Subpoena – Dr. Gene M. Massey, M.D.)

DEFINITIONS

The following definitions apply to this subpoena:

(i) "OrthoSC" refers OrthoSC, LLC (or its parent, subsidiary, or affiliated entities) and shall embrace and include, in addition to said entity, its attorneys, agents, representatives (including, but not limited to, Dr. Gene M. Massey, M.D., Dr. Thomas J. Chambers, M.D. and Dr. Justin G. Brothers, M.D.), and its predecessor or affiliated entities, including Strand Orthopaedics, Strand Orthopedics, and Strand Orthopaedic Consultants, LLC.

(ii) "Massey" refers to Dr. Gene M. Massey, M.D.

(iii) "Duncan" means Dr. Scott F. Duncan, M.D. or his attorneys, agents, and representatives.

(iv) "Grand Strand Regional" refers individually, collectively, and/or alternatively to Grand Strand Regional Medical Center, LLC, its attorneys, agents, employees, and representatives.

(v) "Grand Strand Surgical" refers individually, collectively, and/or alternatively to Grand Strand Surgical Specialists, LLC, its attorneys, agents, employees, and representatives.

(vi) "HCA Physician Services" refers individually, collectively, and/or alternatively to HCA Physician Services, Inc., its attorneys, agents, employees, and representatives.

(vii) "HCA" refers individually, collectively, and/or alternatively to HCA Healthcare, Inc., its attorneys, agents, employees, and representatives (including, but not limited to, Mark Sims, Hugh Tappan, Dr. John Lucas, Bruce Deighton, Randall "Randy" Owen, John Rodgers, Robert "Ali" Faile, Kim Smith, and/or Todd Gallati) and its predecessor or affiliated entities, including Grand Strand Regional Medical Center, LLC; Grand Strand Surgical Specialists, LLC, and HCA Physician Services, Inc.

(viii) "GME orthopedic surgery residency program" refers to the graduate medical education orthopedic surgery residency program at the Grand Strand Medical Center hospital facility or medical facilities for which Duncan was hired to start and direct.

(ix) "Sims" refers to Mark Sims.

(x) "Tappan" refers to Hugh Tappan.

(xi) "Lucas" refers to Dr. John Lucas.

(xii) "Deighton" refers to Bruce Deighton.

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(xiv) "Document" means documents and other tangible things as defined in the broadest sense permitted by the South Carolina Rules of Civil Procedure and shall include any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character, including without limitation: Originals or, if not available, true copies of all letters, memoranda, emails, text messages, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, announcements, agreements, contracts, deeds, plats, studies, photographs, statements, invoices, checks, journals, ledgers, telegrams, handwritten notes, periodicals, pamphlets, reports, computer or business machine printouts, accountants' work papers, accountants' statements and writings, notations or records of meetings, printers' galleys, books, papers, calendars, diary entries, speeches, public

relations issues, advertising, annual and other reports including financial statements filed with appropriate state and federal authorities, documents filed with governmental agencies, office manuals, employee manuals, company rules and regulations, reports of experts, drafts and preliminary copies of any of the foregoing where such document is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual reproduction materials and any other written matter, tangible or physical objects however produced or reproduced upon which words or phrases are affixed or from which by appropriate transcription such written matter or tangible thing may be produced, in the possession, custody or control of the person herein served or his agents, attorneys, or employees.

The term "Document" also includes any other written, recorded, digital, transcribed, punched, taped, filmed, video, or graphic matter, however produced or reproduced.

DOCUMENTS REQUESTED

1. Any written or electronic contracts, agreements, letters of intent, memoranda of understandings, understandings, offers, or solicitations (including any amendments, addenda, modifications, and documents referred or incorporated by reference into the foregoing) between (a) Massey or OrthoSC and (b) HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical concerning the GME orthopedic surgery residency program.

2. Any documents, statements, notes, records, reports, memoranda, correspondence, or other tangible things memorializing any conversations, meetings, or communications between or among (a) Massey or OrthoSC (including, but not limited to, its current or former members, officers, executives, managers, personnel, staff, contractors, or employees including Dr. Thomas J. Chambers, M.D. and Dr. Justin G. Brothers, M.D.) and (b) Tappan, Sims, Lucas, Deighton, Randall "Randy" Owen, John Rodgers, Robert "Ali" Faile, Kim Smith, Todd Gallati, HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical regarding Duncan; the GME orthopedic surgery residency program; Duncan's directorship, position, employment, or tenure with HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical; OrthoSC's potential involvement or participation in the GME orthopedic surgery residency program and any decisions regarding same; OrthoSC's refusal, declination, or noncommittal to become involved in or have a relationship with the GME orthopedic surgery residency program; the cancellation or termination of the GME orthopedic surgery residency program; and/or Duncan's employment with HCA, HCA Physician Services, Grand Strand Regional, and/or Grand Strand Surgical.

3. Any documents, statements, notes, records, reports, memoranda, correspondence, or other tangible things memorializing any refusal, declination, or noncommittal by Massey or OrthoSC to become involved in, participate in, or have a relationship with the GME orthopedic surgery residency program.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>K-f</i> ☒ Agent ☐ Addressee	
1. Article Addressed to: Dr. gene M. Massey, M.D. 210 Village Center Blvd, Suite 200 Myrtle Beach, SC 29579		B. Received by (Printed Name) <i>Kara Funk</i>	C. Date of Delivery <i>8/15/22</i>
2. Article Number (Transfer from service label) 7021 0350 0000 6467 9765		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☒ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

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Chas, SC 29401

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Permit No. G-10

DFB
10114.000

EXHIBIT C

From: [Ipock, Charlie](#)
To: [Frank Blanchard](#)
Cc: [Klett, Jonathan](#); [McQuillin, Mac](#)
Subject: RE: Duncan v. Grand Strand Surgical Specialists, LLC et al./AHLA Claim No. 7029
Date: Wednesday, August 10, 2022 8:12:46 PM
Attachments: [image008.png](#)
[image009.png](#)
[image010.png](#)
[image002.png](#)

Frank:

Thanks. I will get with my clients and let you know. Should know by first of next week as I've been covered up. Thank you for including Jonathan Klett on your email. I've copied him along with Mac McQuillin who will be engaged on this matter moving forward.



Charles E. Ipock | Attorney
 Direct 843.673.5325 | cipock@hsblawfirm.com
 Haynsworth Sinkler Boyd, P.A.
 135 S. Dargan Street, Suite 300 | Florence, SC 29506
 Main 843.669.6002 | Fax 843.669.3815

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Frank Blanchard <dblanchard@rosenhagood.com>
Sent: Wednesday, August 10, 2022 3:44 PM
To: Ipock, Charlie <cipock@hsblawfirm.com>
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Subject: Duncan v. Grand Strand Surgical Specialists, LLC et al./AHLA Claim No. 7029

Charlie,

Good afternoon. I'm attaching copies of document subpoenas in the arbitration matter that have been issued to OrthoSC, LLC and Dr. Gene Massey. In lieu of our having these personally served on the deponents, I wanted to see if you are agreeable to accepting service on their behalf. An acceptance of service form is also attached. If agreeable to you, please send us the executed acceptance of service form. Of course, if you're not able to accept service for any reason, please let us know and we'll make other arrangements. Thank you in advance for your assistance.

With best regards,



Frank Blanchard

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We've Moved as of June 30th!

**We've moved to [40 Calhoun Street, Suite 450, Charleston, SC 29401](#)
 Please update your records to reflect the new address.**

We look forward to working with you at our new location!

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	
	)	
ORTHOSC, LLC, a South Carolina limited	)	(Jury Trial Demanded)
liability company; DR. GENE M. MASSEY,	)	
M.D.; GRAND STRAND SURGICAL	)	
SPECIALISTS, LLC, a South Carolina limited	)	
liability company; HCA PHYSICIAN	)	
SERVICES, INC., a Tennessee corporation;	)	
GRAND STRAND REGIONAL MEDICAL	)	
CENTER, LLC, a Delaware limited liability	)	
company; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
	)	

Plaintiff Dr. Scott F. Duncan, M.D., by and through his undersigned counsel, alleges and states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Dr. Scott F. Duncan, M.D. (hereinafter referred to as "Plaintiff"), is an adult citizen and resident of the City of Myrtle Beach, County of Horry, State of South Carolina. At all times pertinent herein, Plaintiff was and is a medical doctor licensed in the State of South Carolina and specializes in orthopedic surgery.

2. Plaintiff has been engaged in the business of orthopedic surgery and has been so engaged for approximately 21 years. During that time, Plaintiff has developed a substantial clientele and has acquired through his efforts a reputation as a competent, dependable, and honest orthopedic surgeon and businessperson. Since 2017, Plaintiff has provided orthopedic services to patients in or from the geographic areas of Myrtle Beach, Conway, and Murrells Inlet, South Carolina.

3. Upon information and belief, Defendant OrthoSC, LLC (hereinafter referred to as “OrthoSC”) is a South Carolina limited liability company with business offices located at 210 Village Center Boulevard, Suite 200, Myrtle Beach, South Carolina. At all times pertinent herein, Defendant OrthoSC had a business location, employed personnel, was doing and/or transacting business, and/or owned or leased property in the County of Horry, State of South Carolina.

4. Upon information and belief, Defendant OrthoSC operates and conducts business as a group, affiliation, and network of member doctors, nurse practitioners, physician assistants, therapists, medical providers, and staff who practice medicine and care for and treat patients primarily in the geographic areas of Myrtle Beach, Conway, and Murrells Inlet as well as surrounding areas in the State of South Carolina.

5. Upon information and belief, Defendant OrthoSC is comprised of thirty or more member doctors. Defendant OrthoSC’s member doctors all specialize in the diagnosis and treatment of orthopedic injuries and conditions and/or orthopedic surgery. A substantial number of people in the geographic areas of Myrtle Beach, Conway, and Murrells Inlet consult with Defendant OrthoSC’s member doctors for medical advice and treatment.

6. Defendant OrthoSC owns the internet domain or website at www.orthosc.org and publicly promotes, markets, and publishes that it has thirty different medical doctors located in Myrtle Beach, Conway, and Murrells Inlet who are touted and described by OrthoSC as being “Our Doctors” and “The Region’s Most Preferred.” These doctors include Defendant Massey.

7. Defendant OrthoSC’s member doctors publicly advertise, promote, and hold themselves out to the local community and the general public as practicing orthopedic medicine with, on behalf of, and as part of Defendant OrthoSC. Upon information and belief, the member doctors of Defendant OrthoSC have combined and entered into a joint-venture, joint-

undertaking, partnership, or other business relationship or arrangement, using the trade name of OrthoSC, for the purpose of mutually benefiting from the business transactions and activities discussed herein.

8. Upon information and belief, Defendant Dr. Gene M. Massey, M.D. (hereinafter referred to as “Massey”), upon information and belief, is an adult citizen and resident of the City of Myrtle Beach, County of Horry, State of South Carolina. At all times pertinent herein, Defendant Massey was and is a medical doctor licensed in the State of South Carolina and specializes in Orthopedic Surgery. Defendant Massey has medical offices located at 210 Village Center Boulevard, Myrtle Beach, South Carolina.

9. Upon information and belief, at all times pertinent herein, Defendant Massey was and is a member doctor of Defendant OrthoSC and was and is on its Executive Board.

10. Defendant Grand Strand Surgical Specialists, LLC is a South Carolina limited liability company. At all times pertinent herein, Defendant Grand Strand Surgical Specialists, LLC was and is engaged in the business of owning, operating, managing, and staffing medical practices and other health care services in Horry County, State of South Carolina.

11. Defendant HCA Physician Services, Inc. is a Tennessee corporation with its headquarters in Nashville, Tennessee. At all times pertinent herein, Defendant Grand Strand Surgical Specialists, LLC was and is wholly owned by and is a subsidiary of Defendant HCA Physician Services, Inc. Defendant HCA Physician Services, Inc. is and was the parent company and the sole member or shareholder of Defendant Grand Strand Surgical Specialists, LLC and completely controls the business operations and activities of said subsidiary and dictates its policies. All actions undertaken by Defendant Grand Strand Surgical Specialists, LLC were approved and ratified by HCA Physician Services, Inc.

