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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Case No. 2022-CP-42-01163
Appellate Case No. 2023-001612

Timothy Hutley, Guardian for Jane Doe,

Respondent,

v.

THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC,
Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC,
Murray Forman, and Kathy Scroggs, Individually,

Defendants.

Of which THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC, and
Hunt Valley Holdings, LLC, are the

Appellants.

RECORD ON APPEAL

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¹ The “Facility” refers to Defendant THI of South Carolina at Magnolia Manor-Inman, LLC.

² “HVH” refers to Defendant Hunt Valley Holdings, LLC.

³ “THIB” refers to Defendant THI of Baltimore, Inc.

⁴ “THISC” refers to Defendant THI of South Carolina, LLC.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4201163

Timothy Hutley, Guardian For Jane Doe
PLAINTIFF(S)

Thi Of South Carolina At Magnolia Manor Inman, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter was before the Court on Wednesday, March 1, 2023, at 9:30 a.m. upon the Defendants' Motion to Compel Arbitration and Motions to Stay filed with the Court on January 17, 2023. Present representing the Plaintiffs was Charles Daniel Pruitt, Esq. Russell G. Hines, Esq. was present representing the Defendants. This hearing was conducted via Judge Knie's Virtual Courtroom and recorded by the WebEx record function by consent. In this matter, Jane Doe, a Medicare recipient, was admitted to Magnolia Manor Inman on August 22, 2018. Plaintiffs contend that while a resident, Ms. Doe experienced a violent attack with resulting injury and other circumstances that deviated from the accepted standard of care on or around September 8, 2018. (See Below)

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/21/2023 .

Murray Forman
Thi Of South Carolina At Inman
Kathy Scroggs

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Plaintiffs oppose the Motions. Plaintiffs argue as follows: That the purported agreement is invalid and unenforceable because Timothy Hutley lacked authority, either express or implied, to waive Jane Doe's right to jury trial and to enter the purported agreement for binding arbitration. There is no evidence Timothy Hutley had authority to bind Jane Doe as of the time he signed the purported arbitration agreement. The arbitration agreement was not valid because Jane Doe did not sign it. It is undisputed that Jane Doe was a recipient of Medicare at the time of her admission and throughout her stay at the Facility and the Facility was billing and accepting payment from Medicare for Jane Doe's care. As such, the purported agreement for binding arbitration which the Facility mandated that Hutley sign is not valid or enforceable because by its terms it violates federal law. It is well settled that to be valid and enforceable, a contract must be supported by valuable consideration. By requiring Hutley to sign the document attempting to require waiver of the right to jury trial as a condition of admission, Defendants were requiring and accepting consideration in addition to Medicare payments. Therefore, the arbitration agreement in question is not valid or enforceable. There was no meeting of the minds as the arbitration agreement is overly vague. Plaintiffs argue that the Court should deny Defendants' Motions.

Defendants argue that in conjunction with Jane Doe's admission to the Facility, Ms. Doe's son, Timothy Hutley, as GAL for Jane Doe and on behalf of Ms. Doe, executed an arbitration agreement that is enforceable or alternatively, that Plaintiffs should be estopped to deny the enforceability of that which covers the entirety of Plaintiffs' claims against the Facility. The Defendants request that the Court stay the pending action and compel this matter to arbitration.

The applicable law is as follows: Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014), Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016), and Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). Based upon the Court's review of the record, the arguments of Counsel, and the applicable law, the Court is respectfully denying Defendants' Motion to Compel Arbitration and Motions to Stay filed with the Court on January 17, 2023. The Court is requesting that Counsel for Plaintiffs draft an expanded detailed Order within 10 days for the Court's review and approval.



Spartanburg Common Pleas

Case Caption: Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina
At Magnolia Manor Inman, Llc , defendant, et al
Case Number: 2022CP4201163
Type: Order/Electronic Form 4

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Electronically signed on 2023-03-21 10:57:38 page 3 of 3

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-01163
Timothy Hutley, Guardian for Jane Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THI of South Carolina at Magnolia Manor	)	ORDER
Inman, LLC, THI of	)	
Baltimore, Inc., THI of South Carolina,	)	
LLC, Hunt Valley Holdings, LLC, THI of	)	
South Carolina at Inman, LLC, Murray	)	
Forman, and Kathy Scroggs, Individually,	)	
	)	
Defendants.	)	
_____	)	

Hearing Date: March 1, 2023

Hearing Judge: Honorable Grace G. Knie

Counsel for Plaintiff: C. Daniel Pruitt

Counsel for Defendants: Russell G. Hines

This matter was before the Court on March 1, 2023 in Spartanburg County, South Carolina, the Seventh Judicial Circuit via Webex without objection upon Defendants' Motion to Dismiss and Compel Arbitration as well as a Motion to Stay the Court proceedings pending arbitration on the basis of Merger and Equitable Estoppel. Attorney C. Daniel Pruitt was present representing Plaintiff. Attorney Russell G. Hines was present representing all Defendants.

PROCEDURAL BACKGROUND

This action was commenced by the filing of a Summons and Complaint on March 31, 2022, alleging personal injury. Defendants Answered the Complaint and included a Motion to Compel Arbitration and to Stay Court Proceedings based on a separate document

containing an Arbitration Clause. Defendants filed a Memorandum in support of its Motion to Compel Arbitration and to Stay Court proceedings dated March 1, 2023. Plaintiff also filed a Memorandum in opposition to the Motions of Defendants. The parties appeared and presented arguments on March 1, 2023.

FACTUAL BACKGROUND

Jane Doe, a Medicare recipient, was admitted to Magnolia Manor Inman (hereinafter Defendants' facility) on August 22, 2018. While a resident, Ms. Doe experienced a violent attack with resulting injury on or around September 8, 2018. Plaintiffs filed a Summons and Complaint alleging certain wrongful conduct and seeking a jury trial. Defendants filed an Answer and a Motion to Compel Arbitration and to Stay the Court proceedings.

The parties conceded that there was no Power of Attorney in place at the time of admission. Defendants had Jane Doe's son sign the admission agreement and a separate "Facility-Resident/Representative Arbitration Agreement" which was submitted for the Court's evaluation. Defendants conceded in their Memorandum that neither agreement is signed by Jane Doe. No affidavits were submitted.

The separate one-page Arbitration Agreement states:

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

arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The separate agreement purports to waive Jane Doe's right to Jury Trial and require that any controversy or dispute between the parties be submitted to binding arbitration in accordance with the South Carolina Alternate Dispute/ Resolution Rules.

At the hearing, Defendants based their arguments on merger and equitable estoppel. Defendants argued that both the admission agreement and the arbitration agreement were signed at the same time and there should be a merger of the two documents. Plaintiff strongly objected arguing that the agreement was invalid and unenforceable because Timothy Hutley lacked authority, either express or apparent, to waive Jane Doe's right to jury trial and to enter the agreement for binding arbitration.

LAW & ANALYSIS

South Carolina's policy is to favor arbitration of disputes. Zabinski, 346 S.C. at 596, 553 S.E.2d at 118. "Arbitration agreements, like other contracts, are enforceable in accordance with their terms." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). "To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." Zabinski, 346 S.C. at 597, 553 S.E.2d at 118. "Unless a court can say with positive assurance that an arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered." Gissel v. Hart, 382 S.C. 235, 240-41, 676 S.E.2d 320, 323 (2009). "A broadly-worded arbitration clause applies to disputes that do

not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." [Zabinski, 346 S.C. at 598, 553 S.E.2d at 119](#) (quoting [Long v. Silver, 248 F.3d 309, 316 \(4th Cir. 2001\)](#)).

"However, arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." [Gissel, 382 S.C. at 241, 676 S.E.2d at 323](#). "[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement." [Wilson, 426 S.C. at 337, 827 S.E.2d at 173](#) (emphasis omitted) (quoting [Carr v. Main Carr Dev., LLC, 337 S.W.3d 489, 496 \(Tex. App. 2011\)](#)). "[B]ecause arbitration, while favored, exists solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Id.* at 337-38, 827 S.E.2d at 173 (emphasis omitted). Nevertheless, "[w]ell-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." [Pearson v. Hilton Head Hosp., 400 S.C. 281, 288, 733 S.E.2d 597, 600 \(Ct. App. 2012\)](#) (quoting [Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 \(4th Cir. 2000\)](#)).

"Whether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law." [Wilson, 426 S.C. at 338, 827 S.E.2d at 173-74](#). "South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil

piercing/alter ego, and (5) estoppel." *Id.* at 338, 827 S.E.2d at 174. This court has held the theory of equitable estoppel precludes parties from asserting their nonsignatory status, compelling them to submit their claims to arbitration. *Id.* at 339, 827 S.E.2d at 174. Under this theory, "[a] nonsignatory is estopped from refusing to comply with an arbitration clause `when it receives a direct benefit from a contract containing an arbitration clause.'" [Pearson, 400 S.C. at 290, 733 S.E.2d at 601](#) (quoting [Int'l Paper, 206 F.3d at 418](#)).

"In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." *Id.* (emphasis omitted) (quoting [Int'l Paper, 206 F.3d at 418](#)). Notably, in those opinions addressing equitable estoppel in the arbitration context, the nonsignatory's contractual benefit is not typically an alleged benefit of arbitration such as "avoiding the expense and delay of extended court proceedings" or being "capable of enforcing the [AA]," as touted by Appellants in the present case — rather, the contractual benefit typically arises from another provision of the same contract that includes the arbitration provision. See [Pearson, 400 S.C. at 296-97, 733 S.E.2d at 605](#) (ability to work at the defendant's hospital facility and receive payment for work); see also [Int'l Paper Co., 206 F.3d at 418](#) (warranty provisions); [Jackson, 524 F.Supp.2d at 750](#) (entitlement to retain a \$150,000 payment pursuant to the contract's liquidated damages provision); [Am. Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 \(2d Cir.1999\)](#) (lower insurance rates on a yacht ~~60~~*60 and the ability to sail under the French flag); [Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060, 1064 \(2d Cir.1993\)](#) (continuing use of a name).

Defendants argued the court should find the Arbitration Agreement merged with the Admission Agreement because merger is presumed when the instruments in question are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction.

In *Coleman v. Mariner Health Care, Inc.*, our Supreme Court held:

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

407 S.C. at 355, 755 S.E.2d at 455 (quoting *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)). The *Coleman* court found the documents in that case were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction; thus, unless there was a contrary intention, there was a merger. *Id.* However, the court determined that "[b]y their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply." *Id.* And, even if a clause in the contract created an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter. *Id.* at 355-56, 755 S.E.2d at 455. Thus, there was no merger in that case, and the appellants' equitable estoppel argument was properly denied. *Id.* at 356, 755 S.E.2d at 455.

Also, in [*Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*](#), the Court held the admission agreement and arbitration agreement did not merge because: (1) the admission agreement indicated it was governed by South Carolina law, whereas the arbitration agreement stated it was governed by federal law; (2) like in *Coleman*, the arbitration agreement recognized the two documents were separate, stating "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement"; (3) the arbitration agreement stated it could be revoked within thirty days, whereas the admission agreement contained no such indication and instead provided the admission agreement could only be amended; (4) each document was separately paginated and had its own signature page; and (5) the arbitration agreement stated signing it was not a precondition to admission. [422 S.C. at 562-63, 813 S.E.2d at 302.](#)

Here, the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law. The Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement "shall survive any termination or breach of this Agreement or the Admission Agreement." The Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, "Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility." The Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages. The Parties have conceded there was no Power of Attorney in effect at the time of admission. Thus, like the *Coleman* and *Hodge* courts, there was no merger in this case and Defendants' equitable estoppel argument is denied.

The *Coleman* court also considered whether the Adult Health Care Consent Act (Act)^[7] gave a family member authority to execute an arbitration agreement on behalf of another. The court held:

The scope of Sister's authority [under the Act] to consent to "decisions concerning Decedent's health care" extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

[407 S.C. at 353-54, 755 S.E.2d at 454](#). In [Thompson v. Pruitt Corporation](#), this court also held the admission agreement did not merge with the arbitration agreement and the son's authority under the Act to execute the admission agreement did not cover the terms of the arbitration agreement. [416 S.C. at 52-53, 784 S.E.2d at 684-85](#).