12. Defendant Grand Strand Surgical Specialists, LLC and Defendant HCA Physician Services, Inc. are collectively referred to herein as “HCA-PS” or “Defendant HCA-PS.”

13. Defendant Grand Strand Regional Medical Center, LLC is a Delaware limited liability company. At all times pertinent herein, Defendant Grand Strand Regional Medical Center, LLC was and is engaged in the business of owning, operating, managing, and staffing a hospital facility known as the Grand Strand Regional Medical Center located at 809 82nd Parkway, Myrtle Beach, South Carolina, which provides a broad range of services to residents of those areas including patient care, education, and research.

14. Defendant HCA Healthcare, Inc. is a Delaware corporation with its headquarters in Nashville, Tennessee. At all times pertinent herein, Defendant Grand Strand Regional Medical Center, LLC was and is wholly owned by and is a subsidiary of Defendant HCA Healthcare, Inc. Defendant HCA Healthcare, Inc. is and was the parent company and the sole member or shareholder of Defendant Grand Strand Regional Medical Center, LLC and completely controls the business operations and activities of said subsidiary and dictates its policies. All actions undertaken by Defendant Grand Strand Regional Medical Center, LLC were approved and ratified by Defendant HCA Healthcare, Inc.

15. Defendant Grand Strand Regional Medical Center, LLC and HCA Healthcare, Inc. are collectively referred to herein as “HCA” or “Defendant HCA.”

16. Defendant OrthoSC’s member doctors, including but not limited to Defendant Massey and others, are all engaged in the practice of orthopedic medicine in the geographic areas of Myrtle Beach, Conway, and Murrells Inlet; have hospital and/or surgery affiliations and hospital privileges with the Grand Strand Regional Medical Center hospital facility or medical facilities owned, operated, staffed, and/or managed by Defendants HCA-PS and HCA; and, in part, practice orthopedic medicine at said hospital facility or medical facilities.

17. Defendant OrthoSC's member doctors, including but not limited to Defendant Massey and others, routinely perform orthopedic surgeries and other medical procedures on patients at the Grand Strand Regional Medical Center hospital facility, which generate and provide substantial fees, revenue, income, profits, payments, and other financial benefits to Defendants HCA-PS and HCA.

18. Except as otherwise stated below, at all times pertinent herein, in personally committing and/or participating in the acts and/or omissions alleged herein, Defendant Massey in whole and/or in part was acting as a principal, member, partner, manager, officer, employee, and/or agent of Defendant OrthoSC, was acting within the course and scope of his employment and agency and with express or implied consent or permission of Defendant OrthoSC, was acting with the scope of his official duties, and was carrying on and furthering the business interests of Defendant OrthoSC.

19. Alternatively, Defendant Massey in whole and/or in part was acting in his individual capacity, for his own personal motivation, in furtherance of his own personal interests, outside the scope of his official duties, and outside the course and scope of his employment with Defendant OrthoSC.

20. All of the above-named Defendants, either directly and/or by the conduct and actions of their agents, servants, and/or employees, were doing business in the State of South Carolina, transacting business in South Carolina, contracting to supply services or things in South Carolina, committing a tortious act in whole or in part in South Carolina, and/or entering into contracts to be performed in whole or part in the State of South Carolina. The causes of action alleged herein arise out of, and result from, the acts enumerated above.

21. Jurisdiction is proper in this Court pursuant to South Carolina law, including but not limited to the South Carolina Long Arm Statute, S.C. CODE ANN. §§ 36-2-802 and 36-2-803.

22. The Horry County Court of Common Pleas is the proper venue for this case.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

23. In January of 2017, Plaintiff was recruited by Defendants HCA-PS and HCA while he was working in Boston, Massachusetts. At the time, Plaintiff had been the Chairman of the Orthopedic Surgery Department for Boston University and the Boston Medical Center.

24. Defendants HCA-PS and HCA specifically enticed and recruited Plaintiff away from his positions in Boston and hired him to start and serve as program director of a graduate medical education (GME) orthopedic surgery residency program at the Grand Strand Regional Medical Center hospital facility or medical facilities owned, operated, staffed, and/or managed by said Defendants.

25. Defendants HCA-PS and HCA specifically promised Plaintiff the directorship for the GME program for at least five years, with that term to start in the summer of 2017. It was also reasonably anticipated and contemplated that Plaintiff's contract with Defendants HCA-PS and HCA and his directorship of the GME program would be renewed and extended if the program was implemented as planned without interference by Defendants OrthoSC and Massey.

26. Numerous other GME programs in other medical specialties (general surgery, anesthesia, family medicine, internal medicine, etc.) have been successfully implemented and are presently continuing at the Grand Strand Regional Medical Center hospital facility.

27. When Defendants HCA-PS and HCA recruited and hired Plaintiff to the directorship position for the GME program, they agreed that Plaintiff and Defendants HCA-PS and HCA would work together to invite and persuade Defendant OrthoSC to provide the doctors who would serve as the faculty for the GME program in return for reasonable compensation.

28. Both before and after Plaintiff was hired, Defendants HCA-PS and HCA also repeatedly promised, represented, and assured to Plaintiff that if Defendant OrthoSC declined or

refused to participate in providing the faculty for the GME program, then Defendants HCA-PS and HCA would hire its own faculty for the program. Both before and after Plaintiff was hired, Defendants HCA-PS and HCA repeatedly assured Plaintiff they had done that for other programs in the past.

29. Defendants HCA-PS and HCA repeatedly assured Plaintiff they were committed to the GME program and that he would be in charge of the program.

30. On May 1, 2017, in reliance upon these repeated promises, assurances, and representations made by Defendants HCA-PS and HCA, Plaintiff entered and signed a written contract with Defendants HCA-PS and HCA labeled “Physician Employment Agreement” and Plaintiff relocated his permanent residence from Boston to Myrtle Beach, South Carolina. A true and correct copy of the contract is attached hereto and incorporated herein by reference as “Exhibit A” and is being submitted *in camera* due to a confidentiality provision.

31. The Physician Employment Agreement includes, among other compensation, the following three main compensation components: a base annual salary in an amount specified in the contract, call coverage pay in an amount specified in the contract, and clinical services pay in an amount specified in the contract. The clinical services pay was to be calculated as a percentage of the overall professional services performed by or attributed to Dr. Duncan to be determined on a WRVU basis as that term is defined in the contract.

32. Plaintiff started work for Defendants HCA-PS and HCA in July 2017 and began the work necessary to start the GME program. Plaintiff began seeing patients as a treating physician at the Grand Strand Regional Medical Center clinic facility in August 2017. Plaintiff was granted hospital privileges at the Grand Strand Regional Medical Center hospital facility in October 2017. Plaintiff began taking call and performing surgeries at the Grand Strand Regional Medical Center hospital facility in October 2017.

33. After Plaintiff was hired and was working to get the GME program up and running, Plaintiff as well as Mark Sims (the Chief Executive Officer for the Grand Strand Regional Medical Center) had numerous meetings and discussions with several of Defendant OrthoSC's doctors members, including Defendant Massey as well as Dr. Thomas J. Chambers, M.D. and Dr. Justin G. Brothers, M.D., to explain to them the plan and goal of the GME program and to invite and persuade Defendant OrthoSC to agree to provide the doctors needed to serve as the faculty for the program.

34. During and as a result of these meetings and discussions, Defendants Massey and OrthoSC and its doctor members were made well aware of the existence of Plaintiff's contract with Defendants HCA-PS and HCA as well as the plan and purpose for the GME program that Plaintiff was to start and direct at the Grand Strand Regional Medical Center hospital facility.

35. In 2018, despite the efforts to get Defendant OrthoSC on board with the GME program, Defendant OrthoSC began signaling to Plaintiff that it was not receptive to having its own member doctors serve as the faculty for the GME program.

36. As a result, Plaintiff began conducting interviews and recruiting faculty for the GME program from candidates and applicants who were outside of Defendant OrthoSC's group, affiliation, or network of member doctors in the event that Defendant OrthoSC declined to provide the faculty needed for the GME program.

37. On November 7, 2018, Mr. Sims sent an e-mail to Defendant Massey with a copy to Plaintiff as well as to Drs. Chambers and Brothers expressing Plaintiff's and the Grand Strand Regional Medical Center hospital's desire for Defendant OrthoSC to allow Defendant Massey and Drs. Chambers and Brothers to serve as faculty for the GME program in return for compensation stated in the e-mail. The e-mail from Mr. Sims stated in part as follows: "As I mentioned in our individual discussions we would be very excited for you to serve as faculty for

our program. We are however under a tight timeframe: 1) We are actively negotiating with physicians (spine/sports medicine); 2) our application for the 2019 academic year is due in December. I respectfully ask that you provide your response by 11/14/18.”

38. On November 12, 2018, Defendant Massey sent a response e-mail to Mr. Sims with a copy to Plaintiff as well as to Drs. Chambers and Brothers stating in part as follows: “As you know, this is a decision that affects our entire group. We need time to discuss this issue with the partners and Executive Board of OrthoSC. It is unlikely that we’ll have a definitive answer for you by 11/14. I would propose a deadline of 11/21, if that is agreeable to you.”

39. As was made clear to Defendants Massey and OrthoSC, Plaintiff was on the verge of hiring faculty members for the GME program.

40. However, upon information and belief, at some point after November 12, 2018, Defendant Massey personally sent a threatening, intimidating, and coercive e-mail to Mr. Hugh Tappan (President of HCA’s Southeast Atlantic Division and in charge of the Grand Strand Regional Medical Center hospital facility) expressly stating, representing, and assuring to Mr. Tappan that Defendant OrthoSC’s group, affiliation, and network of doctors would immediately pull all of their surgical cases from the Grand Strand Regional Medical Center hospital facility and would take those cases to different hospitals or facilities that compete with Defendants HCA-PS and HCA if they proceeded with the continuation of the GME program and the recruitment of any more orthopedic surgeons (faculty needed for the GME program) to the geographic and market areas serviced by Defendant OrthoSC’s member doctors. Defendant Massey essentially advised Mr. Tappan that Defendant OrthoSC would economically boycott the Grand Strand Regional Medical Center hospital facility and take their business to the competitors of Defendants HCA-PS and HCA if they went forward with the GME program.

41. Upon information and belief, Dr. Massey also later had a telephone conversation with Mr. Tappan during which Dr. Massey reiterated and confirmed the substance of his earlier e-mail and again threatened that Defendant OrthoSC's group, affiliation, and network of doctors would immediately pull all of their surgical cases from the Grand Strand Regional Medical Center hospital facility and would take those cases to different hospitals or facilities that compete with Defendants HCA-PS and HCA if they proceeded to recruit any more orthopedic surgeons to the geographic and market areas serviced by Defendant OrthoSC's member doctors or if they proceeded with the continuation of the GME program.

42. Upon information and belief, during these communications above-referenced, Defendant Massey also stated and represented to Mr. Tappan words to the effect that Defendant OrthoSC and its member doctors "did not want to be training their competition" and that the GME program threatened Defendant OrthoSC's monopoly in the relevant market in Myrtle Beach, Conway, and Murrells Inlet.

43. Defendant Massey made it clear to Mr. Tappan that he and Defendant OrthoSC were acting to protect and maintain their monopoly on orthopedic surgery services in the relevant market in the Myrtle Beach, Conway, and Murrells Inlet areas and were acting to prevent or thwart competition from entering or coming to those markets. Defendants Massey and OrthoSC did not want more orthopedic surgeons to come to the market in Myrtle Beach, Conway, and Murrells Inlet and compete with them. The purpose of the threats, intimidation, and coercive actions of Defendants OrthoSC and Massey was to eliminate and destroy the GME program.

44. Upon information and belief, Defendant OrthoSC's refusal to have its member doctors serve as the faculty for the GME program and its opposition to the program was arbitrary, selective, and motivated to restrain competition given that Defendant OrthoSC's member doctors have participated in graduate medical education programs for residents at the

Grand Strand Regional Medical Center in other medical specialties outside of the orthopedic surgery specialty in which Defendant OrthoSC does business.

45. Upon information and belief, Mr. Tappan later informed Dr. John Lucas (then-Vice President of Graduate Medical Education for HCA's Southeast Atlantic Division) that the orthopedic surgery residency GME program would be canceled due to the threats from Defendants OrthoSC and Massey and that all orthopedic surgery faculty recruitment must immediately stop.

46. Defendant OrthoSC's member doctors, including but not limited to Defendant Massey and others, routinely perform orthopedic surgeries and other medical procedures on patients at the Grand Strand Regional Medical Center, which generate and provide substantial fees, revenue, income, profits, and other financial benefits to Defendants HCA-PS and HCA. Upon information and belief, the fees, revenue, income, profits, and other financial benefits generated by Defendant OrthoSC's member doctors each year while performing surgeries and other medical procedures on patients at the Grand Strand Regional Medical Center and which are paid to Defendants HCA-PS and HCA involve multiple millions of dollars and constitute a substantial portion of the revenue earned by Defendants HCA-PS and HCA. As a result, Defendant OrthoSC's member doctors, including but not limited to Defendant Massey, wield and exert tremendous economic leverage, influence, and power over Defendants HCA-PS and HCA. By force of its numbers, Defendant OrthoSC possesses a peculiar power of coercion over Defendants HCA-PS and HCA.

47. Upon information and belief, Mr. Tappan and/or Dr. Lucas reported to Mr. Sims and shared with him the substance of Defendant Massey's e-mail and telephone conversation and the threats, intimidation, and economic coercion expressed therein.

48. Because of and as a direct result of Defendant Massey's e-mail to Mr. Tappan as above-described and his telephone conversation with Mr. Tappan as above-described, Defendants HCA-PS and HCA immediately canceled, terminated, and repudiated the GME program despite their prior promises, representations, and assurances to Plaintiff that they would hire the necessary faculty if Defendant OrthoSC declined or refused to participate in providing the faculty for the GME program. Defendants HCA-PS and HCA succumbed to or acquiesced in the threats, intimidation, and economic coercion by Defendants OrthoSC and Massey.

49. Defendants HCA-PS and HCA advised and told Plaintiff that the reason they were suddenly canceling, terminating, and repudiating the GME program was because of the above-described threats, intimidation, and economic coercion by Defendants Massey and OrthoSC.

50. But for Defendants Massey's and OrthoSC's threats and statements to Defendants HCA-PS and HCA and their unlawful interference with the GME program, which caused Defendants HCA-PS and HCA to prematurely cancel, terminate, repudiate, and discontinue the program, the GME program was reasonably certain to have continued as planned, Plaintiff would have completed his initial five-year term as program director of the program, and Plaintiff's position as program director thereof would have been renewed and extended beyond the initial five-year term of the contract.

51. In April of 2021, due to Defendants Massey's and OrthoSC's threats and statements above-described, Defendants HCA-PS and HCA canceled, terminated, and repudiated Plaintiff's Physician Employment Agreement without cause. The Grand Strand Regional Medical Center hospital facility has since revoked Plaintiff's hospital privileges without any explanation.

52. Defendants HCA-PS and HCA have since breached the terms of the contract and have failed or refused to pay Plaintiff all of the compensation that was due him, including but not

limited to all of the base annual salary and all of the clinical services pay owed to him under the terms of the contract.

FOR A FIRST CAUSE OF ACTION
(Intentional Interference with Contract)
(As to Defendants OrthoSC and Massey)

53. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

54. As discussed above, pursuant to the terms of the Physician Employment Agreement between Plaintiff and Defendants HCA-PS and HCA to which Plaintiff is a party and/or a direct and intended third-party beneficiary, Defendants HCA-PS and HCA contracted with and hired Plaintiff to start and serve as program director of the GME orthopedic surgery residency program at the Grand Strand Regional Medical Center hospital facility, under which Plaintiff was to receive compensation including, but not limited to, a base annual salary in an amount specified in the contract, call coverage pay in an amount specified in the contract, and clinical services pay in an amount specified in the contract. The clinical services pay was to be calculated as a percentage of the overall professional services performed by or attributed to Dr. Duncan to be determined on a WRVU basis as that term is defined in the contract.

55. Defendants HCA-PS and HCA specifically promised Plaintiff the directorship for the GME program for at least five years, with that term to start in the summer of 2017. It was also reasonably anticipated and contemplated that Plaintiff's contract with Defendants HCA-PS and HCA and his directorship of the GME program would be renewed and extended for additional periods if the program was implemented as planned and if the program was not interfered with by Defendants OrthoSC and Massey.

56. Plaintiff in fact accepted and commenced employment pursuant to the above-referenced contract.

57. Defendants OrthoSC and Massey were aware of and knew about Plaintiff's contract and employment with Defendants HCA-PS and HCA and that Plaintiff was serving as program director of the GME program pursuant to said contract.

58. Defendants OrthoSC and Massey, directly and/or by the conduct and actions of their agents, servants, and/or employees, in the absence of justification, have intentionally interfered with and intentionally procured the breach, cancellation, termination, and/or repudiation of the above-referenced contract between Plaintiff and Defendants HCA-PS and HCA and have procured the cancelation, termination, and repudiation of the GME program by, among other things, refusing and declining to provide doctors to serve as faculty for the GME program; engaging in threats, intimidation, and economic coercion towards Defendants HCA-PS and HCA; making threats to Defendants HCA-PS and HCA that Defendant OrthoSC's group, affiliation, and network of doctors would immediately pull all of their surgical cases from the Grand Strand Regional Medical Center hospital facility and would take those cases to different hospitals or facilities that compete with Defendants HCA-PS and HCA if they proceeded to recruit any more orthopedic surgeons to the geographic and market areas serviced by Defendant OrthoSC's member doctors or if they proceeded with the continuation of the GME program; using threats of business retaliation to induce and compel Defendants HCA-PS and HCA to abandon, cancel, terminate, or repudiate the GME program and/or to discontinue the program; arbitrarily and selectively refusing to provide residency training to other orthopedic doctors who may or would remain in the marketplace and compete with Defendants OrthoSC and Massey; illegally boycotting the GME program; making threats to protect and maintain its monopoly on orthopedic surgery services in the relevant marketplace; making threats to restrain trade and to prevent and stifle business competition from entering or coming into the relevant marketplace; making threats to cause and induce the cancelation, termination, or repudiation of the GME

program; engaging in anti-competitive conduct and activities designed to disrupt and thwart the GME program; using their monopoly power to prevent the entry of additional orthopedic doctors in the relevant market who would compete with Defendants and provide orthopedic medical services to the general public; and harming the general public and Plaintiff by eliminating competition, reducing the availability and number of orthopedic surgeons and services in the geographic market areas of Myrtle Beach, Conway, and Murrells Inlet, and depriving patients of the quality of medical care they would receive but for the Defendants' actions.

59. Defendants OrthoSC and Massey induced and caused Defendants HCA-PS and HCA to cancel, terminate, or repudiate the GME program and/or its contractual relationship with Plaintiff. The actions of Defendants OrthoSC and Massey have prevented Plaintiff from receiving the benefits under his contract with Defendants HCA-PS and HCA and from continuing the GME program. The loss of the contract and the termination of the GME program seriously impair Plaintiff's ability to earn wages, salary, benefits, and other compensation.

60. Defendants OrthoSC and Massey intentionally committed the foregoing acts despite their knowledge of the existing contractual relationship between Plaintiff and Defendants HCA-PS and HCA.

61. Defendants OrthoSC and Massey intentionally interfered with Plaintiff's existing contractual relations with Defendants HCA-PS and HCA without justification, for an improper purpose, and by improper methods. Their actions constitute threats of unlawful business retaliation, monopolistic practices, and unfair business and trade practices that led to the cancelation, termination, or repudiation the GME program and the termination of Plaintiff's contract with Defendants HCA-PS and HCA.

62. As a proximate result of Defendants OrthoSC's and Massey's intentional interference with Plaintiff's contract with Defendants HCA-PS and HCA, Plaintiff has suffered

and will continue to suffer in the future actual, compensatory, consequential, special, and incidental damages, including, but not limited to, the loss of compensation, wages, salary, and other benefits; the loss of the GME program and Plaintiff's wages, salary, benefits, and other compensation to be paid therefrom; loss of income, revenue, and/or profits; the loss of property, assets, and opportunities; injury to professional standing, reputation, and goodwill; and prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show.

63. In doing the acts alleged above, Defendants OrthoSC and Massey acted willfully, maliciously, recklessly, and/or wantonly for the purpose of causing injury to Plaintiff. As a result, Plaintiff is entitled to an award of punitive damages against said Defendants in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Intentional Interference with Prospective Economic Advantage)
(As to Defendants OrthoSC and Massey)

64. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

65. Defendants OrthoSC and Massey were aware of and knew about Plaintiff's contract with Defendants HCA-PS and HCA and that Plaintiff was serving as program director of the GME program pursuant to said contract; that Plaintiff was to receive compensation for serving as program director of the GME program; and that it was reasonably probable that the GME program would continue for many years in the future and that Plaintiff's position as program director thereof would be renewed and extended if the program was implemented as planned without interference by Defendants OrthoSC and Massey.

66. Plaintiff had a reasonable expectation of continuing the GME program and of having his position as director of the program renewed or extended beyond the initial five-year

term of the contract if the program had been implemented as planned without interference by Defendants OrthoSC and Massey. Defendants OrthoSC and Massey were aware of this reasonable expectation.

67. Defendants OrthoSC and Massey, directly and/or by the conduct and actions of their agents, servants, and/or employees, in the absence of justification, have intentionally interfered with Plaintiff's prospective contractual relations with Defendants HCA-PS and HCA, have caused Defendants HCA-PS and HCA not to enter into or to continue their relationship with Plaintiff, and have procured the discontinuation of the GME program by, among other things, refusing and declining to provide doctors to serve as faculty for the GME program; engaging in threats, intimidation, and economic coercion towards Defendants HCA-PS and HCA; making threats to Defendants HCA-PS and HCA that Defendant OrthoSC's group, affiliation, and network of doctors would immediately pull all of their surgical cases from the Grand Strand Regional Medical Center hospital facility and would take those cases to different hospitals or facilities that compete with Defendants HCA-PS and HCA if they proceeded to recruit any more orthopedic surgeons to the geographic and market areas serviced by Defendant OrthoSC's member doctors or if they proceeded with the continuation of the GME program; using threats of business retaliation to induce and compel Defendants HCA-PS and HCA to abandon, cancel, terminate, or repudiate the GME program and/or to discontinue the program; arbitrarily and selectively refusing to provide residency training to other orthopedic doctors who may or would remain in the marketplace and compete with Defendants OrthoSC and Massey; illegally boycotting the GME program; making threats to protect and maintain its monopoly on orthopedic surgery services in the relevant marketplace; making threats to restrain trade and to prevent and stifle business competition from entering or coming into the relevant marketplace; making threats to cause and induce the cancelation, termination, or repudiation of the GME

program; engaging in anti-competitive conduct and activities designed to disrupt and thwart the GME program; used their monopoly power to prevent the entry of additional orthopedic doctors in the relevant market who would compete with Defendants and provide orthopedic medical services to the general public; and harming the general public and Plaintiff by eliminating competition, reducing the availability and number of orthopedic surgeons and services in the geographic market areas of Myrtle Beach, Conway, and Murrells Inlet, and depriving patients of the quality of medical care they would receive but for the Defendants' actions.

68. Defendants OrthoSC and Massey intentionally interfered with Plaintiff's prospective contractual relations without justification, for an improper purpose, and by improper methods. Their actions constitute threats of unlawful business retaliation, monopolistic practices, and unfair business and trade practices that led to the discontinuation of the GME program and the termination and nonrenewal of Plaintiff's contract with Defendants HCA-PS and HCA.