Earlier this year our Court of Appeals issued an Order addressing the **precise** Resident/Representative Arbitration Agreement in the present case. [Solesbee v. Fundamental](#) (Op. 5963 Ct. App. Filed Jan. 25, 2023). In reviewing the agreement used in that case which is the same facility in question in the present case, the Court of Appeals found there was no express authority because in [Solesbee](#), at the time her son signed the agreement, he was not operating under a Power of Attorney.

In [Solesbee](#), the Court construed the agreement and relied on [Coleman v. Mariner Health Care, Inc.](#), 407 S.C. 346, 755 S.E.2d 450 (2014); [Hodge v. UniHealth Post-Acute Care of Bamberg, LLC](#), 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); and [Thompson v. Pruitt](#)

[Corporation, 416 S.C. 43, 784 S.E.2d 679 \(Ct. App. 2016\)](#) to rule the Arbitration Agreement in question in the present case was unenforceable. The critical circumstances are virtually identical and therefore the result is the same in the present case.

Conclusion

The arbitration agreement was not valid because Jane Doe did not sign it. In addition, Hutley did not have authority, express or apparent, to bind Jane Doe to an arbitration agreement. The Admission Agreement and the Arbitration Agreement were separate and did not merge. In addition, there was no evidence that Jane Doe did or said anything to mislead the Defendants so as to support an argument of equitable estoppel.

The Motions of the Defendants to Compel Arbitration and to Stay the Court Proceedings pending Arbitration are hereby DENIED.

AND IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina
At Magnolia Manor Inman, Llc , defendant, et al
Case Number: 2022CP4201163
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
 Timothy Hutley, as Guardian for Jane Doe.	)	
	)	
Plaintiff(s),	)	
	)	
-vs-	)	ORDER REGARDING DEFENDANTS'
	)	MOTION FOR RECONSIDERATION
	)	
THI of South Carolina at Magnolia	)	
Manor Inman, LLC, et.al.,	)	Case No.: 2022CP4201163
<u>Defendant(s).</u>	)	

Hearing Date:	September 5th, 2023, @ 9:30 a.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff/s:	Charles Daniel Pruitt
Counsel for Defendant/s:	Russell Grainger Hines
Court Reporter:	WebEx Record Function

A Rule 59 (e) SCRCF motion to reconsider and to alter or amend has been received from the Defendants filed with and served on the Court on May 25th, 2023. The Motion to Reconsider was properly served on The Court per Rule 59(g) SCRCF. Present representing the Plaintiff was Charles D. Pruitt, Esq. Russell G. Hines, Esq. was present representing the Defendants. This hearing was conducted via Judge Knie's Virtual Courtroom and recorded by the WebEx record function by consent. Specifically Defendants' Motion is requesting that the Court alter, amend or reconsider its Order filed on May 15th, 2023, which denied Defendants' January 17th, 2023, Motion to Compel Plaintiff's claims against it to arbitration and stay the lawsuit as to them pending the outcome of the Motion to Compel.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Defendants' Motion for Reconsideration filed with the Court on May 25th, 2023, made pursuant to Rule 59, SCRCP, requesting that the Court reconsider its decision denying the Defendants' Motion to Compel Arbitration and Stay is respectfully denied.

IT IS SO ORDERED.

September 11th, 2023

Grace Gilchrist Knie, Judge
Circuit Court, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina
At Magnolia Manor Inman, Llc , defendant, et al

Case Number: 2022CP4201163

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-_____
Timothy Hutley, Guardian for Jane Doe,	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	
THI of South Carolina at Magnolia Manor	)	
Inman, LLC, THI of	)	
Baltimore, Inc., THI of South Carolina,	)	
LLC, Hunt Valley Holdings, LLC, THI of	)	
South Carolina at Inman, LLC, Murray	)	
Forman, and Kathy Scroggs, Individually,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint herewith served upon you, which was filed in the Office of the Clerk of Court, and to serve a copy of your answer to same upon the subscriber at 300 Pettigru Street, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, the Plaintiff will apply to the Court for the relief demanded herein.

Respectfully Submitted,

s/ C. Daniel Pruitt
 Bar # 66497
 Attorney for Plaintiff
 300 Pettigru Street
 Greenville, South Carolina 29601
 (864) 232-4273
danlaw@bellsouth.net

Dated: March 31, 2022
 Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-_____
Timothy Hutley, Guardian for Jane Doe,	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
THI of South Carolina at Magnolia Manor	)	
Inman, LLC, THI of	)	
Baltimore, Inc., THI of South Carolina,	)	
LLC, Hunt Valley Holdings, LLC, THI of	)	
South Carolina at Inman, LLC, Murray	)	
Forman, and Kathy Scroggs, Individually,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff, by and through her undersigned counsel, for a Complaint against the Defendant, does hereby respectfully allege as follows:

PARTIES

Plaintiff

1. The Plaintiff, Timothy Hutley, is a citizen and resident of the County of Gwinnett, State of Georgia and is the duly appointed Guardian for Jane Doe. He brings this action on behalf of Jane Doe, for damages recoverable pursuant to §15-5-90, Code of Laws of South Carolina (1976) and for damages recoverable by the statutory beneficiaries of Edward Littlejohn pursuant to §15-51-10, et. seq., Code of Laws of South Carolina (1976, as amended).

2. Before filing this Complaint, Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman in accordance with the South Carolina Code of Laws. A copy of this Affidavit is attached as “Exhibit A”.

Defendant

3. Upon information and belief, THI of South Carolina at Magnolia Manor Inman, LLC (hereinafter “Defendants”) is a for profit corporation incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.

4. Upon information and belief, THI of Baltimore, Inc. (hereinafter “Defendants”) is a company existing under the laws of the State of Delaware, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

5. Upon information and belief, THI of South Carolina, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

6. Upon information and belief, Hunt Valley Holdings, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

7. Upon information and belief, THI of South Carolina at Inman, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

8. Upon information and belief, Murray Forman (hereinafter “Defendant Forman”) was an employee of Defendants’ facility, Magnolia Manor Inman, during the time in which the incident stated herein occurred.

9. Upon information and belief, Kathy Scroggs (hereinafter “Defendant Scroggs”) was an employee of Defendants’ facility, Magnolia Manor Inman, during the time in which the incident stated herein occurred.

10. Upon information and belief, Defendants own and operate a long-term care facility located at 63 Blackstock Rd, Inman, South Carolina 29349.

11. Defendants’ facility delivers nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to the decedent during her residency at Defendants’ facility

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

12. At all times material to this complaint, Jane Doe was residing at the facility known as Magnolia Manor Inman.

13. The Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of Defendants’ facility were acting within the course and scope of their employment in regard to their care and treatment of Jane Doe.

14. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants’ employees and/or agents were acting on behalf of or, in place of Defendants in making decisions regarding the care of Jane Doe.

15. At the time of her admission to Defendants’ facility, Jane Doe was dependent upon the care provided by employees and agents of the Defendants’ facility in order to live her life.

16. Upon information and belief, Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent nursing home care to Jane Doe.

17. Defendants' facility had an obligation to employ nursing assistants, nurses and other personnel who were qualified to render reasonable care to a patient in the condition of Jane Doe.

18. Upon information and belief, Defendants' facility failed to assign sufficient staff to ensure that all necessary care was delivered to Jane Doe.

19. Upon information and belief, Defendants' facility failed to ensure that the proper treatment and standard of care was delivered to Jane Doe.

20. Upon information and belief, Defendants' facility failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Jane Doe.

21. On or around August 22, 2018, Jane Doe was admitted to the Defendants' facility due to advanced Dementia. Jane Doe had cognitive impairments which caused her to be very confused and unable to recall information. She also had memory problems, difficulty following directions, decreased safety awareness, and severe impairment in her decision-making ability. Additionally, she was only oriented to herself. Jane Doe was also aphasic and incontinent, during her stay at Defendants' facility.

22. While at Defendants' facility, she also suffered from physical limitations related to weakness, osteoarthritis, past CVA, and frailty. Her physical limitations caused lack of coordination, balance problems, gait abnormalities, impaired mobility, and difficulty walking.

23. On or around September 8, 2018 around 2:00 p.m., a male visitor was reported to be in Jane Doe's room. It was at this time that the staff of Defendants' facility observed a male visitor sitting on side of Jane Doe's bed. When the nurse entered the room, the male visitor moved to sit in chair beside bed. Around 2:20 pm, someone from social services came to the floor and removed the visitor to sit at the nurses' station. Around 2:30 pm, the visitor was taken to the front office to wait for management and the police department to arrive. Additionally, around 2:30 – 3:00 pm, on September 8, 2018, a SBAR Communication Form reflected that the physician was contacted with concerns that Jane Doe was in bed undressed waist down with a male visitor at her bedside. The SBAR Communication Form further reflected that orders had been given to send the resident to the ER for rape test kit to be performed and to evaluation for further treatment as needed.

24. On or around September 8, 2018, at around 3:30 – 4:00 pm, the nurse gave a statement to the police department, and Jane Doe was transferred to the emergency room with her bedding and clothing.

25. On or around September 8, 2018 at 4:29 p.m., Jane Doe arrived at Spartanburg Regional Medical Center for a forensic exam due to sexual assault. A few minutes later, around 4:32 pm, staff at Spartanburg Regional Medical Center were given the following arrival information from the ground transport crew: Ambustar reports patient coming from MMI after sexual assault. In the ER, it was reported that Defendants' facility staff walked into her room to witness a visitor sexually assaulting Jane Doe. Upon examination, a thick white discharge was present from the vagina.

26. Investigator Boulware, who is thought to be employed by Spartanburg County Police, was informed of Jane Doe's case by the emergency room staff, and evidence was collected, as requested by Spartanburg County.

27. On September 9, 2018, an article published by FOX Carolina reflected that 44-year old Christopher Lachele Pilgrim was arrested on September 8, 2018, after deputies say he sexually battered a woman who was mentally incapacitated and possibly physically helpless; this woman was a resident of Defendants' facility. Christopher Pilgrim, who was not an employee of the nursing home, pled guilty and was charged with 3rd degree criminal sexual conduct and 1st degree assault and battery.

**FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Recklessness)**

28. Plaintiff reiterates and realleges paragraphs 1 through 27 as though set forth herein verbatim.

29. The Defendants had an obligation to employ nursing assistants, nurses and other personnel who were qualified to render reasonable care to a patient in the condition of Jane Doe.

30. While Jane Doe was under the care of Defendants' facility, said Defendants departed from the prevailing professional standards of care and treatment of Jane Doe and were thereby negligent, careless, grossly negligent, reckless and acted in violation of the duties owed to Jane Doe in that they committed one or more of the following acts of omission or commission, any and all of which were departures from the prevailing professional standards of care:

- (a) Failure to ensure that Jane Doe was free from abuse.

- (b) Failure to develop and uphold policies and procedures to ensure that Jane Doe was not mistreated or abused.
- (c) Failure to provide care to enhance Jane Doe's quality of life.
- (d) Failure to provide adequate supervision to prevent injury from occurring to Jane Doe.
- (e) Failure to provide necessary care and services to allow the resident to maintain their highest level of physical, mental, and psychological well-being.
- (f) Failure of administrative staff to operate the facility in compliance with regulatory standards.
- (g) Failure to thoroughly investigate and report sexual assault.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, punitive damages, special damages and consequential damages, in an amount to be determined by the jury at the trial of this action, attorneys fees and treble damages for violations of South Carolina Code §39-5-10 et seq., the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/ C. Daniel Pruitt

Bar # 66497

Attorney for Plaintiff

300 Pettigru Street

Greenville, South Carolina 29601

(864) 232-4273

danlaw@bellsouth.net

Dated: March 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA**COUNTY OF MARION****AFFIDAVIT OF KAREN COLEMAN**

1. My name is Karen Coleman. I am over the age of eighteen, of sound mind and otherwise competent to make this Affidavit, which I make based upon my background, education, training, and experience. This affidavit is also based upon my own personal knowledge.