69. As a proximate result of Defendants OrthoSC's and Massey's intentional interference with Plaintiff's prospective contractual relations with Defendants HCA-PS and HCA and the discontinuation of the GME program, Plaintiff has suffered and will continue to suffer in the future actual, compensatory, consequential, special, and incidental damages, including, but not limited to, the loss of future compensation, wages, salary, and other benefits; the loss of the GME program and Plaintiff's wages, salary, benefits, and other compensation to be paid therefrom; loss of income, revenue, and/or profits; the loss of property, assets, and opportunities; injury to professional standing, reputation, and goodwill; and prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show.

70. In doing the acts alleged above, Defendants OrthoSC and Massey acted willfully, maliciously, recklessly, and/or wantonly for the purpose of causing injury to Plaintiff. As a

result, Plaintiff is entitled to an award of punitive damages against said Defendants in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)
(As to Defendants OrthoSC and Massey)

71. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

72. Defendants OrthoSC and Massey are “persons” as defined in S.C. CODE ANN. § 39-5-10(a).

73. The conduct and actions of Defendants OrthoSC and Massey as above-described constitute “trade or commerce” within the meaning of S.C. CODE ANN. § 39-5-10 *et seq.*

74. Upon information and belief, the conduct and actions of Defendants OrthoSC and Massey as above-described were committed pursuant to and as part of their normal business practices and policies and involve repetitive conduct. Defendant Massey is a licensed medical doctor subject to the laws and regulations of the State of South Carolina and Defendant OrthoSC is comprised of a group of medical doctors specializing in orthopedic medicine. Said defendants are regularly engaged in the business of treating medical patients and providing orthopedic services to patients in the State of South Carolina and advertising and marketing such services to the general public.

75. Upon information and belief, Defendant Massey is a principal, member, officer, director, manager, shareholder, or other person in active control of the activities of Defendant OrthoSC and knew of and participated in, authorized, and/or acquiesced in the acts or practices alleged herein-above and, therefore, is personally liable for said entity’s violation of the UTPA.

76. The conduct and actions of Defendants OrthoSC and Massey as above-described adversely impact upon and affect the public interest in that the potential for repetition is present

when they deal with other members of the general public, including existing or potential competitors. The practices as above-described are unfair, deceptive, capable of recurring, and have reoccurred. Defendants OrthoSC and Massey knowingly and intentionally threatened to discontinue doing business with HCA-PS and HCA and to take their business to competitors of HCA-PS and HCA if they continued to pursue the GME program. The practice of employing threats, intimidation, undue influence, and/or coercion to induce and cause HCA-PS and HCA to discontinue the GME program and to refrain from training and hiring medical doctors who would compete with Defendants OrthoSC and Massey harms the general public and the public interest by eliminating or reducing competition in the relevant marketplace, by eliminating or reducing the options available to patients seeking or needing orthopedic medical services, by reducing the number of competent medical doctors and medical providers who offer orthopedic services in the relevant market, by depriving patients of the quality of medical care they would receive but for the Defendants' actions, by artificially inflating medical costs and prices for patients in the relevant market, and by allowing Defendants OrthoSC and Massey to monopolize orthopedic medical services in the relevant market. Upon information and belief, Defendants OrthoSC and Massey have engaged in similar conduct in the past or will engage in similar conduct in the future.

77. Defendants OrthoSC's and Massey's practice of employing threats, retaliation, intimidation, undue influence, and economic duress through a scheme to cause HCA-PS and HCA to discontinue the GME program and to arbitrarily and selectively refrain from training and hiring medical doctors who would compete with Defendants OrthoSC and Massey is unfair, deceptive, oppressive, offensive to public policy, and capable of recurring.

78. The conduct and actions of Defendants OrthoSC and Massey as above-described constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct

of a trade or commerce within the meaning of S.C. CODE ANN. § 39-5-20(a). Said defendants knowingly participated, either as direct wrongdoers or as aiders and abettors, in the conduct constituting a violation of the Act.

79. The conduct and actions of Defendants OrthoSC and Massey as above-described constitute willful and knowing violations of S.C. CODE ANN. § 39-5-20, in that they knew or should have known that their conduct violated the Act. S.C. CODE ANN. § 39-5-140(a), (d). A person of ordinary prudence engaged in trade or commerce, through the exercise of due diligence, could have and should have ascertained that the above-described conduct violates the Act.

80. The conduct and actions of Defendants OrthoSC and Massey as above-described caused Plaintiff to suffer an ascertainable loss of money and property including, but not limited to, loss of revenue and/or profits, lost business, injury to reputation and business goodwill, impairment of the marketability of the Plaintiff's services, attorney's fees and costs, along with such other actual, consequential, special, and incidental damages as the evidence may show, plus his costs and expenses incurred in bringing this action and pre-judgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A). Plaintiff is, therefore, entitled to triple his actual damages, costs, reasonable attorney's fees, and such other relief as to the Court seems necessary and proper. S.C. CODE ANN. § 39-5-140(a), (d).

FOR A FOURTH CAUSE OF ACTION
(Civil Conspiracy)
(As to Defendants OrthoSC and Massey)

81. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

82. Defendants OrthoSC and Massey have combined with other entities, corporations, and/or persons, including but not limited to with each other, with other member doctors of

Defendant OrthoSC, and/or other third parties, for the purpose and intent of committing an unlawful act or a lawful act by unlawful means; restraining competition and trade; continuing or maintaining their monopoly on orthopedic surgery services in the relevant market in the Myrtle Beach, Conway, and Murrells Inlet areas; causing the cancelation, termination, or discontinuation of the GME program; and causing injury and damage to Plaintiff.

83. In furtherance of this combination and conspiracy, and with the purpose of and intent of restraining and destroying competition and causing harm or injury to Plaintiff, Defendants OrthoSC and Massey have committed and engaged in overt acts, including but not limited to the following:

- a. Refusing and declining to provide doctors to serve as faculty for the GME program;
- b. Engaging in threats, intimidation, and economic coercion towards Defendants HCA-PS and HCA;
- c. Making threats to Defendants HCA-PS and HCA that Defendant OrthoSC's group, affiliation, and network of doctors would immediately pull all of their surgical cases from the Grand Strand Regional Medical Center hospital facility and would take those cases to different hospitals or facilities that compete with Defendants HCA-PS and HCA if they proceeded to recruit any more orthopedic surgeons to the geographic and market areas serviced by Defendant OrthoSC's member doctors or if they proceeded with the continuation of the GME program;
- d. Using threats of business retaliation to induce and compel Defendants HCA-PS and HCA to abandon, cancel, terminate, or repudiate the GME program and/or to discontinue the program;
- e. Interfering with the GME program and Plaintiff's work as program director of the program;
- f. Arbitrarily and selectively refusing to provide residency training to other orthopedic doctors who may or would remain in the marketplace and compete with Defendants OrthoSC and Massey;
- g. Illegally boycotting the GME program;
- h. Making threats to Defendants HCA-PS and HCA to protect and maintain their monopoly on orthopedic surgery services in the relevant marketplace;

- i. Making threats to Defendants HCA-PS and HCA to restrain trade and to prevent and stifle business competition from entering or coming into the relevant marketplace;
- j. Making threats to Defendants HCA-PS and HCA to cause and induce the cancelation, termination, or repudiation of the GME program;
- k. Engaging in anti-competitive conduct and activities designed to disrupt and thwart the GME program;
- l. Using their monopoly power to prevent the entry of additional orthopedic doctors in the relevant market who would compete with Defendants and provide orthopedic medical services to the general public; and
- m. Harming the general public and Plaintiff by eliminating competition, reducing the availability and number of orthopedic surgeons and services in the geographic market areas of Myrtle Beach, Conway, and Murrells Inlet, and depriving patients of the quality of medical care they would receive but for the Defendants' actions.

84. As a direct and proximate result of the afore-mentioned combination and conspiracy, Plaintiff has suffered and will continue to suffer in the future special damages, including, but not limited to, injury to Plaintiff's occupation, career, and professional advancement; humiliation; emotional distress; stress; inconvenience; lost business opportunities; denial of and/or diminished professional standing and reputation; the loss of future compensation, wages, salary, and other benefits; the loss of the GME program and Plaintiff's wages, salary, benefits, and other compensation to be paid therefrom; loss of income, revenue, and/or profits; the loss of property, assets, and opportunities; injury to professional standing, reputation, and goodwill; and prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show.

85. In doing the acts alleged above, Defendants OrthoSC and Massey acted willfully, maliciously, recklessly, and/or wantonly for the purpose of causing injury to Plaintiff. As a result, Plaintiff is entitled to an award of punitive damages against said Defendants in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)
(As to Defendants HCA-PS and HCA)

86. Plaintiffs hereby incorporate all preceding paragraphs by reference as if specifically restated herein.

87. Defendants HCA-PS and HCA falsely represented, concealed, and/or failed to disclose to the Plaintiff the truth regarding their ability to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the GME program, their commitment to the GME program and to have Plaintiff in charge of the program, and their willingness or ability to hire their own faculty for the GME program if Defendant OrthoSC declined or refused to participate in providing the faculty for the program for any reason.

88. Defendants HCA-PS and HCA falsely represented to Plaintiff that they were fully committed to implement and continue the GME program, that they would have Plaintiff direct it, and that they could secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program or, if that did not come to fruition for any reason, they would hire their own faculty for the program.

89. Defendants HCA-PS and HCA falsely represented to Plaintiff their ability, plan, and intent to implement and continue the GME program, to have Plaintiff direct the program, to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program, and to hire their own faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty for the program for any reason.

90. Defendants HCA-PS and HCA made these misrepresentations to induce Plaintiff to leave Boston and to forego other academic orthopedic surgery opportunities and offers, to move and relocate his permanent residence to Myrtle Beach, to accept the position as program

director of the GME program, to enter and execute the Physician Employment Agreement, and to commence and continue his work with the GME program.

91. At the time of said Defendants' representations and assurances to the Plaintiff, Defendants HCA-PS and HCA knew they could not secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the GME program, they knew they would not or could not hire faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty, and they knew they would discontinue the GME program if Defendant OrthoSC refused to provide the faculty for the program.

92. Defendants HCA-PS and HCA had a pecuniary interest in making the above-referenced misrepresentations and in concealing and/or failing to disclose the true facts regarding their ability to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the GME program, their ability or commitment to hire faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty for any reason, and their commitment to the GME program and to have Plaintiff direct the program. Induced by said Defendants' misrepresentations, concealment, and/or failure to disclose, Plaintiff left Boston and turned down other academic orthopedic surgery opportunities and offers for the purpose of starting the GME program in Myrtle Beach, he moved and relocated his permanent residence to Myrtle Beach, he accepted the position as program director of the GME program, he entered and executed the Physician Employment Agreement, and he commenced and continued his work with the GME program.

93. Defendants HCA-PS and HCA owed a duty of care to see that they communicated truthful information to Plaintiff. The parties understood that Plaintiff was relying on said Defendants' alleged superior ability, knowledge, expertise, and experience with respect to these matters.

94. Defendants HCA-PS and HCA breached their duty of care to Plaintiff by failing to exercise due care and by negligently making the above-referenced false representations to Plaintiff.

95. At the time that Defendants HCA-PS and HCA made the above-referenced false representations to Plaintiff and when Plaintiff entered into the contract with said Defendants, the Plaintiff did not know, and had no reason to believe, that said Defendants had misrepresented, concealed, and/or failed to disclose material facts regarding their ability, plan, and intent to implement and continue the GME program, to have Plaintiff direct the program, to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program, and to hire their own faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty for the program for any reason.

96. Plaintiff relied upon Defendants HCA-PS and HCA to disclose all material facts known to them regarding their ability, plan, and intent to implement and continue the GME program, to have Plaintiff direct the program, to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program, and to hire their own faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty for the program for any reason. Plaintiff relied upon said Defendants' misrepresentations, concealment, and/or failure to disclose the true facts in deciding to leave and resign his position with Boston University, to move and relocate his permanent residence to Myrtle Beach, to accepted the position as program director of the GME program, to enter and execute the Physician Employment Agreement, and to continue his work with the GME program. Had Defendants HCA-PS and HCA disclosed the truth regarding their ability, plan, and intent to implement and continue the GME program, to have Plaintiff direct the program, to secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program,

and to hire their own faculty for the program if Defendant OrthoSC declined or refused to participate in providing the faculty for the program for any reason, Plaintiff would not have accepted the program directorship of the GME program and turned down other academic orthopedic surgery offers, moved and relocated his permanent residence to Myrtle Beach, accepted the position as program director of the GME program, entered or executed the Physician Employment Agreement, or commenced or continued his work with the GME program.

97. Plaintiff's reliance upon the misrepresentations, concealment, and/or failure to disclose by Defendants HCA-PS and HCA was justified and reasonable.

98. As a direct and proximate result of Plaintiff's reliance on the negligent misrepresentations, concealment, and/or failure to disclose by Defendants HCA-PS and HCA as set forth herein, Plaintiff has suffered pecuniary losses including, but not limited to, actual, compensatory, consequential, special, and incidental damages; loss of past and future compensation, wages, salary, and other benefits; the loss of the GME program and Plaintiff's wages, salary, benefits, and other compensation to be paid therefrom; loss of income, revenue, and/or profits; the loss of property, assets, and opportunities; injury to professional standing, reputation, and goodwill; and prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show, and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact.

99. In doing the acts alleged above, Defendants HCA-PS and HCA acted willfully, wantonly, and/or recklessly for the purpose of causing injury to the Plaintiff. As a result, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing)
(As to Defendants HCA-PS and HCA)

100. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

101. As discussed above, Plaintiff entered the Physician Employment Agreement with Defendants HCA-PS and HCA, the terms of which are described herein-above.

102. The contract between the parties included an implied covenant of good faith and fair dealing which required that Defendants HCA-PS and HCA act in all respects in good faith toward the Plaintiff.

103. Defendants HCA-PS and HCA breached the Physician Employment Agreement with the Plaintiff and breached the implied covenant of good faith and fair dealing by, *inter cilia*, defaulting on their obligations under the contract and failing to pay Plaintiff all of the base annual salary and all of the clinical services pay that was owed to him under the terms of the contract.

104. As a direct and proximate result of the breaches of the Physician Employment Agreement by Defendants HCA-PS and HCA and their breaches of the implied covenant of good faith and fair dealing, Plaintiff has suffered actual and special damages, including, but not limited to, loss of fees, salary, wages, pay, and compensation due under the contract, prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show, and his costs and expenses incurred in the prosecution of this action.

FOR A SEVENTH CAUSE OF ACTION
(Promissory Estoppel)
(As to Defendants HCA-PS and HCA)

105. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

106. As discussed above, Defendants HCA-PS and HCA repeatedly and unambiguously promised and assured Plaintiff that they were fully committed to implement and continue the GME program, that they would have Plaintiff direct it, and that they could secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program or, if that did not come to fruition for any reason, they would hire their own faculty for the program.

107. In making these promises and assurances, the officers, employees, and agents of Defendants HCA-PS and HCA were acting as officers, employees, or agents of said Defendants, they possessed proper authority to make the promises and assurances, and they were acting within the proper scope of their authority in making the promises and assurances to Plaintiff.

108. Based on the unambiguous promises or assurances by Defendants HCA-PS and HCA, Plaintiff justifiably believed and was lead to believe by Defendants HCA-PS and HCA that they were fully committed to implement and continue the GME program, that they would have Plaintiff direct it, and that they could secure or obtain Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program or, if that did not come to fruition for any reason, they would hire their own faculty for the program.

109. Plaintiff had no knowledge of and lacked the means to know that any of the information, promises, or assurances described above were untrue, mistaken, or incorrect in any manner. Defendants HCA-PS and HCA did not notify Plaintiff of any reason to believe that said Defendants were not fully committed to implement and continue the GME program, that they would not have Plaintiff direct it, and that they could not or would not secure or obtain

Defendant OrthoSC's agreement to provide doctors to serve as faculty for the program or, if that did not come to fruition for any reason, they would not hire their own faculty for the program.

110. Plaintiff has justifiably relied upon Defendants HCA-PS's and HCA's promises, assurances, and actions and the truthfulness and accuracy of the information described above and such reliance was expected and foreseeable by said Defendants.

111. Plaintiff made a prejudicial or detrimental change in position based on Defendants HCA-PS's and HCA's promises, assurances, and actions and has been injured thereby in that Plaintiff has since left Boston, he did not accept or take advantage of the other academic orthopedic surgery opportunities and offers available to him, he moved and relocated his permanent residence to Myrtle Beach, he accepted the position as program director of the GME program, he entered and executed the Physician Employment Agreement, and he continued his work with the GME program. Based on and because of the Defendants HCA-PS's and HCA's promises, assurances, and actions, Plaintiff detrimentally changed his position, performed substantial work on the GME program, spent considerable time and effort on the program, and performed valuable tasks and services for the program. Plaintiff worked on the GME program for over a year and a half.

112. Plaintiff's reliance upon Defendants HCA-PS's and HCA's promises was expected by said Defendants and foreseeable by them.

113. In reliance upon Defendants HCA-PS's and HCA's promises described above, Plaintiff has suffered actual, compensatory, consequential, special, and incidental damages; loss of past and future compensation, wages, salary, and other benefits; the loss of the GME program and Plaintiff's wages, salary, benefits, and other compensation to be paid therefrom; loss of income, revenue, and/or profits; the loss of property, assets, and opportunities; injury to professional standing, reputation, and goodwill; and prejudgment interest at the rate of 8.75% per

annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show, and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact. Plaintiff has unjustly lost the opportunity and right to develop, implement, and continue the GME program and to realize an expected return on his agreements with said Defendants, and he is entitled to recover actual damages in such amount as he shall prove at trial.

FOR AN EIGHTH CAUSE OF ACTION
(S.C. Payment of Wages Act Violation)
(As to Defendants HCA-PS and HCA)

114. Plaintiff repeats and re-alleges each and every preceding paragraph as if each were fully repeated verbatim herein.

115. At all relevant times, Plaintiff is and was an “employee” of Defendants HCA-PS and HCA and said Defendants are and were an “employer” of Plaintiff as defined by and within the meaning of § 41-10-10(1) of the South Carolina Code.

116. At the relevant times, Defendants HCA-PS and HCA employed five or more employees at all times during the preceding twelve months.

117. Following Plaintiff’s performance of his work in accordance with his employment contract with Defendants HCA-PS and HCA, Defendants HCA-PS and HCA have failed and/or refused to pay Plaintiff the wages, salary, benefits, and other compensation that he earned for his work, including but not limited to fees, salary, wages, pay, and compensation due under the terms of the Physician Employment Agreement.

118. Plaintiff has demanded payment of all wages, salary, benefits, and other compensation due him.

119. Defendants HCA-PS and HCA violated the South Carolina Payment of Wages Act by failing and/or refusing to pay Plaintiff the full amount of his wages, salary, benefits, and

other compensation earned, including but not limited to fees, salary, wages, pay, and compensation due under the terms of the Physician Employment Agreement, which conduct violates §§ 41-10-30, -40, -50, and -60 of the South Carolina Code.

120. As a direct and proximate cause of Defendants HCA-PS and HCA wrongfully withholding Plaintiff's wages, salary, benefits, and other compensation after such amounts had been earned and became due, Plaintiff has suffered actual and compensatory damages and has been required to retain attorneys to assist in recovering money owed to him.

121. As a consequence of Defendants HCA-PS's and HCA's actions and violations of the Payment of Wages Act, Plaintiff is entitled to payment of the full amount of his unpaid wages, salary, benefits, and other compensation due him or wrongfully withheld from him, plus treble damages, prejudgment interest, costs, and reasonable attorney's fees.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, or in the alternative, as follows:

- (a) awarding actual, compensatory, special, consequential, and incidental damages as determined by the trier of fact;
- (b) awarding punitive, exemplary, statutory, and/or treble damages as permitted by law;
- (c) awarding reasonable attorneys' fees, costs, and expenses incurred in the prosecution of this action;
- (d) awarding the Plaintiffs pre-judgment and post-judgment interest as allowed by law; and
- (e) awarding such other and further legal and equitable relief which the Court deems necessary and proper.

ROSEN HAGOOD, LLC

/s/ Daniel F. Blanchard, III

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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
November 11, 2021.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action for all issues so triable.

EXHIBIT A

Copy of “Physician Employment Agreement” signed by Plaintiff Dr. Scott F. Duncan, MD and dated May 1, 2017, is being submitted *in camera*.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER COMPELLING
ORTHOSC, LLC, a South Carolina limited	)	ARBITRATION OF CERTAIN
liability company; DR. GENE M. MASSEY,	)	CLAIMS AND STAYING THE
M.D.; GRAND STRAND SURGICAL	)	CLAIMS PENDING ARBITRATION
SPECIALISTS, LLC, a South Carolina limited	)	
liability company; HCA PHYSICIAN	)	
SERVICES, INC., a Tennessee corporation;	)	
GRAND STRAND REGIONAL MEDICAL	)	
CENTER, LLC, a Delaware limited liability	)	
company; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
	)	

On November 11, 2021, Plaintiff filed the Summons and Complaint in this action against the above-captioned Defendants. On January 14, 2022, Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. filed a Motion to Stay the Action and Compel Arbitration or, in the Alternative, Motion to Dismiss Pursuant to SCRCP 12(b)(6). Those Defendants seek to compel arbitration based on an arbitration provision contained in the Physician Employment Agreement dated May 2, 2017.

Plaintiff's counsel has advised the Court that the Plaintiff does not oppose the entry of an Order compelling arbitration of his claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. and staying his claims against said parties in this Court until the arbitration is concluded. Accordingly,

IT IS ORDERED that Plaintiff and Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. shall pursue

arbitration of Plaintiff's claims against said Defendants pursuant to the arbitration rules and procedures as called for in the Physician Employment Agreement dated May 2, 2017. The Plaintiff will file his demand for arbitration involving the above-referenced claims with the American Health Lawyers Association (AHLA) no later than thirty (30) days after entry of this Order and said claims will be administered by the AHLA pursuant to the rules and procedures established by the Alternative Dispute Resolution Service of the AHLA; and

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. are hereby stayed pending arbitration of these claims; and

IT IS FURTHER ORDERED that this Order shall not be deemed or construed to stay or affect Plaintiff's claims against any of the other Defendants in this action, which shall proceed in this Court; and

AND IT IS SO ORDERED!

Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2022.

_____, South Carolina.



Horry Common Pleas

Case Caption: Scott F Duncan VS ORTHOSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DR. SCOTT F. DUNCAN, M.D.,

Plaintiff,

v.

ORTHOSC, LLC, a South Carolina
limited liability company; DR. GENE
M. MASSEY, M.D.; and HCA
HEALTHCARE, INC., a Delaware
corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-26-07488

**DEFENDANTS ORTHOSC, LLC &
DR. GENE M. MASSEY, M.D.'S**

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER AND
STAY OF DISCOVERY
AND
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY AND COMPLIANCE WITH
ARBITRATION SUBPOENAS**

Defendants OrthoSC, LLC ("OrthoSC") and Dr. Gene M. Massey, M.D. ("Massey") (collectively, "OrthoSC Defendants") respectfully submit this memorandum in support of their motion for protective order and stay of discovery and memorandum in opposition to Plaintiff Dr. Scott F. Duncan, M.D.'s ("Plaintiff") motion to compel discovery responses and to compel compliance with arbitration subpoenas. Good cause exists for this Court to grant OrthoSC Defendants' motion for a protective order and/or stay of discovery under Rule 26(c), SCRCF and, accordingly, Plaintiff's motion to compel discovery should be denied. Moreover, Plaintiff's motion to compel compliance with arbitration subpoenas should be denied as Plaintiff improperly seeks to circumvent the appropriate discovery process and cannot enforce the arbitration subpoenas in this lawsuit pursuant to state law and court rules.