2. I am and have been a Registered Nurse, licensed in the State of South Carolina, since 1991. My further qualifications and background are set forth in the attached CV (Exhibit "A"), which is incorporated by reference.

3. I have actual professional knowledge and experience in my area of practice, Registered Nursing, including my specialty within this area, which is nursing home and long term care.

4. I am familiar with the standard of care applicable during the time of Jane Doe's residency at Magnolia Manor of Inman and the standard of care and skill exercised by reasonably prudent skilled nursing facilities under similar conditions as those involving Jane Doe.

5. I have reviewed the records relating to Jane Doe from Magnolia Manor of Inman and Spartanburg Regional Medical Center. I have also reviewed police records on sccourts.org pertaining to Christopher Pilgrim. Based on my review of these records, I find that there is at least one deviation from the standard of care, during Jane Doe's residency at Magnolia Manor of Inman.

6. Without limitation, my review of records revealed the following:
- Jane Doe was admitted to Magnolia Manor of Inman on August 22, 2018.
 - Due to advanced Dementia, Jane Doe had cognitive impairments. Her cognitive impairments caused her to be "very confused" and unable to recall information. She also had memory problems, difficulty following directions, decreased safety awareness, and severe

impairment in her decision-making ability. Additionally, she was only oriented to herself.

- Jane Doe was also aphasic and incontinent, during her stay at Magnolia Manor of Inman.
- While at Magnolia Manor of Inman, she also suffered from physical limitations related to weakness, osteoarthritis, past CVA, and frailty. Her physical limitations caused lack of coordination, balance problems, gait abnormalities, impaired mobility, and difficulty walking.
- While at Magnolia Manor of Inman, on September 8, 2018 around 2:00 pm, a male visitor was "reported to be in res room." It was at this time that the staff of Magnolia Manor of Inman observed a male visitor "sitting on side of residents bed." When the nurse entered the room, the male visitor "moved to sit in chair beside bed."
- Around 2:20 pm, someone from social service came to the floor and removed the visitor to sit at the nurses' station.
- Around 2:30 pm, the visitor was taken to the front office to wait for management and the police department to arrive. Additionally, around 2:30 - 3:00 pm, on September 8, 2018, a SBAR Communication Form reflected that the physician was contacted with concerns that Jane Doe was "in bed undressed waist down w/male visitor @ bedside." The SBAR Communication Form further reflected that orders had been given to send the resident to the ER for "rape test kit to be performed and to eval for further tx as needed."
- Around 3:30 - 4:00 pm, on September 8, 2018, the nurse gave a "statement given to police dept", and Jane Doe left the facility "for ER w/clothing and bedding in use sent w/res."
- Around 4:29 pm, on September 8, 2018, Jane Doe arrived at Spartanburg Regional Medical Center for a forensic exam due to sexual assault. A few minutes later, around 4:32 pm, staff at Spartanburg Regional Medical Center were given the following arrival information from the ground transport crew - "Ambustar

reports patient coming from MMI after sexual assault" ... "Patient has dementia and is very confused."

- In the ER, it was reported that the nursing home "staff walked into her room to witness a visitor sexually assaulting" Jane Doe. Upon examination, a "Thick white discharge" was present from the vagina.
- Investigator Boulware, who is thought to be employed by Spartanburg County Police, was informed of Jane Doe's case by the ER staff, and evidence was collected, as requested by "Spartanburg County."
- On September 9, 2018, an article published by FOX Carolina reflected that 44-year old Christopher Lachele Pilgrim was arrested on September 8, 2018, after "deputies say he sexually battered a woman who was mentally incapacitated and possibly physically helpless"; this woman was a resident of Magnolia Manor "nursing home on Blackstock Road".
- Pilgrim, who was not an employee of the nursing home, pled guilty and was charged with 3rd degree criminal sexual conduct and 1st degree assault and battery.

7. In my professional opinion, the staff of Magnolia Manor of Inman breached the standard of care and skill exercised by nurses generally and under similar conditions and circumstances as those presented by Jane Doe. In particular, in my opinion, the nursing home staff deviated from the standard of care in the following particulars:

- Failure to ensure that Jane Doe was free from abuse.
- Failure to develop and uphold policies and procedures to ensure that Jane Doe was not mistreated or abused.
- Failure to provide care to enhance Jane Doe's quality of life.
- Failure to provide adequate supervision to prevent injury from occurring to Jane Doe.
- Failure to provide necessary care and services to allow the resident to maintain their highest level of physical, mental, and psychological well-being.
- Failure of administrative staff to operate the facility in compliance with regulatory standards.
- Failure to thoroughly investigate and report sexual assault.

8. In my professional opinion, the staff of Magnolia Manor of Inman also breached multiple regulatory standards, some of which are as follows:

- SC Code of Laws, 43-35-10, Omnibus Adult Protection Act, expects the facility to protect its residents, who are considered vulnerable adults, from neglect.
- SC Code of Laws, Title 44-81-40, Rights of Residents, demands that all residents should be free from abuse and treated with dignity and respect.
- SC Code of Laws, Title 40, Chapter 33, Nurse Practice Act, requires nurses to implement nursing interventions to achieve desired outcomes & provide safe and effective nursing care either directly or indirectly.
- SC DHEC Regulation Number 61-17, Standards for Licensing Nursing Homes, Administrator, Section 602, requires the administrator to exercise judgment that reflects that he or she is in compliance with regulatory standards and demonstrate working knowledge of the regulations.
- Code of Federal Regulations, Title 42, 483.10, Resident Rights, demands that residents are to be cared in a respectable, dignified manner and in a safe environment that enhances each resident's quality of life.
- US Code of Federal Regulations, Title 42, Section 483.12, Freedom from Abuse, Neglect and Exploitation, expects the facility to:
 - o Ensure that staff does not neglect the needs of its residents. If the facility is aware of, or should have been aware of, services that a resident(s) requires but fails to provide these services to the resident(s), this may be considered as neglectful behavior.
 - o Ensure that each resident is "free from verbal, sexual, physical and mental abuse."
 - o Develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents. The facility is also expected to "have evidence" that any type of abuse of a resident is thoroughly investigated and results are to be reported to the State agency within 5 working days of the incident. Within their report, the facility must also provide the type of corrective action to be taken to prevent any further episodes of abuse.

- Code of Federal Regulations, Title 42, 483.25, Quality of Care, guides the facility of the need to provide necessary care and services to allow the resident to attain or maintain the highest practical physical, mental, and psychosocial well-being possible. As part of this regulatory standard, staff must ensure that each resident is provided with adequate supervision to prevent injury from occurring.
- United States Code of Federal Regulations, Title 42, Section 483.70, Administration, requires the facility to
 - o Be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident residing in the facility.
 - o Operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes and with accepted professional standards and principles that apply to professionals that provide services in the same type of facility.

9. Additionally, it is my opinion that Jane Doe's assault and sexual abuse, while in the care of Magnolia Manor of Inman, can be attributed to breaches from the standard of care.

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

Karen Coleman RN

Karen Coleman, RN

Sworn to me this 26 day of May, 2020

Shelley Sarris

Notary Public for South Carolina

My commission expires:

9/7/2021

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-_____
	)	
Timothy Hutley, Guardian for Jane Doe,	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	
THI of South Carolina at Magnolia Manor	)	
Inman, LLC, THI of	)	
Baltimore, Inc., THI of South Carolina,	)	
LLC, Hunt Valley Holdings, LLC, THI of	)	
South Carolina at Inman, LLC, Murray	)	
Forman, and Kathy Scroggs, Individually,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint herewith served upon you, which was filed in the Office of the Clerk of Court, and to serve a copy of your answer to same upon the subscriber at 300 Pettigru Street, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, the Plaintiff will apply to the Court for the relief demanded herein.

Respectfully Submitted,

s/ C. Daniel Pruitt

Bar # 66497

Attorney for Plaintiff

300 Pettigru Street

Greenville, South Carolina 29601

(864) 232-4273

danlaw@bellsouth.net

Dated: March 31, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-_____
Timothy Hutley, Guardian for Jane Doe,	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	COMPLAINT
THI of South Carolina at Magnolia Manor	)	
Inman, LLC, THI of	)	
Baltimore, Inc., THI of South Carolina,	)	
LLC, Hunt Valley Holdings, LLC, THI of	)	
South Carolina at Inman, LLC, Murray	)	
Forman, and Kathy Scroggs, Individually,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff, by and through her undersigned counsel, for a Complaint against the Defendant, does hereby respectfully allege as follows:

PARTIES

Plaintiff

1. The Plaintiff, Timothy Hutley, is a citizen and resident of the County of Gwinnett, State of Georgia and is the duly appointed Guardian for Jane Doe. He brings this action on behalf of Jane Doe.

2. Before filing this Complaint, Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman in accordance with the South Carolina Code of Laws. A copy of this Affidavit is attached as “Exhibit A”.

Defendant

3. Upon information and belief, THI of South Carolina at Magnolia Manor Inman, LLC (hereinafter “Defendants”) is a for profit corporation incorporated under the

laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.

4. Upon information and belief, THI of Baltimore, Inc. (hereinafter “Defendants”) is a company existing under the laws of the State of Delaware, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

5. Upon information and belief, THI of South Carolina, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

6. Upon information and belief, Hunt Valley Holdings, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

7. Upon information and belief, THI of South Carolina at Inman, LLC (hereinafter “Defendants”) is a company existing under the laws of the State of South Carolina, and which is registered and doing business in the State of South Carolina, Spartanburg County, engaged in nursing home business under the name Magnolia Manor Inman.

8. Upon information and belief, Murray Forman (hereinafter “Defendant Forman”) was an employee of Defendants’ facility, Magnolia Manor Inman, during the time in which the incident stated herein occurred.

9. Upon information and belief, Kathy Scroggs (hereinafter “Defendant Scroggs”) was an employee of Defendants’ facility, Magnolia Manor Inman, during the time in which the incident stated herein occurred.

10. Upon information and belief, Defendants own and operate a long-term care facility located at 63 Blackstock Rd, Inman, South Carolina 29349.

11. Defendants’ facility delivers nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to the decedent during her residency at Defendants’ facility

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

12. At all times material to this complaint, Jane Doe was residing at the facility known as Magnolia Manor Inman.

13. The Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of Defendants’ facility were acting within the course and scope of their employment in regard to their care and treatment of Jane Doe.

14. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants’ employees and/or agents were acting on behalf of or, in place of Defendants in making decisions regarding the care of Jane Doe.

15. At the time of her admission to Defendants’ facility, Jane Doe was dependent upon the care provided by employees and agents of the Defendants’ facility in order to live her life.

16. Upon information and belief, Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent nursing home care to Jane Doe.

17. Defendants' facility had an obligation to employ nursing assistants, nurses and other personnel who were qualified to render reasonable care to a patient in the condition of Jane Doe.

18. Upon information and belief, Defendants' facility failed to assign sufficient staff to ensure that all necessary care was delivered to Jane Doe.

19. Upon information and belief, Defendants' facility failed to ensure that the proper treatment and standard of care was delivered to Jane Doe.

20. Upon information and belief, Defendants' facility failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Jane Doe.

21. On or around August 22, 2018, Jane Doe was admitted to the Defendants' facility due to advanced Dementia. Jane Doe had cognitive impairments which caused her to be very confused and unable to recall information. She also had memory problems, difficulty following directions, decreased safety awareness, and severe impairment in her decision-making ability. Additionally, she was only oriented to herself. Jane Doe was also aphasic and incontinent, during her stay at Defendants' facility.

22. While at Defendants' facility, she also suffered from physical limitations related to weakness, osteoarthritis, past CVA, and frailty. Her physical limitations caused lack of coordination, balance problems, gait abnormalities, impaired mobility, and difficulty walking.