BACKGROUND

I. Timeline and Procedural Posture

The pertinent facts and procedural background are set forth more fully in the prior filings and record in this matter, and more specifically in OrthoSC's Motion for Protective Order and Stay

of Discovery (filed August 25, 2022) and in OrthoSC's memorandum in support of their Motion to Dismiss Plaintiff's Amended Complaint (filed November 18, 2022).

However, for the purposes of this combined memorandum in support of OrthoSC Defendants' motion for protective order and stay of discovery and memorandum in opposition to Plaintiff's motion to compel discovery responses and to compel compliance with arbitration subpoenas (hereinafter collectively the "discovery motions"), the timeline and procedural posture is key to assessing all of the discovery motions now before the court.

Timeline:

- Plaintiff filed the original complaint on November 11, 2021.
- OrthoSC Defendants filed a motion to dismiss the complaint on January 20, 2022.
- The Court held hearings on the various pending motions on March 29, 2022 and, by Form 4 Order entered on April 1, 2022, the Court took OrthoSC Defendants' pending motion to dismiss under advisement.
- One week later, while the motion to dismiss was still under advisement, on April 8, 2022 Plaintiff filed a motion for leave to amend his complaint.
- On May 2, 2022, the Court entered a written order that, among other things, deferred ruling on OrthoSC Defendants' pending motion to dismiss the Plaintiff's complaint.
- On June 21, 2022, the Court held a hearing on Plaintiff's motion for leave to amend.
- By Form 4 Order entered the after the hearing on June 21, 2022, the Court granted Plaintiff's motion for leave to amend and found OrthoSC Defendants' motion to dismiss was moot, ordering Plaintiff's counsel to draft a written order to that effect.
- One month later, on July 21, 2022, the Court entered a twenty-two (22) page Order outlining its reasoning for, among other things, granting Plaintiff's motion to amend and for finding OrthoSC Defendants' motion to dismiss moot. It's reasoning for the mootness determination was solely: "36. Because the Court is granting Plaintiff's Motion to Amend Complaint and Plaintiff will be amending his pleading accordingly, the Motion to Dismiss filed by Defendants OrthoSC and Massey in response to Plaintiff's initial Complaint necessarily becomes moot."
- On July 22, 2022, Plaintiff served its first set of request for production and interrogatories on the OrthoSC Defendants.

- On August 10, 2022, Plaintiff filed the Amended Complaint.
- On August 15, 2022, Plaintiff obtained and served subpoenas on the OrthoSC Defendants that were issued by an arbitrator in an arbitration to which the OrthoSC Defendants are not a party.
- On August 25, 2022, OrthoSC Defendants filed:
 - o A motion to dismiss Plaintiff's Amended Complaint; and
 - o A motion for protective order and stay of discovery pending the Court's consideration of the motion to dismiss
- The next day, on August 26, 2022, Plaintiff filed a Motion to Compel Discovery Responses from OrthoSC Defendants.
- On September 8, 2022, Plaintiff filed a Motion to Compel Compliance with or Enforce Arbitration Subpoenas and/or for Order of Contempt.

Indeed, a ruling on OrthoSC Defendants' motion was deferred on several occasions, delayed by the Plaintiff's filing of a motion to amend, and eventually mooted by the Court's consideration and granting of the motion to amend. Further, Plaintiff seeks to compel discovery responses and third-party arbitration subpoena responses from the OrthoSC Defendants via motions to compel that were filed after OrthoSC filed its motion to dismiss Plaintiff's Amended Complaint.

As set forth more fully in OrthoSC's motion to dismiss and memorandum in support, all claims against the OrthoSC Defendants are still pending—and have never been afforded—12(b)(6), SCRCF review and the arguments for dismissal have not substantially changed despite Plaintiff's recent amendment. Plaintiff tries to assert claims against the OrthoSC Defendants for intentional interference with contractual relations, intentional interference with prospective economic advantage, violation of South Carolina Unfair Trade Practices Act, and civil conspiracy against OrthoSC Defendants. These claims should be dismissed given their conclusory nature,

factual implausibility, and legal insufficiency and, given the timeline of events, motions, and Court Orders in this matter, good cause exists for this Court to grant the OrthoSC Defendants' request for a protective order regarding discovery given the almost one-year ongoing dismissal challenge to the Plaintiff's claims.

LEGAL STANDARD

This Court may deny a motion to compel brought pursuant to Rule 37(a), South Carolina Rules of Civil Procedure, and "make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c)." *See* Rule 37(a), SCRPC. Moreover, Plaintiff's motion to compel discovery responses under Rule 37(a), SCRPC is subject to the condition outlined in Rule 37(d), SCRPC: the timely filing of a motion for protective order acts to toll the time for responding to the discovery requests. *See* Rule 37(d), SCRPC ("The failure to act described in this subdivision [which includes the failure to appear for a deposition or failure to respond to interrogatories or requests for production] may not be excused on the ground that the discovery sought is objectionable *unless the party failing to act has applied for a protective order as provided by Rule 26(c).*" (emphasis added).

Rule 26(c), SCRPC provides that "[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect the party from annoyance, embarrassment, oppression or undue burden or expense." Although the Rules of Civil Procedure do not specifically address a party's request to stay the proceedings, Rule 26(c) does expressly permit the court for good cause shown to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense" including an order finding

“that the discovery not be had” and “that the discovery may be had only on specified terms and conditions, including a designation of the time or place.” *See* Rule 26(c)(1)-(2), SCRCPP.

Moreover, this Court has the inherent authority to manage the conduct of proceedings and may also grant a motion seeking the stay of discovery when a dispositive motion has been filed and not yet ruled on. *See, e.g., Tilley v. United States*, 270 F. Supp. 2d 731, 734 (M.D.N.C. 2003), *aff’d*, 85 F. App’x 333 (4th Cir. 2004) (holding that a protective order under Rule 26(c) to stay discovery pending determination of party’s dispositive motion was warranted).

ARGUMENT

I. OrthoSC Defendants’ Motion for Protective Order and Stay of Discovery should be granted.

Simply put, good cause exists for an order under Rules 26(c) or 37(a), SCRCPP that protects, stays, and prevents discovery from taking place until the OrthoSC Defendants’ motion to dismiss has been resolved.

Plaintiff’s claims, particularly given the length of time that has passed since the first motion to dismiss was filed and the events culminating in this Court’s consideration of the OrthoSC Defendants’ pending motion to dismiss, have caused and continue to cause the expenditure of time, money, and resources that should not be further consumed by unnecessary and premature discovery pre-ruling on dismissal. The OrthoSC Defendants’ pending motion to dismiss has the potential to resolve some or all of Plaintiff’s claims. When combined with the mootness determination of the prior motion to dismiss, plus the length of time that has passed since the original January 2022 motion to dismiss, the OrthoSC Defendants would clearly be prejudiced¹ if

¹ Importantly, Plaintiff would suffer no prejudice by the issuance of a protective order or stay of discovery under the rules of civil procedure until the OrthoSC Defendants’ dispositive motion has been addressed. There is no emergency present in this case which necessitates that the parties be allowed to engage in discovery at this point.

required to engage in discovery at this juncture and if they were not granted a stay or protective order until the claims against them are fully ascertained and tested under Rule 12(b)(6), SCRCF. The OrthoSC Defendants have been, and would continue to be, mired in time-wasting, annoying, unduly burdensome, and unduly expensive process in order to responding to Plaintiff's lengthy and detailed Discovery Requests, and other time-consuming and expensive discovery procedures until the Court determines that the Plaintiff's claims should be allowed to go forward.

Finally, engaging in merits-based discovery prior to a decision on that motion would be wasteful and inefficient and would impose an undue burden on the OrthoSC Defendants. A stay or protective order regarding discovery pending resolution of the motion to dismiss would not significantly delay this litigation and Plaintiff would suffer no prejudice as a result. Lastly, the motion to dismiss may dispose of the claims against Dr. Massey in their entirety and discovery is neither necessary nor relevant to deciding the motion to dismiss. Therefore, the entry of a protective order and order to stay will promote "the just, speedy, and inexpensive determination" of this action. *See* Rule 1, SCRCF

II. Plaintiff's Motion to Compel Discovery and Motion to Compel Compliance with/or Enforce Arbitration Subpoenas should be denied.

A. Motion to Compel Discovery Responses (filed August 26, 2022)

In its Motion to Compel Discovery Responses, Plaintiff posits that the OrthoSC Defendants are not entitled to a protective order under Rule 26(c), SCRCF because they have not shown good cause. *See id.* at p. 5. In support of this argument, Plaintiff mischaracterizes the basis for OrthoSC Defendants' good cause showing as simply the filing of "a potentially dispositive motion pursuant to Rule 12(b)(6)." *Id.* Further, Plaintiff argues that a particularized harm must be shown to support a claim of good cause for a procreative order and that the moving party must show that it is reasonable. *Id.* Plaintiff then relies on several federal cases (both within South Carolina and from

other jurisdictions) which interpret the good cause showing and protective order standards under the inapplicable Federal Rules of Civil Procedure (*see id.* at 6), and cites to cases that confine the analysis of good cause to the “filing of a dispositive motion . . . alone” as being insufficient to obtain a stay or protective order from discovery. *See id.* at 6 – 7. That is not the circumstance here, however.

Even the cases Plaintiff relies on to challenge the motion for protective order demonstrate that the OrthoSC Defendants have made an appropriate good cause showing for this court’s review pursuant to South Carolina law. *See, e.g., Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241-42, 439 S.E.2d 852, 853-54 (1994) (explaining that “allegations of a particularized harm are usually in the form of a motion, either for a protective order or a return to a motion to compel production” and noting that “[o]nce the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must come forward and show that the information sought is both relevant and necessary to the case. When both parties meet their burden of proof, the court must weigh the opposing factors”) (internal quotations omitted). Indeed, the “particularized” requirement for good cause is not a formulaic or specific requirement, it merely requires OrthoSC Defendants to articulate—as it has done in its prior filings and this memorandum—and explain the harms that have and will continue to befall them if no protective order is entered.

Finally, Plaintiff argues he would be prejudiced to delay discovery further, even suggesting the Plaintiff himself has “suffered delay after delay” and characterizing the OrthoSC Defendants’ motion to dismiss as “successive roadblocks to basic and unobjectionable discovery.” Little response is required to this argument—any delay has been the result of Plaintiff’s motions, filings, and timing of discovery and has nothing to do with any of OrthoSC’s motions or rule-compliant

challenges to discovery after being served with it. Indeed, Plaintiff only just tried to serve discovery on the OrthoSC Defendants in the past four (4) months, and any claim made by Plaintiff of suffering prejudice or delay because of the OrthoSC Defendants is disingenuous.

B. Motion to Compel Compliance with or Enforce Arbitration Subpoenas and/or for Order of Contempt (filed September 8, 2022)

In its Motion to Compel Compliance with or Enforce Arbitration Subpoenas and/or for Order of Contempt, Plaintiff reveals its hand. Indeed, in addition to discovery in this case, Plaintiff has also attempted to serve, and now seeks to compel response to, non-party witness subpoenas to the OrthoSC Defendants that were signed by an arbitrator in an arbitration to which OrthoSC has no connection. Several former co-defendants in this lawsuit and the Plaintiff are currently engaged in arbitration of their claims and defenses, and Plaintiff is clearly attempting to weaponize both non-party discovery in the arbitration in addition to the contested civil case discovery to harass the OrthoSC Defendants, subject them to ongoing and unnecessary expense and waste of time, and for other improper purposes.