23. On or around September 8, 2018 around 2:00 p.m., a male visitor was reported to be in Jane Doe's room. It was at this time that the staff of Defendants' facility observed a male visitor sitting on side of Jane Doe's bed. When the nurse entered the

room, the male visitor moved to sit in chair beside bed. Around 2:20 pm, someone from social services came to the floor and removed the visitor to sit at the nurses' station. Around 2:30 pm, the visitor was taken to the front office to wait for management and the police department to arrive. Additionally, around 2:30 – 3:00 pm, on September 8, 2018, a SBAR Communication Form reflected that the physician was contacted with concerns that Jane Doe was in bed undressed waist down with a male visitor at her bedside. The SBAR Communication Form further reflected that orders had been given to send the resident to the ER for rape test kit to be performed and to evaluation for further treatment as needed.

24. On or around September 8, 2018, at around 3:30 – 4:00 pm, the nurse gave a statement to the police department, and Jane Doe was transferred to the emergency room with her bedding and clothing.

25. On or around September 8, 2018 at 4:29 p.m., Jane Doe arrived at Spartanburg Regional Medical Center for a forensic exam due to sexual assault. A few minutes later, around 4:32 pm, staff at Spartanburg Regional Medical Center were given the following arrival information from the ground transport crew: Ambustar reports patient coming from MMI after sexual assault. In the ER, it was reported that Defendants' facility staff walked into her room to witness a visitor sexually assaulting Jane Doe. Upon examination, a thick white discharge was present from the vagina.

26. Investigator Boulware, who is thought to be employed by Spartanburg County Police, was informed of Jane Doe's case by the emergency room staff, and evidence was collected, as requested by Spartanburg County.

27. On September 9, 2018, an article published by FOX Carolina reflected that 44-year old Christopher Lachele Pilgrim was arrested on September 8, 2018, after deputies say he sexually battered a woman who was mentally incapacitated and possibly physically helpless; this woman was a resident of Defendants' facility. Christopher Pilgrim, who was not an employee of the nursing home, pled guilty and was charged with 3rd degree criminal sexual conduct and 1st degree assault and battery.

**FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Recklessness)**

28. Plaintiff reiterates and realleges paragraphs 1 through 27 as though set forth herein verbatim.

29. The Defendants had an obligation to employ nursing assistants, nurses and other personnel who were qualified to render reasonable care to a patient in the condition of Jane Doe.

30. While Jane Doe was under the care of Defendants' facility, said Defendants departed from the prevailing professional standards of care and treatment of Jane Doe and were thereby negligent, careless, grossly negligent, reckless and acted in violation of the duties owed to Jane Doe in that they committed one or more of the following acts of omission or commission, any and all of which were departures from the prevailing professional standards of care:

- (a) Failure to ensure that Jane Doe was free from abuse.
- (b) Failure to develop and uphold policies and procedures to ensure that Jane Doe was not mistreated or abused.
- (c) Failure to provide care to enhance Jane Doe's quality of life.

- (d) Failure to provide adequate supervision to prevent injury from occurring to Jane Doe.
- (e) Failure to provide necessary care and services to allow the resident to maintain their highest level of physical, mental, and psychological well-being.
- (f) Failure of administrative staff to operate the facility in compliance with regulatory standards.
- (g) Failure to thoroughly investigate and report sexual assault.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, punitive damages, special damages and consequential damages, in an amount to be determined by the jury at the trial of this action, attorneys fees and treble damages for violations of South Carolina Code §39-5-10 et seq., the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/ C. Daniel Pruitt

Bar # 66497

Attorney for Plaintiff

300 Pettigru Street

Greenville, South Carolina 29601

(864) 232-4273

danlaw@bellsouth.net

Dated: March 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	DEFENDANT THI OF SOUTH
MAGNOLIA MANOR	)	CAROLINA AT MAGNOLIA MANOR -
INMAN, LLC, THI OF BALTIMORE,	)	INMAN, LLC'S ANSWER TO THE
INC., THI OF SOUTH CAROLINA,	)	PLAINTIFF'S AMENDED COMPLAINT
LLC, HUNT VALLEY HOLDINGS,	)	
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of South Carolina at Magnolia Manor-Inman, LLC (hereinafter "this Defendant"), *subject to and without waiving its right to compel this matter to arbitration*, hereby responds to the allegations set forth in Plaintiff's Amended Complaint as follows:

1. Any and all allegations set forth in Plaintiff's Amended Complaint which are not specifically admitted, qualified, or otherwise explained or denied, are hereby expressly denied and strict proof is demanded thereof.
2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint and therefore denies the same and demands strict proof thereof.

3. This Defendant admits the allegations in Paragraph 2 to the extent they allege that Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman. However, this Defendant denies the sufficiency of said Affidavit and its contents to the extent they assert or imply liability, damages, and/or wrongdoing as to this Defendant. Any allegations inconsistent with this response are denied.

4. This Defendant admits the allegations set forth in Paragraph 3 of Plaintiff's Amended Complaint only insofar as it is alleged that this Defendant is licensed to do business in Spartanburg County and the State of South Carolina. Any and all remaining allegations set forth in Paragraph 3 of Plaintiff's Amended Complaint are denied. This Defendant would further assert that it is a limited liability company organized and existing under the laws of Delaware.

5. The allegations set forth in Paragraphs 4, 5, 6, 7, and 8 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

6. The allegations set forth in Paragraph 9 of the Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, this Defendant admits that Kathy Scroggs was an employee of Magnolia Manor Inman (the "Facility") at the time alleged. Further responding, this Defendant asserts it is the sole licensee and operator of the Facility. Any allegations inconsistent with this response are denied.

7. To the extent the allegations set forth in Paragraph 10 of the Plaintiff's Amended Complaint are directed at this Defendant, this Defendant admits that it is the sole licensee and operator of the Facility, which is located at the stated address. Any allegations inconsistent with

this response are denied. To the extent the allegations in the above Paragraph are directed at other parties, no response is required.

8. Answering the allegations in Paragraph 11 of Plaintiff's Amended Complaint, this Defendant admits such allegations only insofar as it is alleged that this Defendant provides nursing care and does charge for such services depending on the care required for each respective resident. All remaining allegations call for pure legal conclusions which do not require a response.

9. Responding to the allegations set forth in Paragraph 12 of the Plaintiff's Amended Complaint, this Defendant admits that Jane Doe was a resident of the facility but craves reference to her medical records and skilled nursing chart to confirm the dates of her residency. Any and all allegations inconsistent with those records are hereby denied and strict proof is demanded thereof.

10. The allegations set forth in Paragraphs 13 and 14 of the Plaintiff's Amended Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, these allegations are denied as stated and strict proof is demanded.

11. In answering the allegations set forth in Paragraph 15 of Plaintiff's Amended Complaint, this Defendant would crave reference to Ms. Doe's skilled nursing chart and any other pertinent medical records for their contents. This Defendant denies any and all allegations inconsistent therewith.

12. This Defendant admits the allegations in Paragraph 16 of Plaintiff's Amended Complaint to the extent it alleges that this Defendant had a duty to comply with the nursing standard of care during the time period that Ms. Doe was a resident of this Defendant's facility. Any and all other allegations in Paragraph 16 inconsistent with or not specifically admitted in this response are hereby denied and this Defendant demands strict proof thereof.

13. This Defendant admits the allegations in Paragraph 17 of Plaintiff's Amended Complaint to the extent it alleges that this Defendant is licensed under the laws of the State of South Carolina to operate a nursing home and that it is subject to a certain standard of care with respect to such operation. Any and all other allegations in Paragraph 17 inconsistent with or not specifically admitted in this response are hereby denied and this Defendant demands strict proof thereof.

14. This Defendant denies the allegations in Paragraphs 18, 19, and 20 of Plaintiff's Amended Complaint and demands strict proof thereof.

15. This Defendant admits the allegations in Paragraph 21 of Plaintiff's Amended Complaint only to the extent that Ms. Doe was admitted to this Defendant's facility on or around August 22, 2017. Answering as to any and all other allegations of Paragraph 21, this Defendant craves reference to the skilled nursing chart and the medical records of Ms. Doe and denies any and all allegations inconsistent therewith or absent therefrom. This Defendant would further assert that it complied with the standard of care and denies any and all assertions of liability set forth in Paragraph 21 of Plaintiff's Amended Complaint.

16. Answering the allegations in Paragraph 22 of Plaintiff's Amended Complaint, this Defendant craves reference to the skilled nursing chart and the medical records of Ms. Doe and denies any and all allegations inconsistent therewith or absent therefrom. This Defendant would further assert that it complied with the standard of care and denies any and all assertions of liability set forth in Paragraph 22 of Plaintiff's Amended Complaint.

17. Responding to the allegations set forth in Paragraph 23 of the Plaintiff's Amended Complaint, this Defendant craves reference to the skilled nursing chart and medical records of Ms. Doe for their contents and denies any and all allegations inconsistent therewith or absent therefrom.

Any and all allegations inconsistent with this response or which assert or imply liability and/or damages as to this Defendant are denied.

18. Answering the allegations set forth in Paragraphs 24, 25, and 26 of the Plaintiff's Amended Complaint, this Defendant would crave reference to Ms. Doe's chart, medical records, as well as any pertinent police records for their contents. This Defendant denies any allegations inconsistent with the contents of such records or absent therefrom. Any and all allegations inconsistent with this response or which assert or imply liability and/or damages as to this Defendant are denied.

19. Answering the allegations set forth in Paragraph 27 of the Plaintiff's Amended Complaint, this Defendant would crave reference to the article cited therein for its contents and any relevant arrest and conviction records for their contents. This Defendant admits that Christopher Pilgrim was not an employee of the facility. This Defendant denies any and all allegations inconsistent therewith or absent therefrom. Any and all allegations inconsistent with this response or which assert or imply liability and/or damages as to this Defendant are denied.

20. Answering the allegations in Paragraph 28 of Plaintiff's Amended Complaint, this Defendant restates all previous responses as if fully set forth herein verbatim.

21. The Defendant admits the allegations in Paragraph 29 of Plaintiff's Amended Complaint to the extent it alleges this Defendant had a duty to comply with the standard of care during the time period Ms. Doe was a resident of this Defendant's facility. Any and all other allegations in Paragraph 29 inconsistent with or not specifically admitted in this response are hereby denied and this Defendant demands strict proof thereof.

22. This Defendant denies the allegations in Paragraphs 30 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof.

23. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief, in full.

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

24. Plaintiff's claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections and defenses set forth in S.C. Code Ann. § 15-32-510, et. seq., including but not limited to S.C. Code Ann. §§ 15-32-520, 15-32-530, and 15-32-540.

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

25. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between this Defendant and Jane Doe, and therefore this matter should be stayed or dismissed pursuant to rule 12(b)(1) of the South Carolina Rules of Civil Procedure and Section 3 of the Federal Arbitration Act and compelled to arbitration.

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

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

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

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

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

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

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

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

29. This Defendant would affirmatively assert that the Plaintiff's injuries were caused by intervening and superseding acts of third parties not a party to this action.

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

30. This Defendant would assert that the acts that caused the Plaintiff's injuries were unforeseeable and occurred independently of any alleged action or omission of this Defendant.

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

31. To the extent this Defendant is required to raise the affirmative defenses under applicable South Carolina law in order to avoid an argument of waiver by Plaintiff, this Defendant

would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

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

32. Some or all of the Plaintiff's claims are barred by the applicable statute of limitations.

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

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

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

34. There was no negligence, gross negligence, or recklessness by this Defendant that caused or contributed to the injuries allegedly suffered by Ms. Doe.

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

35. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses. Further, the Defendant also intends to rely upon the affirmative defenses asserted by its Co-Defendants in this matter, to the extent they are applicable.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved and that it be awarded

the costs and reasonable fees associated with this matter and such other relief as this Court may deem just and proper.

CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
James D. Gandy, III
SC State Bar ID No.: 11925
Gaillard T. Dotterer, III
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Attorneys for the Defendant THI of South Carolina
at Magnolia Manor-Inman, LLC

Charleston, South Carolina

Dated: May 18, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR JANE DOE,	)	CASE NO. 2022-CP-42-01163
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT HUNT VALLEY
INC., THI OF SOUTH CAROLINA,	)	HOLDINGS, LLC'S ANSWER TO THE
LLC, HUNT VALLEY HOLDINGS,	)	PLAINTIFF'S AMENDED COMPLAINT
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Hunt Valley Holdings, LLC (hereinafter "this Defendant"), *subject to and without waiving its right to move to dismiss this matter for lack of personal jurisdiction*, hereby responds to the allegations set forth in Plaintiff's Amended Complaint as follows:

1. Any and all allegations set forth in Plaintiff's Amended Complaint which are not specifically admitted, qualified, or otherwise explained or denied, are hereby expressly denied and strict proof is demanded thereof.

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

3. This Defendant admits the allegations in Paragraph 2 to the extent they allege that Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman. However, this Defendant denies the sufficiency of said Affidavit and its contents to the extent they assert or imply liability, damages, and/or wrongdoing as to this Defendant. Any allegations inconsistent with this response are denied.

4. The allegations set forth in Paragraphs 3, 4, and 5 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

5. This Defendant denies the allegations set forth in Paragraph 6 of Plaintiff's Amended Complaint. Further responding, this Defendant affirmatively asserts that it does not manage, operate, or control any skilled nursing facility, including the facility at issue in this matter (the "Facility") and has never delivered nursing care to any person, including Jane Doe.

6. The allegations set forth in Paragraphs 7, 8, and 9 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

7. This Defendant denies the allegations set forth in Paragraphs 10 and 11 of the Plaintiff's Amended Complaint, to the extent they are directed at this Defendant. Further responding, this Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe.

8. The allegations set forth in Paragraph 12 of the Plaintiff's Amended Complaint are directed at a party other than this Defendant. To the extent they are directed at this Defendant, this

Defendant is without sufficient information and knowledge to form an opinion as to the allegations in Paragraph 8 and, therefore, they are denied and strict proof thereof is demanded.

9. This Defendant denies the allegations in Paragraphs 13, 14, and 15 of Plaintiff's Complaint and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility, does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent these allegations are directed at a party other than this Defendant, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

10. To the extent the allegations set forth in Paragraphs 16, 17, 18, 19, and 20 of the Plaintiff's Amended Complaint are directed at this Defendant, they are denied. To the extent they are directed at other parties, no response is required.

11. The allegations set forth in Paragraphs 21, 22, 23, 24, 25, 26, and 27 of the Plaintiff's Amended Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant is without information and belief to respond to such allegations. This Defendant has never operated, managed or controlled any skilled nursing facility, including the Facility, and has never provided care or treatment to any person, including Ms. Doe. This Defendant further denies any interaction or relationship with Ms. Doe of any kind.

12. Answering the allegations in Paragraph 28 of Plaintiff's Amended Complaint, this Defendant restates all previous responses as if fully set forth herein verbatim.

13. This Defendant denies the allegations in Paragraphs 29 and 30 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility, does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent those allegations are directed at other parties, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

14. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief, in full.

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

15. This matter must be stayed as against this Defendant pending the result of arbitration pursuant to a valid arbitration agreement entered into between Ms. Doe and the Facility Defendant pursuant to Section 3 of the Federal Arbitration Act. This Defendant hereby gives notice of its intent to file a Motion to Stay.

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

16. This Court lacks jurisdiction over this Defendant pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 36-2-803. Accordingly, Plaintiff's claims against this Defendant must be dismissed.

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

17. Plaintiff's claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to

privileges and immunities, due process and equal protection and this Defendant would further assert the protections and defenses set forth in S.C. Code Ann. § 15-32-510, et. seq., including but not limited to S.C. Code Ann. §§ 15-32-520, 15-32-530, and 15-32-540.

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

18. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between this Defendant and Jane Doe, and therefore this matter should be stayed or dismissed pursuant to rule 12(b)(1) of the South Carolina Rules of Civil Procedure and Section 3 of the Federal Arbitration Act and compelled to arbitration.

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

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

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

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

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

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

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

22. This Defendant would affirmatively assert that the Plaintiff's injuries were caused by intervening and superseding acts of third parties not a party to this action.

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

23. This Defendant would assert that it owes no duty of care to the Ms. Doe. To the extent this Defendant did Ms. Doe a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

24. This Defendant would assert that the acts that caused the Plaintiff's injuries were unforeseeable and occurred independently of any alleged action or omission of this Defendant.

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

25. To the extent this Defendant is required to raise the affirmative defenses under applicable South Carolina law in order to avoid an argument of waiver by Plaintiff, this Defendant

would assert Plaintiff's damages, if any, should be proportionately barred or reduced under the doctrine of comparative fault if such evidence is found as the case proceeds.

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

26. Some or all of the Plaintiff's claims are barred by the applicable statute of limitations.

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

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

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

28. There was no negligence, gross negligence, or recklessness by this Defendant that caused or contributed to the injuries allegedly suffered by Ms. Doe.

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

29. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses. Further, the Defendant also intends to rely upon the affirmative defenses asserted by its Co-Defendants in this matter, to the extent they are applicable.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved and that it be awarded

the costs and reasonable fees associated with this matter and such other relief as this Court may deem just and proper.

CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
James D. Gandy, III
SC State Bar ID No.: 11925
Gaillard T. Dotterer, III
SC State Bar ID No.: 103620
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com,
tgandy@ycrlaw.com, gdotterer@ycrlaw.com
Attorneys for the Defendant Hunt Valley Holdings,
LLC

Charleston, South Carolina

Dated: May 18, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT THI OF BALTIMORE,
INC., THI OF SOUTLI CAROLINA,	)	INC.'S ANSWER TO THE PLAINTIFF'S
LLC, HUNT VALLEY HOLDINGS,	)	AMENDED COMPLAINT
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR PLAINTIFF:

The Defendant, THI of Baltimore, Inc. (hereinafter "this Defendant"), *subject to and without waiving its right to move to dismiss this matter for lack of personal jurisdiction*, hereby responds to the allegations set forth in Plaintiff's Amended Complaint as follows:

1. Any and all allegations set forth in Plaintiff's Amended Complaint which are not specifically admitted, qualified, or otherwise explained or denied, are hereby expressly denied and strict proof is demanded thereof.

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

3. This Defendant admits the allegations in Paragraph 2 to the extent they allege that Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman. However, this Defendant denies the sufficiency of said Affidavit and its contents to the extent they assert or imply liability, damages, and/or wrongdoing as to this Defendant. Any allegations inconsistent with this response are denied.

4. The allegations set forth in Paragraph 3 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

5. Responding to the allegations in Paragraph 4 of the Plaintiff's Amended Complaint, this Defendant admits only that it is an entity organized under the laws of the state of Delaware. Any and all remaining allegations are denied. Further responding, this Defendant affirmatively asserts that it does not manage, operate, or control any skilled nursing facility, including the facility at issue in this matter (the "Facility") and has never delivered nursing care to any person, including Jane Doe.

6. The allegations set forth in Paragraphs 5, 6, 7, 8, and 9 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

7. This Defendant denies the allegations set forth in Paragraphs 10 and 11 of the Plaintiff's Amended Complaint, to the extent they are directed at this Defendant. Further responding, this Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe.

8. The allegations set forth in Paragraph 12 of the Plaintiff's Amended Complaint are directed at a party other than this Defendant. To the extent they are directed at this Defendant, this Defendant is without sufficient information and knowledge to form an opinion as to the allegations in Paragraph 8 and, therefore, they are denied and strict proof thereof is demanded.

9. This Defendant denies the allegations in Paragraphs 13, 14, and 15 of Plaintiff's Complaint and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility, does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent these allegations are directed at a party other than this Defendant, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

10. To the extent the allegations set forth in Paragraphs 16, 17, 18, 19, and 20 of the Plaintiff's Amended Complaint are directed at this Defendant, they are denied. To the extent they are directed at other parties, no response is required.

11. The allegations set forth in Paragraphs 21, 22, 23, 24, 25, 26, and 27 of the Plaintiff's Amended Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant is without information and belief to respond to such allegations. This Defendant has never operated, managed or controlled any skilled nursing facility, including the Facility, and has never provided care or treatment to any person, including Ms. Doe. This Defendant further denies any interaction or relationship with Ms. Doe of any kind.

12. Answering the allegations in Paragraph 28 of Plaintiff's Amended Complaint, this Defendant restates all previous responses as if fully set forth herein verbatim.

13. This Defendant denies the allegations in Paragraphs 29 and 30 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility, does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent those allegations are directed at other parties, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

14. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief, in full.

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

15. This matter must be stayed as against this Defendant pending the result of arbitration pursuant to a valid arbitration agreement entered into between Ms. Doe and the Facility Defendant pursuant to Section 3 of the Federal Arbitration Act. This Defendant hereby gives notice of its intent to file a Motion to Stay.

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

16. This Court lacks jurisdiction over this Defendant pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 36-2-803. Accordingly, Plaintiff's claims against this Defendant must be dismissed.

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

17. Plaintiff's claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections and defenses set forth in S.C. Code Ann. § 15-32-510, et. seq., including but not limited to S.C. Code Ann. §§ 15-32-520, 15-32-530, and 15-32-540.

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

18. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between this Defendant and Jane Doe, and therefore this matter should be stayed or dismissed pursuant to rule 12(b)(1) of the South Carolina Rules of Civil Procedure and Section 3 of the Federal Arbitration Act and compelled to arbitration.

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

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

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

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

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

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

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

22. This Defendant would affirmatively assert that the Plaintiff's injuries were caused by intervening and superseding acts of third parties not a party to this action.

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

23. This Defendant would assert that it owes no duty of care to the Ms. Doe. To the extent this Defendant did Ms. Doe a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

24. This Defendant would assert that the acts that caused the Plaintiff's injuries were unforeseeable and occurred independently of any alleged action or omission of this Defendant.

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

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

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

26. Some or all of the Plaintiff's claims are barred by the applicable statute of limitations.

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

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

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

28. There was no negligence, gross negligence, or recklessness by this Defendant that caused or contributed to the injuries allegedly suffered by Ms. Doe.

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

29. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses. Further, the Defendant also intends to rely upon the affirmative defenses asserted by its Co-Defendants in this matter, to the extent they are applicable.

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

CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
James D. Gandy, III
SC State Bar ID No.: 11925
Gaillard T. Dotterer, III
SC State Bar ID No.: 103620
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com,
tgandy@ycrlaw.com, gdotterer@ycrlaw.com
Attorneys for the Defendant THI of Baltimore, Inc.

Charleston, South Carolina

Dated: May 18, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT THI OF SOUTH
INC., THI OF SOUTLI CAROLINA,	)	CAROLINA, LLC'S ANSWER TO THE
LLC, HUNT VALLEY HOLDINGS,	)	PLAINTIFF'S AMENDED COMPLAINT
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of South Carolina, LLC (hereinafter "this Defendant"), hereby responds to the allegations set forth in Plaintiff's Amended Complaint as follows:

1. Any and all allegations set forth in Plaintiff's Amended Complaint which are not specifically admitted, qualified, or otherwise explained or denied, are hereby expressly denied and strict proof is demanded thereof.
2. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint and therefore denies the same and demands strict proof thereof.
3. This Defendant admits the allegations in Paragraph 2 to the extent they allege that Plaintiff filed a Notice of Intent along with an Affidavit of Karen Coleman. However, this

Defendant denies the sufficiency of said Affidavit and its contents to the extent they assert or imply liability, damages, and/or wrongdoing as to this Defendant. Any allegations inconsistent with this response are denied.

4. The allegations set forth in Paragraphs 3 and 4 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

5. This Defendant denies the allegations set forth in Paragraph 5 of the Plaintiff's Amended Complaint. Further responding, this Defendant affirmatively asserts that it does not manage, operate, or control any skilled nursing facility, including the facility at issue in this matter (the "Facility") and has never delivered nursing care to any person, including Jane Doe.