In relying on Rules 37(a)(4) and 45(e), SCRPC, and the South Carolina Arbitration Act, including S.C. Code Ann. § 15-48-80(a) Plaintiff attempts to improperly compel the OrthoSC Defendants' response over their objection to the arbitration subpoenas. While S.C. Code Ann. § 15-48-80(a) does allow an arbitrator to issue subpoenas to non-party witnesses, like the OrthoSC Defendants, the enforcement of those subpoenas shall be "in the manner provided by law for the service and enforcement of subpoenas in a civil action." However, Plaintiff seeks to enforce these subpoenas in this active litigation with the OrthoSC Defendants and, thus, has failed to comply with both the South Carolina Arbitration Act and the South Carolina Rules of Civil Procedure for enforcement of subpoenas on third-party witnesses to compel the production of documents. *See, e.g.,* Rule 45(c), SCRPC. The fact that the arbitration from which the subpoenas were issued arose

out of this current lawsuit is of no import and does not change the statutorily-required process for Plaintiff to compel a response to the same.

CONCLUSION

For the foregoing reasons, Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D. respectfully request an Order granting their motion for a protective order and stay of discovery pending a ruling on their motion to dismiss. Further, Plaintiff's motion to compel discovery responses and motion to compel compliance with or enforce arbitration subpoenas and/or for order of contempt should be denied.

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 Gene M. Massey, M.D.*

November 18, 2022
 Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
ORTHOSC, LLC, a South Carolina limited	)	
liability company; DR. GENE M. MASSEY,	)	
M.D.; GRAND STRAND SURGICAL	)	
SPECIALISTS, LLC, a South Carolina limited	)	
liability company; HCA PHYSICIAN	)	
SERVICES, INC., a Tennessee corporation;	)	
GRAND STRAND REGIONAL MEDICAL	)	
CENTER, LLC, a Delaware limited liability	)	
company; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
	)	

This matter came before the Court on November 30, 2022 for a hearing conducted via WebEx involving (1) the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Massey”) on August 25, 2022, (2) the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, (3) the Motion to Compel Discovery Responses filed Plaintiff Dr. Scott F. Duncan, M.D. (“Plaintiff”) on August 26, 2022, and (4) the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff; Charles E. Ipock, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC and Massey; and Katon E. Dawson, Jr., Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendant HCA Healthcare, Inc.

After careful consideration of the motions, pleadings, exhibits, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion to Compel Discovery Responses filed by Plaintiff on August 26, 2022 should be GRANTED, and the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 should be left to the Arbitrator's determination for the reasons stated herein.

1. OrthoSC/Massey's Motion to Dismiss Pursuant to S.C. R. CIV. PRO. 12(b)(6):

Plaintiff's Amended Complaint filed on August 10, 2022, avers claims against OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of South Carolina Unfair Trade Practices Act (SCUTPA), S.C. CODE ANN. § 39-5-10 *et seq.*, and (4) Civil Conspiracy. Defendants OrthoSC and Massey have moved to dismiss all of the causes of action pursuant to S.C. R. CIV. PRO. 12(b)(6).

In considering a Rule 12(b)(6) motion to dismiss, the trial court must base its ruling solely on "the allegations contained within the four corners of the complaint." Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011). "[A]t the pleadings stage, the factual allegations made by the plaintiff in regards to his claim are taken as true." Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 560, 521 S.E.2d 153, 157 (1999). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007). "[T]he court must regard all properly pleaded factual

allegations as admitted” and “any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment.” Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350, 353 (Ct. App. 2000). A complaint is sufficient if it states “*any* cause of action or it appears the plaintiff (or petitioner) is entitled to *any relief whatsoever*.” Baldwin v. Sanders, 266 S.C. 394, 223 S.E.2d 602 (1976) (emphasis added).

“The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id. (citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)). “‘At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice’ to withstand a motion to dismiss.” Town of Arcadia Lakes v. S.C. Dep’t of Health & Env’t Control, 404 S.C. 515, 745 S.E.2d 385, 392 (Ct. App. 2013).

Viewed in the light most favorable to the Plaintiff, Plaintiff’s Amended Complaint alleges sufficient facts to constitute causes of action against Defendants OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of the SCUTPA, and (4) Civil Conspiracy. Accordingly, the Motion to Dismiss must be denied.

2. OrthoSC/Massey’s Motion for Protective Order and Stay of Discovery:

Defendants OrthoSC and Massey moved for a protective order and a stay of discovery pending the resolution of their Motion to Dismiss. As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. Defendants OrthoSC and Massey have not shown good cause to grant a protective order or to stay discovery once their Motion to Dismiss is disposed of. Accordingly, the Motion for Protective Order and Stay of Discovery must be denied.

3. Plaintiff's Motion to Compel Discovery Responses:

Plaintiff served Interrogatories and Requests for Production of Documents upon Defendants OrthoSC and Massey on July 22, 2022. Under the rules, Defendants OrthoSC's and Masseys' responses to these discovery requests became due on August 26, 2022. Defendants OrthoSC and Massey did not provide any of the information or documents sought by Plaintiff. Rather, on August 25, 2022, Defendants OrthoSC and Massey served objections to Plaintiff's discovery requests. Defendants OrthoSC and Massey objected and argued it would be premature and improper to require them to respond to Plaintiff's requests until their Motion to Dismiss is resolved.

As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. The objections made by Defendants OrthoSC and Massey to Plaintiff's Interrogatories and Requests for Production of Documents are overruled. Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and Requests for Production of Documents. Accordingly, Plaintiff's Motion to Compel Discovery Responses is granted.

4. Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt:

In addition to serving Interrogatories and Requests for Production upon Defendants OrthoSC and Massey in this lawsuit, Plaintiff also issued subpoenas *duces tecum* to Defendants OrthoSC and Massey on August 3, 2022.

Defendants OrthoSC and Massey are not parties to the arbitration. Because the non-party subpoenas were issued in a pending arbitration, the Arbitrator should be the one with authority to enforce those subpoenas in the first instance. This Court finds that it does not have the authority to

compel Defendants OrthoSC and Massey to comply with the subpoenas at this time. S.C. CODE ANN. § 15-48-80(a). Accordingly, Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt is left to the determination of the Arbitrator. Accordingly,

IT IS ORDERED that the Motion to Dismiss Amended Complaint pursuant to S.C. R. CIV. PRO. 12(b)(6) filed by Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D. on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion to Compel Discovery Responses filed by Plaintiff Dr. Scott F. Duncan, M.D. on August 26, 2022 is hereby GRANTED and Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and produce the documents or things requested in Plaintiff's Requests for Production of Documents no later than thirty (30) days from entry of this Order; and

IT IS FURTHER ORDERED that the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 is hereby left to the determination of the Arbitrator; and

AND IT IS SO ORDERED!

Kristi F. Curtis
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2023.

_____, South Carolina.



Horry Common Pleas

Case Caption: Scott F Duncan MD VS OrthoSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	MOTION TO PARTIALLY ALTER
vs.	)	OR AMEND ORDER
	)	
ORTHOSC, LLC, a South Carolina limited	)	
liability company; DR. GENE M. MASSEY,	)	
M.D.; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
_____	)	

PLEASE TAKE NOTICE THAT the Petitioner Scott F. Duncan, M.D. ("Petitioner"), through the undersigned attorneys, pursuant to S.C. R. CIV. PRO. 54 and 59(e), hereby moves the Court to alter or amend portions of the Court's Order filed on February 24, 2023, so as to compel compliance with or enforce the document subpoenas issued by the Arbitrator to Respondents OrthoSC, LLC ("OrthoSC") and Dr. Gene M. Massey, M.D. ("Dr. Massey"), and to order and require OrthoSC and Dr. Massey to fully comply with the Arbitrator's subpoenas and to produce the documents described therein. A copy of the Court's February 24, 2023 Order is attached as "Exhibit A." See "Exhibit A" attached hereto.

In support of the motion, Petitioner will show as follows:

1. On April 1, 2022, after this action was commenced, the Court ordered that Petitioner's claims against Defendants Grand Strand Surgical Specialists, LLC ("GSSS"); Grand Strand Regional Medical Center, LLC ("GSRMC"); and HCA Physician Services, Inc. ("HCA-PS") be sent to arbitration. See 4.1.22 Order. The Order provides that the arbitration shall be conducted in accordance with the rules of the American Health Lawyers Association (AHLA). Id. p.2. The Order further stays the Petitioner's claims against Defendants GSSS, GSRMC, and HCA-

PS pending arbitration of these claims, but also provides it “shall not be deemed or construed to stay or affect Plaintiff’s claims against any of the other Defendants in this action, which shall proceed in this Court.” Id.

2. Notwithstanding the arbitration involving Defendants GSSS, GSRMC, and HCA-PS, Petitioner’s claims against Defendants OrthoSC and Massey are still proceeding in this Court and are not part of the separate arbitration.

3. The arbitration involving Defendants GSSS, GSRMC, and HCA-PS has been assigned AHLA Claim No. 7029. Henry L. Parr, Jr. has been appointed as the Arbitrator.

4. Section 5.8(a) of the AHLA’s Rules for Employment Arbitration provides:

To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena.

5. S.C. CODE ANN. § 15-48-80(a) further provides:

(a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

S.C. CODE ANN. § 15-48-80(a).

6. On August 3, 2022, pursuant to this authority granted under the AHLA’s rules and § 15-48-80(a), the Arbitrator issued document subpoenas to OrthoSC and Dr. Massey, which were served on them by certified mail on August 15, 2022. The due date for compliance with the subpoenas was September 2, 2022. Neither OrthoSC nor Dr. Massey responded to the subpoenas or timely served any objections. OrthoSC and Dr. Massey failed to produce or provide any of the documents sought in either of the subpoenas issued by the Arbitrator.

7. On September 8, 2022, pursuant to Section 5.8 of the AHLA's Rules, S.C. CODE ANN. § 15-48-80(a), and S.C. R. CIV. PRO. 37 and 45, Petitioner moved this Court to compel compliance with and to enforce the Arbitrator's document subpoenas.

8. On February 24, 2023, following a hearing, the Court entered an Order disposing of several motions, including Petitioner's Motion to Compel Compliance with or Enforce Arbitration Subpoenas and/or for Order of Contempt filed on September 8, 2022. With respect to that motion, the Court held that "[b]ecause the non-party subpoenas were issued in a pending arbitration, the Arbitrator should be the one with authority to enforce those subpoenas in the first instance." See 2.24.23 Order p.4. The Court further ruled "that it does not have the authority to compel Defendants OrthoSC and Massey to comply with the subpoenas at this time." Id. Accordingly, the Court held that the Petitioner's motion "is left to the determination of the Arbitrator." Id.

9. Since receiving the Court's Order, Petitioner has submitted same to the Arbitrator and sought enforcement of the August 3, 2022, subpoenas in the arbitration proceeding. However, the Arbitrator has issued an order finding that he lacks authority to enforce the subpoenas. See "Exhibit B" attached hereto. The Arbitrator ruled that he does not have the authority to enforce the subpoenas under § 15-48-80(a). Notably, the Arbitrator does not have practical authority to order law enforcement or court personnel to confine, fine, or sanction any nonparty to the arbitration due to their noncompliance with or disregard of an order or subpoena issued in the arbitration.

10. Although there is no South Carolina case law applying § 15-48-80(a), that section is taken verbatim from the Uniform Arbitration Act (UAA) § 7 (1956). Like South Carolina, numerous other states have enacted this same provision as part of their arbitration statutes. These states have held the court has authority to enforce the arbitrator's subpoenas. See, e.g., May Const.