6. The allegations set forth in Paragraphs 6, 7, 8, and 9 of Plaintiff's Amended Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations required a response, they are denied.

7. This Defendant denies the allegations set forth in Paragraphs 10 and 11 of the Plaintiff's Amended Complaint, to the extent they are directed at this Defendant. Further responding, this Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe.

8. The allegations set forth in Paragraph 12 of the Plaintiff's Amended Complaint are directed at a party other than this Defendant. To the extent they are directed at this Defendant, this Defendant is without sufficient information and knowledge to form an opinion as to the allegations in Paragraph 8 and, therefore, they are denied and strict proof thereof is demanded.

9. This Defendant denies the allegations in Paragraphs 13, 14, and 15 of Plaintiff's Complaint and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility, does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent these allegations are directed at a party other than this Defendant, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

10. To the extent the allegations set forth in Paragraphs 16, 17, 18, 19, and 20 of the Plaintiff's Amended Complaint are directed at this Defendant, they are denied. To the extent they are directed at other parties, no response is required.

11. The allegations set forth in Paragraphs 21, 22, 23, 24, 25, 26, and 27 of the Plaintiff's Amended Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant is without information and belief to respond to such allegations. This Defendant has never operated, managed or controlled any skilled nursing facility, including the Facility, and has never provided care or treatment to any person, including Ms. Doe. This Defendant further denies any interaction or relationship with Ms. Doe of any kind.

12. Answering the allegations in Paragraph 28 of Plaintiff's Amended Complaint, this Defendant restates all previous responses as if fully set forth herein verbatim.

13. This Defendant denies the allegations in Paragraphs 29 and 30 of Plaintiff's Amended Complaint, including all subparts, and demands strict proof thereof. This Defendant asserts that it has never operated, managed or controlled any nursing facility, including the Facility,

does not have employees and/or agents at the Facility and has never provided care and treatment to any person, including Jane Doe. This Defendant further denies any interaction or relationship with Jane Doe of any kind. To the extent those allegations are directed at other parties, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof thereof is demanded.

14. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief, in full.

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

15. This matter must be stayed as against this Defendant pending the result of arbitration pursuant to a valid arbitration agreement entered into between Ms. Doe and the Facility Defendant pursuant to Section 3 of the Federal Arbitration Act. This Defendant hereby gives notice of its intent to file a Motion to Stay.

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

16. Plaintiff's claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further assert the protections and defenses set forth in S.C. Code Ann. § 15-32-510, et. seq., including but not limited to S.C. Code Ann. §§ 15-32-520, 15-32-530, and 15-32-540.

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

17. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between this Defendant and Jane Doe, and therefore this matter should be stayed or dismissed

pursuant to rule 12(b)(1) of the South Carolina Rules of Civil Procedure and Section 3 of the Federal Arbitration Act and compelled to arbitration.

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

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

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

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

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

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

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

21. This Defendant would affirmatively assert that the Plaintiff's injuries were caused by intervening and superseding acts of third parties not a party to this action.

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

22. This Defendant would assert that it owes no duty of care to the Ms. Doe. To the extent this Defendant did Ms. Doe a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

23. This Defendant would assert that the acts that caused the Plaintiff's injuries were unforeseeable and occurred independently of any alleged action or omission of this Defendant.

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

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

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

25. Some or all of the Plaintiff's claims are barred by the applicable statute of limitations.

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

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

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

27. There was no negligence, gross negligence, or recklessness by this Defendant that caused or contributed to the injuries allegedly suffered by Ms. Doe.

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

28. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses. Further, the Defendant also intends to rely upon the affirmative defenses asserted by its Co-Defendants in this matter, to the extent they are applicable.

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

CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

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Attorneys for the Defendant THI of South Carolina,
LLC

Charleston, South Carolina

Dated: May 18, 2022

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 TIMOTHY HUTLEY, GUARDIAN FOR JANE
5 DOE,

6 PLAINTIFF,

7 vs.

8 THI OF SOUTH CAROLINA AT MAGNOLIA
9 MANOR INMAN, LLC, THI OF BALTIMORE,
10 INC., THI OF SOUTH CAROLINA, LLC,
11 HUNT VALLEY HOLDINGS, LLC, THI OF
12 SOUTH CAROLINA AT INMAN, LLC,
13 MURRAY FORMAN, AND KATHY SCROGGS,
14 INDIVIDUALLY,

15 DEFENDANTS.

TRANSCRIPT
OF
RECORD

2022-CP-42-1163

16 March 1st, 2023

17 B E F O R E:

18 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

20 C. DANIEL PRUITT
21 ESQ.
22 Attorney for the Plaintiff

23 RUSSELL G. HINES
24 ESQ.
25 Attorney for the Defendants

Pamela E. Green
Circuit Court Reporter

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: So, let me, because we're doing this via
4 WebEx, they're a couple of things I have to put on the
5 record.

6 Okay. Good morning. I am Judge Knie. I am a Circuit
7 Court judge in the Seventh Judicial Circuit and this is a
8 term of Common Pleas Nonjury for the Seventh Judicial
9 Circuit in Spartanburg. Today is March the 1st, 2023, and
10 the hearings are being conducted via WebEx and we are using
11 the WebEx record function to preserve the record.

12 And so let me ask counsel if you-all will please
13 identify yourselves for the record beginning with counsel
14 for the plaintiff.

15 MR. PRUITT: Yes, Your Honor. I'm Dan Pruitt of the
16 Greenville County Bar representing the plaintiff in this
17 case.

18 THE COURT: Okay.

19 MR. HINES: And I'm Russ Hines of, of Clement Rivers in
20 Charleston on behalf of all the, the movants in, in this
21 case or the moving parties.

22 We have a, a -- I believe four of them. One is THI of
23 South Carolina at Magnolia Manor Inman, LLC. Also THI of
24 Baltimore, Incorporated, THI of South Carolina, LLC, and
25 Hunt Valley Holdings, and I believe also THI of South

1 Carolina Inman, LLC, which are the -- well, I think
2 that's -- that defendant is all -- is -- would be analogous
3 with the, with THI of Magnolia Manor, LLC. But the, the
4 facility in the case. But those are the parties we
5 represent.

6 THE COURT: Okay. And so you are present on behalf of
7 all defendants and Mr. Pruitt is present on behalf of the
8 plaintiff and I'm pulling -- I've got the, the motion,
9 Hutley, guardian ad litem for Jane Doe.

10 MR. PRUITT: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. PRUITT: That's correct.

13 THE COURT: All right. And so, do -- Mr. Pruitt, do
14 you agree for the hearing to be conducted this way, sir?

15 MR. PRUITT: Yes, sir. Yes, Your Honor.

16 THE COURT: And, Mr. Hines, do you agree?

17 MR. HINES: Yes, Your Honor.

18 THE COURT: Okay. And so now officially we are on the
19 record in the Civil Action Number 22-CP-42-1163, Timothy
20 Hutley, guardian ad litem for Jane Doe, versus THI of South
21 Carolina at Magnolia Manor Inman, LLC, et al, defendants.
22 And I have before me -- there are four motions and the first
23 motion is a motion to compel arbitration filed on behalf of
24 defendant THI of South Carolina at Magnolia Manor, LLC. And
25 then I have three motions to stay filed by Hunt Valley

1 Holdings, LLC, THI of South Carolina, LLC, and THI of
2 Baltimore, Inc.'s motion to stay.

3 And so, since Mr. Hines is stating that he represents
4 all of those folks, I'm going to let him go forward and then
5 I will hear from Mr. Pruitt.

6 Of course, Mr. Hines, if you need to reply, I will
7 allow you to do so.

8 Okay?

9 MR. HINES: Thank you very much, Your Honor.

10 May it please the Court.

11 Yes, indeed. I represent all of the moving parties
12 today, and as Your Honor has recited, there are four
13 motions. Three of those motions I think I can not set
14 aside. We're at -- of course, we're moving forward with
15 them. But the relationship between three of the motions
16 and, and the one that I'll call the primary motion is this.

17 The primary motion is the motion to compel arbitration
18 and that's the one that we're making on behalf of THI of
19 South Carolina---

20 THE COURT: Oh, Mr.---

21 MR. HINES: ---at Magnolia Manor---

22 THE COURT: Mr.---

23 MR. HINES: ---Inman---

24 THE COURT: Mr. Hines, I'm sorry. Excuse me. Just,
25 just a couple things.

1 I, I -- I've got -- I can't split my screen. So, I've
2 got a laptop and then I've got this computer that -- but
3 I'm, I'm looking at the, the file and I want to make sure
4 that everything is in the file that we need to consider.

5 okay?

6 MR. HINES: Yes, Your Honor.

7 THE COURT: And I meant to do that at the beginning.

8 So, there -- the most recent filing is something that
9 was filed -- was it filed this morning?

10 MR. HINES: I believe so, Your Honor. I think we both
11 filed, you know, some memos very recently.

12 THE COURT: Okay. And so there was a memo in support
13 filed on yesterday, a memo in opposition filed on yesterday,
14 and then another memo in support. And that, I think, was
15 filed by -- for THI of South Carolina at Magnolia Manor
16 Inman this morning at nine o'clock.

17 MR. HINES: That sounds---

18 THE COURT: Is that right?

19 MR. HINES: That sounds right, Your Honor. I, I know
20 we---

21 THE COURT: Okay.

22 MR. HINES: I think we did, and Mr. Pruitt can speak to
23 this, we did send him I think what was filed this morning.
24 I think we, we sent that to him yesterday at -- but, but I
25 believe you've correctly identified the filings related to

1 these motions and---

2 THE COURT: Okay. Okay. And so I just want to make
3 sure there's not anything else in the pipeline before we---

4 MR. HINES: No, Your Honor.

5 THE COURT: ---concluded the hearing and, and that I've
6 received everything that y'all want me to consider.

7 Okay.

8 MR. PRUITT: May I just speak briefly to that?

9 I -- I'm not sure. I got two filings yesterday but I
10 didn't -- I haven't seen a filing this morning and then they
11 attached a number of exhibits to their memorandum in support
12 of their motion to compel arbitration and one of the
13 motions -- one of the exhibits -- I think the first exhibit
14 they accidentally gave two times with the arbitration
15 clause. But one of those was suppose to be the admission
16 agreement and they didn't -- I think it was just a mistake.

17 They meant to put it. But it, it came out two
18 arbitration agreements instead of one admission and one
19 arbitration. But I think my paralegal, in filing it last
20 time, they went ahead and extracted that admission agreement
21 and stuck it in.

22 And so I think we've got it. But I think the documents
23 to -- for the Court to consider are gonna be the admission
24 agreement and the arbitration agreement.

25 MR. HINES: And my, my records indicate that, that

1 those documents were filed as Exhibits 1 and 2 to the memo
2 in support, that it was filed by THI of Magnolia -- THI of
3 South Carolina at Magnolia Manor Inman, LLC. And I do --
4 and I apologize for it.

5 I -- I'm not -- I've seen an email from Mr. Pruitt
6 about how there could of been some inadvertence. I think
7 that's gotten straightened out now because what I can see in
8 our records show a file stamp on Exhibit 1 to the memo in
9 support that, from late yesterday, for the -- this would be
10 Exhibit 1 for the admission agreement and Exhibit 2 for the
11 arbitration agreement. And they both seem to show a file --
12 show the file stamp on the right side, which makes me
13 believe that they've -- have been filed properly. At least
14 at this point.

15 There could of been some initial confusion about that.
16 But I think we've got it cleared up.

17 MR. PRUITT: Thank you.

18 If that is the case, I think that those are the
19 documents. I just wanted to make sure the Court had the
20 documents necessary for review.

21 Thank you.

22 THE COURT: Okay.

23 MR. HINES: Thank you.

24 THE COURT: Okay.

25 MR. HINES: And, Your Honor---

1 THE COURT: And so, so, Mr. Pruitt, do you anticipate
2 filing anything else in response?

3 MR. PRUITT: The -- I filed a memorandum based on what
4 I was trying to argue. I think it's sufficiently complete.

5 There is one case that is a very recent Court of
6 Appeals decision called Solesbee versus Fundamental that I
7 referenced in the -- it has not really -- it's Opinion 5963
8 and I -- it's a South Carolina Court of Appeals decision.

9 I would be happy to, you know, file that or email that
10 with the Court cause it's -- it was -- I wasn't able to call
11 it like Southeast Second or Southeast Third 454 or whatever.
12 But I refer to it and I, I would offer that. If the Court
13 needs me to provide that, I can have that emailed for the
14 Court's review. But I've, I've cited it as best I can in my
15 memorandum.

16 Other than that, I don't think of any -- I can't think
17 of anything else I would file in response.

18 THE COURT: Okay.

19 MR. HINES: And let me say this, if I may, about that
20 Solesbee case. I've -- that case is one that is not
21 specifically mentioned in our, in our memo. But I, I have
22 it here to, to, to bring to Your Honor's attention. Then,
23 candidly, it probably should of been specifically mentioned
24 in, in our, in our memo and, and I would be happy to provide
25 it to Your Honor via email with a copy to counsel.

1 well, I can do that immediately. But the, the, the
2 reason why I say it may, it may, you know, probably should
3 of been, and I, and I apologize for, for doing this, cause
4 it -- it's a case that cuts against us on this point and I
5 certainly -- my intention, in arguing this, is to bring that
6 case to the Court's attention and to explain why I don't
7 believe it binds the Court in this case.

8 But, anyways, I, I -- I'm -- I'm at -- I can readily
9 put my hands on that case and send it to Your Honor. If --
10 that would be the only thing I could think of that, that we
11 might want to submit, you know, post hearing. I could, I
12 could take a moment and do it right now, in fact. But, but
13 I was going to, to, to bring up that case and to discuss it
14 with Your Honor as to why I'm -- could -- believe I can
15 distinguish it from this -- from the current case and
16 that's -- well, I'm -- I intend that to be part of my
17 argument.

18 THE COURT: Okay. You can send it to me afterward.
19 That will be fine and I'll -- I mean, of course, I'll give
20 y'all as much time as you want arguing today and allow a
21 follow-up.

22 okay?

23 MR. HINES: well, thank you very much, Your Honor.

24 THE COURT: All right.

25 MR. HINES: In, in this case, you know, I really

1 feel -- and thank you for all that housekeeping and I'm
2 sorry to have -- for the confusion that might of made it a
3 little more, a little more difficult.

4 This is one where I'm -- I've, I've argued a motion --
5 well, I've argued this, this motion to Your Honor a time or
6 two before and, and really it's this -- in our -- and it's
7 the same -- well, the, the same -- basically the same
8 substance. And so I, I will, I will try to make my way
9 through it expeditiously.

10 But basically what -- where we are here is that we have
11 the THI at Magnolia Manor Inman has made -- that's the
12 primary motion and that's a motion to stay and compel
13 arbitration, the motion, motion to compel arbitration. And
14 the other motions that are made by the three other moving
15 parties sort of tagalong with that motion. They say, in
16 essence, we want to have the case stayed as to us pending
17 the outcome of, of the, the motion to compel arbitration and
18 any arbitration proceedings that result from that motion.

19 So, you know, those motions -- and, and I will say, you
20 know, quickly that the, the basis for, for their asking for
21 the stay is from the Federal Arbitration Act. In
22 particular, Section 3 which we take the, the, the position
23 it requires a stay if, if the case is subject to arbitration
24 and -- but that -- that's really -- all of those motions
25 follow along with the lead of the, the motion to compel

1 arbitration.

2 And the, the context here for the motion to compel
3 arbitration, this is a case -- well, it -- it's (sic) arises
4 out of an alleged, you know -- well, abuse. I mean it's a
5 little different I guess than your, than your medical
6 malpractice case in terms of alleged skilled nursing
7 facility deficient care and treatment. It's a case where
8 the allegation is that, that the residents, who's named Jane
9 Doe for the sake of this lawsuit, was abused at the, at
10 the -- at this facility and we're moving to compel the claim
11 to arbitration on this basis.

12 We've, we've -- there's an -- and these are the primary
13 bases of this, Your Honor. This is -- the Doctrine of
14 Merger and the equitable concept of direct benefits
15 estoppel. And the way that works is Timothy Hutley, who's
16 the guardian for the, the resident here, Jane Doe, he
17 signed, upon her admission, Mrs. Doe's admission to the
18 facility, an admission agreement and an arbitration
19 agreement. Those are really the two things that, that I
20 want to focus Your Honor's attention.

21 The admission agreement is Exhibit 1 to our memo in
22 support of the motion to compel arbitration. The, the ad --
23 the arbitration agreement is Exhibit 2 and the Doctrine of
24 Merger works like this.

25 We have case law in South Carolina. The case of

1 Coleman versus Mariner Health Care is a particularly good
2 place to look although the doctrine predates that even.
3 But, in Coleman, it was another case that had to do with a
4 skilled nursing facility and it had to do with arbitration
5 and admission agreements that were signed in conjunction
6 with an admission.

7 And, in Coleman, the Court recognized the Doctrine of
8 Merger in that when you have an admission agreement and an
9 arbitration agreement, and it -- this wouldn't apply --
10 strictly speaking, it could apply to other instruments
11 signed under these circumstances. But, in Coleman, it's
12 particularly good because Coleman was a case that did
13 involve the, the basic setup that we have here with nursing
14 home admission.

15 But we have an admission agreement and an arbitration
16 agreement signed at the same time by the same parties for
17 the same purpose and in the course of the same transaction.
18 Those instruments are presumed to merge, which means that
19 they would be deemed to be considered and construed as a
20 single contract. And the reason why that's important, Your
21 Honor, is because, from that proposition of merger, having
22 merged the admission and arbitration agreements together, I
23 then want to apply the, the principle of direct benefits
24 estoppel.

25 Direct benefits estoppel says that you can not receive

1 benefits under certain provisions of a contract and then
2 deny the enforceability of other provisions of the same
3 contract and the reason why -- it's sort of a one/two punch.
4 And the reason why I have to land both punches to prevail, I
5 have to both have the merger and the estoppel -- so it's
6 important for me to make sure that I'm clear on that. But
7 if, if Your Honor will go with me so far as to say they're
8 merged, then what we have is we have a single contract by
9 virtue of merger that includes the admission agreement and
10 the arbitration agreement.

11 And the benefits that were received under the admission
12 agreement, which, again, through merger is now part of the
13 same contract as the arbitration agreement, is what I rely
14 on to argue direct benefits estoppel and those benefits,
15 Your Honor, I think are really hard to dispute. The
16 benefits would be in the form of, of room, of board, of
17 various care, treatment services all provided pursuant to
18 the admission agreement.

19 Obviously I recognize that there is liability that's
20 alleged in this case that would suggest that the experience,
21 you know, and to put it mildly, mildly, I'm -- I don't, I
22 don't need to get into the specifics of the, of the
23 allegations. But the -- that there was -- well, that
24 there's -- it's not claimed to be beneficial obviously with
25 respect to the, to the allegations. But my point is twofold

1 on that score.

2 Number one. We are, at this point, not talking about
3 the merits of the case, and as far as us -- you know, we --
4 so it would be premature to, to find that the plaintiff's
5 claim is actually meritorious cause we are disputing and
6 defending it. But also even with the out -- the alleged
7 acts or omissions and the alleged damages, that does not
8 change the fact that benefits were received under the
9 admission agreement in terms of, again, room, board, various
10 care, various treatments, things about which are not
11 complained of in the, in the complaint.

12 And so that's -- the basic lay of the land, Your Honor,
13 in terms of my argument for it -- to enforce the arbitration
14 agreement is through merger and direct benefits estoppel.
15 And I would make the point, Your Honor, let me -- if I can
16 come back just a little bit having laid out that, that
17 general sort of lay of the land that merger -- and in --
18 there's a case called Coleman. There's a case called Hodge.
19 There's a case called Thompson.

20 We've cited all these cases in the memo where every --
21 where the doctrine -- the idea that I'm arguing to you now,
22 Your Honor, the merger argument was unsuccessful and it was
23 un -- but the point that I want to come back to, to start
24 with is that Coleman gave us a, a, a viable, legal basis to
25 argue this by recognizing the, the principle of merger of

1 the same time, parties, purpose, and transaction.

2 And Coleman said that the admission agreement and the
3 arbitration agreement that were signed there in that case,
4 in that case it was signed by the, the resident's sister on
5 her behalf, that they checked all those boxes and they said
6 that -- so unless there is evidence contrary to an intention
7 to merge these documents, the proponent of arbitration in
8 that case is correct. There was a merger.

9 Now, in that case the Coleman Court went on to find
10 that there was evidence contrary to an intent to merge and,
11 therefore, the merger argument failed. But the keep point
12 for Coleman for this one moment I'm now is to say the
13 Coleman Court did recognize, if you check those four boxes,
14 you do have merger in play and you have the presumption in
15 favor -- presumption of merger. But the question then
16 becomes is it upset by evidence of an intent contrary to
17 merger.

18 Now, in Coleman, they found that there was an intent
19 contrary to merger for two reasons. Number one reason was
20 that -- or, or the two -- I don't know if they, if they
21 specifically ordered the reasons in terms of importance.
22 But here -- so here are the two reasons.

23 But -- one was that, in that case, the arbitration
24 agreement actually had a provision in it that allowed it to
25 be revoked within 30 days, which the admission agreement did

1 not.

2 So, what you have is a situation where, within 30 days
3 of signing the arbitration agreement, a person could say or,
4 you know, the resident's representative could say, you know
5 what? We, we want to revoke that. We don't like it anymore
6 and it could fall away.

7 So, if you imagine that merger document -- doctrine
8 being these two documents or two instruments come together,
9 the Court found -- considered it to be evidence contrary to
10 the intention to merge, that one of them could just kind of
11 fall out. And so the Court -- the thinking, as I understood
12 the, the Court, was to say how could you argue that they are
13 intended to be linked together and merged if one of them
14 could potentially just sort of disappear by virtue of being
15 able to be revoked.

16 Well, the -- I would have -- were this a case where we
17 had that provision, I would have another argument I suppose
18 to make about how, you know, I, I don't necessarily agree
19 with the Court's analysis there. But that's beside the
20 point here because we don't have the revocation provision.

21 So, that was one of the bases on, on which the Coleman
22 Court found there was no merger and we don't have that here.
23 There is no ability to revoke the arbitration agreement once
24 it's signed.

25 The other issue that the Coleman Court found, the

1 Coleman Court looked to the language in the admission
2 agreement under a provision that was the entire agreement
3 provision, which it might -- a merger clause and it had
4 language in it that referenced the admission, excuse me, the
5 arbitration agreement, you know, in those terms. It
6 referred to, in some of its language, the arbitration
7 agreement and the Court found that to be a textual basis
8 that reflected an intent not to merge them because by
9 referring to -- by including that language, it seems to
10 refer to the arbitration agreement as something other than
11 the admission agreement, there was an intent contrary to
12 merger.

13 Here we'd offer -- we don't have that situation either
14 because we do have an entire agreement provision of the
15 admission agreement. But not only does ours not refer to
16 the arbitration agreement in, in a way that would allow it
17 to be seen as, as something intended to be separate from the
18 admission agreement, it specifically has a clause in it
19 that, in the entire agreement provision, that says that
20 other admissions materials are incorporated by reference
21 herein and we take the position, and I think this is
22 supported -- there's a case called Stock versus White Oak.
23 I think it also is under the Hodge case where the Court of
24 Appeals -- and I -- and you might call it offhand.