Co. v. Thompson, 20 S.W.3d 345, 352 (Ark. 2000) (holding the circuit court acted within its jurisdiction by issuing orders to enforce the arbitrator's discovery orders under Arkansas's version of UAA § 7) (citing ARK. CODE ANN. § 16–108–207(a); Loc. 447 of Int'l Union of Painters & Allied Trades v. Feaker Painting, Inc., 788 N.W.2d 398 (Iowa Ct. App. 2010) (applying Iowa's version of UAA § 7 and affirming district court's order enforcing the arbitrator's subpoena *duces tecum* issued to nonparty to the arbitration proceeding) (citing IOWA CODE ANN. § 679A.7); Drivers, Chauffeurs & Helpers Loc. Union No. 639 v. Seagram Sales Corp., 531 F. Supp. 364, 366 (D.D.C. 1981) (“The [UAA] provides for the issuance of subpoenas by an arbitrator to non-party witnesses at an arbitration proceeding, to compel their testimony of the production of documents. The Act also authorizes either the arbitrator or a party to seek enforcement of the subpoenas in the Superior Court in the event of noncompliance.”) (citing D.C. LAW 1-117 § 8(a)); Matahen v. Sehwait, No. PAS-L-895-19, 2019 WL 11729634, at *1 (N.J. Super. Ct. Apr. 17, 2019) (Trial court entered order enforcing arbitration panel's subpoenas to nonparties for production of documents based on New Jersey's version of UAA § 7.) (citing N.J. Stat. Ann. § 2A:23B-17); Cotter v. Shearson Lehman Hutton, 546 N.Y.S.2d 319, 321 (N.Y. Sup. Ct. 1989) (holding that issuer of subpoena in arbitration may apply to trial court to enforce the subpoena).

11. Petitioner has not been able to locate any decision from any court in the country holding that an arbitrator has authority to enforce its own subpoenas under UAA § 7. In City of Philadelphia v. Fraternal Ord. of Police Lodge No. 5, 932 A.2d 274 (Pa. Commw. Ct. 2007), aff'd sub nom. City of Philadelphia v. Fraternal Ord. of Police Lodge No. 5 (Breary), 985 A.2d 1259 (Pa. 2009), the Court expressly held “that the proper procedure for enforcing subpoenas issued by an ... arbitrator lies with the applicable court of common pleas, and not with the arbitrator.” Id. at 286. The Court said that although the arbitration act “authorizes arbitrators to issue subpoenas, it

does *not* give them authority to enforce them” and “[t]hat authority lies with the courts of common pleas.” Id. at 283-84. See also Superadio Ltd. P’ship v. Winstar Radio Prods., LLC, 844 N.E.2d 246, 254 (Mass. 2006) (Spina, J., concurrence) (“We have said that when discovery requests are not complied with, the proper enforcement procedure is for the arbitrator to issue a subpoena pursuant to [the arbitration statute], and if the party or witness persists in its refusal to comply, the arbitrator or the party seeking enforcement of the discovery order may make application to a judge for enforcement of the subpoena. Thereafter ‘the decision to enforce or to quash the subpoena[] is a matter within the ... discretion’ of a trial court judge. That is the only enforcement mechanism available under the statute.” (citations omitted)).

12. Petitioner respectfully submits the Court, not the Arbitrator, has authority to enforce the Arbitrator’s subpoenas issued on August 3, 2022.

13. Petitioner respectfully requests the Court to alter or amend its February 24, 2023 Order so as to enforce the Arbitrator’s subpoenas *duces tecum* issued on August 3, 2022, in accordance with the authority granted to this Court in S.C. CODE ANN. § 15-48-80(a), and to order and require OrthoSC and Dr. Massey to fully comply with the Arbitrator’s subpoenas *duces tecum* issued on August 3, 2022.

WHEREFORE, Petitioner respectfully moves this Court to alter or amend its February 24, 2023 Order so as to enforce the Arbitrator’s subpoenas *duces tecum* issued on August 3, 2022, and to order and require OrthoSC and Dr. Massey to fully comply with the Arbitrator’s subpoenas and to produce the documents described therein, and for such other and further relief as the Court may deem just and proper.

ROSEN HAGOOD, LLC

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ATTORNEYS FOR PETITIONER

Charleston, South Carolina

March 6, 2023.

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
ORTHOSC, LLC, a South Carolina limited	)	
liability company; DR. GENE M. MASSEY,	)	
M.D.; GRAND STRAND SURGICAL	)	
SPECIALISTS, LLC, a South Carolina limited	)	
liability company; HCA PHYSICIAN	)	
SERVICES, INC., a Tennessee corporation;	)	
GRAND STRAND REGIONAL MEDICAL	)	
CENTER, LLC, a Delaware limited liability	)	
company; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
	)	

This matter came before the Court on November 30, 2022 for a hearing conducted via WebEx involving (1) the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Massey”) on August 25, 2022, (2) the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, (3) the Motion to Compel Discovery Responses filed Plaintiff Dr. Scott F. Duncan, M.D. (“Plaintiff”) on August 26, 2022, and (4) the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff; Charles E. Ipock, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC and Massey; and Katon E. Dawson, Jr., Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendant HCA Healthcare, Inc.

After careful consideration of the motions, pleadings, exhibits, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion to Compel Discovery Responses filed by Plaintiff on August 26, 2022 should be GRANTED, and the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 should be left to the Arbitrator's determination for the reasons stated herein.

1. OrthoSC/Massey's Motion to Dismiss Pursuant to S.C. R. CIV. PRO. 12(b)(6):

Plaintiff's Amended Complaint filed on August 10, 2022, avers claims against OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of South Carolina Unfair Trade Practices Act (SCUTPA), S.C. CODE ANN. § 39-5-10 *et seq.*, and (4) Civil Conspiracy. Defendants OrthoSC and Massey have moved to dismiss all of the causes of action pursuant to S.C. R. CIV. PRO. 12(b)(6).

In considering a Rule 12(b)(6) motion to dismiss, the trial court must base its ruling solely on "the allegations contained within the four corners of the complaint." Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011). "[A]t the pleadings stage, the factual allegations made by the plaintiff in regards to his claim are taken as true." Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 560, 521 S.E.2d 153, 157 (1999). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007). "[T]he court must regard all properly pleaded factual

allegations as admitted” and “any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment.” Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350, 353 (Ct. App. 2000). A complaint is sufficient if it states “*any* cause of action or it appears the plaintiff (or petitioner) is entitled to *any relief whatsoever*.” Baldwin v. Sanders, 266 S.C. 394, 223 S.E.2d 602 (1976) (emphasis added).

“The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id. (citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)). “‘At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice’ to withstand a motion to dismiss.” Town of Arcadia Lakes v. S.C. Dep’t of Health & Env’t Control, 404 S.C. 515, 745 S.E.2d 385, 392 (Ct. App. 2013).

Viewed in the light most favorable to the Plaintiff, Plaintiff’s Amended Complaint alleges sufficient facts to constitute causes of action against Defendants OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of the SCUTPA, and (4) Civil Conspiracy. Accordingly, the Motion to Dismiss must be denied.

2. OrthoSC/Massey’s Motion for Protective Order and Stay of Discovery:

Defendants OrthoSC and Massey moved for a protective order and a stay of discovery pending the resolution of their Motion to Dismiss. As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. Defendants OrthoSC and Massey have not shown good cause to grant a protective order or to stay discovery once their Motion to Dismiss is disposed of. Accordingly, the Motion for Protective Order and Stay of Discovery must be denied.

3. Plaintiff's Motion to Compel Discovery Responses:

Plaintiff served Interrogatories and Requests for Production of Documents upon Defendants OrthoSC and Massey on July 22, 2022. Under the rules, Defendants OrthoSC's and Masseys' responses to these discovery requests became due on August 26, 2022. Defendants OrthoSC and Massey did not provide any of the information or documents sought by Plaintiff. Rather, on August 25, 2022, Defendants OrthoSC and Massey served objections to Plaintiff's discovery requests. Defendants OrthoSC and Massey objected and argued it would be premature and improper to require them to respond to Plaintiff's requests until their Motion to Dismiss is resolved.

As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. The objections made by Defendants OrthoSC and Massey to Plaintiff's Interrogatories and Requests for Production of Documents are overruled. Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and Requests for Production of Documents. Accordingly, Plaintiff's Motion to Compel Discovery Responses is granted.

4. Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt:

In addition to serving Interrogatories and Requests for Production upon Defendants OrthoSC and Massey in this lawsuit, Plaintiff also issued subpoenas *duces tecum* to Defendants OrthoSC and Massey on August 3, 2022.

Defendants OrthoSC and Massey are not parties to the arbitration. Because the non-party subpoenas were issued in a pending arbitration, the Arbitrator should be the one with authority to enforce those subpoenas in the first instance. This Court finds that it does not have the authority to

compel Defendants OrthoSC and Massey to comply with the subpoenas at this time. S.C. CODE ANN. § 15-48-80(a). Accordingly, Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt is left to the determination of the Arbitrator. Accordingly,

IT IS ORDERED that the Motion to Dismiss Amended Complaint pursuant to S.C. R. CIV. PRO. 12(b)(6) filed by Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D. on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion to Compel Discovery Responses filed by Plaintiff Dr. Scott F. Duncan, M.D. on August 26, 2022 is hereby GRANTED and Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and produce the documents or things requested in Plaintiff's Requests for Production of Documents no later than thirty (30) days from entry of this Order; and

IT IS FURTHER ORDERED that the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 is hereby left to the determination of the Arbitrator; and

AND IT IS SO ORDERED!

Kristi F. Curtis
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2023.

_____, South Carolina.



Horry Common Pleas

Case Caption: Scott F Duncan MD VS OrthoSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DR. SCOTT F. DUNCAN, M.D.,

Plaintiff,

v.

ORTHOSC, LLC, a South Carolina
limited liability company; DR. GENE
M. MASSEY, M.D.; and HCA
HEALTHCARE, INC., a Delaware
corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-26-07488

**ORDER DENYING PLAINTIFF DR. SCOTT
F. DUNCAN, M.D.'S MOTION TO
PARTIALLY ALTER OR AMEND ORDER**

On September 8, 2022, Plaintiff Dr. Scott F. Duncan, M.D. ("Plaintiff") filed a motion in this action to compel compliance with and to enforce two subpoenas dated August 3, 2022 issued in a separate arbitration action involving Plaintiff, Grand Strand Surgical Specialists, LLC, Grand Strand Regional Medical Center, LLC and HCA Physician Services, Inc. assigned American Health Lawyers Association Claim No. 7029 ("Arbitration Proceeding"). The subpoenas sought the production of documents from OrthoSC, LLC ("OrthoSC") and Dr. Gene M. Massey, M.D. ("Massey"), non-parties to the Arbitration Proceeding. After a hearing, the Court denied the motion by order dated February 24, 2023 ("February Order"). Thereafter, Plaintiff filed a Motion to Partially Alter or Amend the February Order on March 6, 2023 ("Motion to Amend") under Rules 54 and 59(e). This Court heard the Motion to Amend on July 11, 2023.

Under Rule 59(e), SCRCP, parties may file a motion to alter or amend a judgment "not later than 10 days after receipt of written notice of the entry of the order." Similarly, under Rule 52(b), SCRCP, "[u]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend

the judgment accordingly[.]” Broadly, “[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments. A motion under Rule 59(e) long has been viewed as [a] ‘motion for reconsideration’ despite the absence of those words from the rule.’ Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). More specifically, as held by the *Elam* court,

[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.

Elam, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (emphasis in original). “A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After reviewing the applicable law, the parties’ filings, and considering the arguments raised at the hearing, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Consistent with this Court’s prior ruling, this Court may not compel compliance with the Arbitration Subpoenas issued in a separate arbitration to non-parties. This determination is based on the plain language of South Carolina Code Ann. § 15-48-80(a) as well as the rationale of the federal circuit courts when analyzing the Federal Arbitration Act, that have held arbitrators do not have authority to compel a non-party to produce documents pre-hearing, including *Hay Group, Inc. v. EBS Acquisition Corp.*, 360 F.3d 404 (3rd Cir. 2004) and *Life Receivables Trust v. Syndicate 102*, 549 F.3d 210 (2d Cir. 2008). In addition, the parties have not come forward with any South

Carolina law indicating that this Court may compel OrthoSC and Massey—who are non-parties to the Arbitration Proceeding—to comply with the Arbitration Proceeding subpoenas or anything else in connection with the Arbitration Proceeding.

Consequently, the Motion to Amend and the relief requested therein is **DENIED**.

AND IT IS SO ORDERED!

Kristi F. Curtis
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

_____, 2023

_____, South Carolina



Horry Common Pleas

Case Caption: Scott F Duncan MD VS OrthoSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762