25 I would say that, that -- although it wasn't asked the

1 question does an arbitration agreement constitute admissions
2 materials, in simply describing the case, the Court of
3 Appeals referred to the arbitration agreement as admissions
4 material meaning that -- say it, it wasn't teed up with the
5 question does the arbitration agreement constitute
6 admissions materials. But in simply writing out the factual
7 situation about what was signed in a, in a -- in accordance
8 with the admission or in conjunction with the admission, the
9 Court, you know, included the language that a -- sign that
10 the arbitration agreement and, and, and other admissions or
11 other admission materials.

12 And so my point is it's really one just to say that's
13 an evidence of just by a plain sort of common logic, you
14 know, logic I guess is that, of course, if the document's
15 signed in conjunction with the admission, which the
16 arbitration agreement was, are admissions materials.

17 Now, Your Honor, the Solesbee case I need to mention
18 and this is a case -- and I will send the Court this opinion
19 once we -- I'll, I'll email it to Your Honor and I'll
20 include, of course, opposing counsel. That case is called
21 the Estate of Mary Solesbee versus Fundamental Clinical and
22 Operational Services. It was decided by the Court of
23 Appeals on January 25th of, of this year, and, in fact,
24 Your Honor, I know this is testing well, all of our memories
25 because the case is actually one that I argued in front of

1 you some time ago and I should say to Your Honor you have
2 been affirmed by the Court of Appeals, Appeals in denying
3 our motion to compel arbitration.

4 So -- and, and so, as I, I say that well with the
5 utmost respect to both Your Honor and the Court of Appeals
6 when I suggest that this -- the case -- two things about why
7 that case is not necessarily dispositive of the, the
8 argument that I'm making today and two reasons are this.

9 One is a technical reason is that the case was very
10 recently decided, and although it is a published opinion, it
11 has -- and would have precedential value, that precedential
12 value has not yet attached so to speak because the time for
13 petitioning for rehearing has not run and, and we do intend
14 to petition for rehearing. And so there's, there's that
15 sort of technical reason.

16 I, I, I don't say that suggesting to Your Honor that I,
17 that I hold a lot of high hopes on a petition for rehearing.
18 Usually those are, are, are tough sledding. But they are
19 necessary to try and petition for, for a cert, which you
20 might have a little better chance in, in that environment
21 than you will after the Court of Appeals has already made
22 its ruling. But the Court of Appeals, to be sure, has
23 affirmed the denial of the motion to compel arbitration in
24 that case.

25 The other and more substantive reason is that we made

1 some arguments in that case, in the Solesbee case, that, to
2 my reading of the opinion, and, again, I say this with the
3 utmost respect to the Court of Appeals, the Court of Appeals
4 didn't -- did not address -- and so, for instance, the Court
5 of Appeals likened the Solesbee case -- and I will say this.
6 In Solesbee, we're dealing with identical admission
7 agreements and arbitration agreements. The terms of -- are,
8 are identical in that case to what they are here. So, I, I
9 certainly can't deny that.

10 But in terms of the way the Court of Appeals in
11 Solesbee addressed our arguments, they looked to that other
12 case I mentioned called Hodge. And, in Hodge, like Coleman
13 and another case like Thompson, they're all sort of maybe
14 the big three of the cases that have addressed this merger
15 argument, they, they looked to some other grounds beside
16 what the Coleman Court looked to, the ones I just mentioned
17 about the revocation and the entire agreement clause. They,
18 they, they included those but they also looked to some
19 others and found, in totality, there was an intent contrary
20 to merger.

21 The Court of Appeals, in Solesbee, in affirming Your
22 Honor's ruling denying our motion to compel arbitration, if
23 you'll indulge me just a, just a small amount of reading
24 from that decision. They -- the Court of Appeals writes
25 here the admission agreement provides it is to -- it is

1 governed by South Carolina law and the arbitration agreement
2 provides it's governed by federal law. That's the first
3 bases for finding an intent contrary to merger.

4 The Court of Appeals did not address that part of our
5 argument that explained that which is to say, when you're
6 dealing with a contract that implicates the Federal
7 Arbitration Act, which this case does here, and we --
8 because the Federal Arbitration Act is, is gonna be
9 implicated by an arbitration clause that's a part of any
10 contract that evidences a transaction involving interstate
11 commerce, you are always going to be involved in federal law
12 in the arbitration provision even if, for instance, the
13 arbitration provision is actually embedded within in a
14 single instrument.

15 So, I don't really -- the Court of Appeals didn't, you
16 know, in my, in my view, did not actually explain why -- you
17 know, explain it beyond that one, one sentence. This just
18 says hey, the -- our admission agreement provides it's
19 governed by South Carolina law. The arbitration by federal
20 law.

21 well, my point is that that doesn't actually show an
22 intention contrary to merger because an FAA governed
23 arbitration clause is always gonna be under the FAA even if
24 it's in the single contract, which, you know -- and,
25 furthermore, the arbitration agreement -- the admission

1 agreement doesn't actually say it's governed exclusively by
2 South Carolina law. It says it's governed by South Carolina
3 law, law except for where federal law displaces South
4 Carolina law, which is really essentially what the FAA does.

5 So, I, I -- in, you know, candidly and, again, with
6 respect to the Court of Appeals, I think there's a
7 distinction there that the Court of Appeals simply hasn't
8 addressed, and, until it does, it seems to me to be a fair
9 point to continue to try and argue to, to suggest that the
10 Court of Appeals decision in Solesbee has not -- is not
11 dispositive of what Your Honor is, is hearing today because,
12 while it does deal with our merger and, and a direct
13 inference estoppel arguments, and while it does deal with
14 identical admission in arbitration agreements, the Court of
15 Appeals has simply not addressed our argument about why this
16 federal law versus state law issue does not weigh against
17 merger.

18 The next thing -- point that the Court of Appeals
19 relied on in Solesbee is that the arbitration agreement
20 recognized the two doctrines were separate stating the
21 arbitration agreement "shall survive any termination or
22 breach of this agreement or the admission agreement."

23 Well, Your Honor, what -- what's going on there is that
24 the Solesbee Court is sort of analogizing this case to
25 Coleman. But, respectfully, it's doing so in a way that,

1 that doesn't -- it doesn't add up.

2 In Coleman, when it noted this textual basis for the,
3 for the, the -- a recognition of the arbitration agreement
4 as a separate agreement, it was doing that in the entire
5 agreement provision of the admission agreement, which is not
6 what, what happens here. In the arbitration agreement here,
7 it refers to the admission agreement and not in an entire
8 agreement provision. And, in our case, the entire agreement
9 provision again specifically includes language that
10 incorporates, by reference, other admissions materials.

11 That's not something in the, in the -- you know, and
12 similar to my, to my point -- my argument or response to the
13 Court of Appeals -- well, on the first point, the Court of
14 Appeals just doesn't, doesn't address that in the opinion.
15 It doesn't say -- it just -- it has that one sentence and
16 that's, that's it. We don't understand why the Court of
17 Appeals found or we, you know, against us on that point
18 other than, you know, we just -- it didn't actually dig into
19 our, our, our argument to explain why -- to refute our
20 position that, that there's not the intent contrary to
21 merger here because of, again, this is not exactly the
22 Coleman circumstance because, in Coleman, the language that
23 the Court cited was actually in the entire agreement
24 provision of the admission agreement. Here it's not.

25 This is their starting language from the arbitration

1 agreement and not in the entire agreement provision and,
2 again, I think, most importantly, the entire agreement
3 provision of our admission agreement here has this language
4 about incorporation by reference.

5 The next thing the Court of Appeals noted was the
6 arbitration agreement is silent as to whether it could be
7 revoked. But the admission agreement provides "resident
8 and/or his legal representative may terminate this agreement
9 at anytime upon written notice to the facility."

10 The Court of Appeals here seems to be trying to
11 analogize this case to the Coleman and also Thompson and
12 Hodge for that matter. They all had the revocation
13 provision in the admission agreement, which the Solesbee
14 Court recognizes that we don't have here. But, nonetheless,
15 the Court of Appeals goes on to say that the admission
16 agreement provides what I just read about the, the ability
17 to terminate the admission agreement.

18 The reason that we argue that that does not carry the
19 day and does not show an intention contrary to merger is
20 because the Court of Appeals has conflated the concept of
21 termination of the contract with revocation of a contract.
22 To revoke a contract is to nullify a contract, to treat as
23 if it is, is vacated and that's why I think it was important
24 that that was there for the Coleman, and Thompson, and Hodge
25 cases and the Court of Appeals here admits we don't have

1 revocation language. We simply have the ability to
2 terminate the admission agreement.

3 well, of course we have the ability to terminate the
4 agree -- the admission agreement because that -- you know,
5 you could do that simply by leaving the facility. The fact
6 that the arbitration agreement doesn't have similar language
7 and would pre -- and would go on beyond the termination
8 agreement, that's just the way arbitration agreements work
9 and there's a case we cited.

10 It's a, it -- you know, it's a case called -- well,
11 it's -- well, one of the corporate parties, Hooters, in the
12 case. But it, it -- it's a U.S. District Court says that --
13 explains about how that's just the way arbitration
14 agreements have to work because otherwise you would only
15 have the, the ability to arbitrate if the claim actually was
16 brought while the person was still at the facility. Because
17 unless there's that tail beyond that where the -- cause
18 obviously you have a Statute of Limitations the last number
19 of years, you know, you're -- the, the provisions that, that
20 are agreeing to arbitrate, they have to extend on into the
21 period where the claim might actually be made.

22 And two more points, Your Honor. You've been most
23 indulgent and I -- agreement it -- the admission agreement
24 and arbitration agreement were separately paginated and have
25 their own signature pages and on that one, you know, the

1 Court didn't -- it didn't -- again, did not get into our
2 point that, that that is really a specious basis to find an
3 intent contrary to merger because the Doctrine of Merger
4 will absolutely never be implicated if you don't have it --
5 two instruments, you know, to -- meaning, meaning two
6 different documents. You're always going to have that.

7 And so to say that, that the -- you know, the fact that
8 they have their own page numbers or their own signature
9 pages, I don't see how that can allow you to do anything
10 other than speculate about the intent to, to merge one way
11 or the other because you'll never -- you will never have
12 that. Again, you'll never have a question of merger arise
13 without multiple instruments.

14 So that's -- it seems to me that that -- to allow that
15 kind of, of, of a factor to, to cut against an intent to
16 merge is essentially to viscerate the, the Doctrine of
17 Merger cause, again, you will always have two instruments.
18 And if they happen to be page -- you know, paginated, I
19 guess the Court would be thinking they can't have page
20 numbers or, if they do, they actually have to be
21 continuously paginated in which case it would seem like, to
22 me, they're just part of the same contract and you don't
23 really have merger anyways.

24 So, again, but the Court didn't explain that and I
25 think the final point here is, on the merger, is that, that,

1 that they found because it was a voluntary arbitration
2 agreement that it -- that that cut against merger and,
3 again, we argue for, you know, that that's -- that's not
4 actually an, an indicia of, of contrary intention --
5 intention contrary to merger because, while it's perfectly
6 true that you -- they didn't have to sign the arbitration
7 agreement, once it's signed, it then, then would merge. You
8 know, so it's -- and, again, the Court of Appeals just
9 didn't explain that any further and that's why we think
10 there's room to argue that the Court of Appeals opinion is
11 simply not, you know, on its face anyways, dispositive of
12 this case because they're questions the Court left
13 unanswered.

14 And then -- but with that, Your Honor, because the
15 Court of Appeals found there was no merger, it didn't need
16 to address the equitable estoppel argument and it, and it
17 did not. And if I can quickly tick off just a couple of
18 quick points, I will, I will hush.

19 I, I -- in the, in the memo in opposition, opposing
20 counsel makes two arguments I want to be clear and, and
21 address.

22 One is there's an argument that the arbitration
23 agreement is a violation of, of federal law that has to do
24 with Medicare and Medicaid reimbursements and, essentially,
25 that law says that, that you can not require or you can

1 not -- you can not -- yeah, you can not require that -- the
2 facility can not require or accept, you know, any additional
3 consideration for admission. I guess, you know, this is
4 beyond the, the reimbursements that are allowed as a
5 precondition for admitting and the idea there would be that
6 to require the arbitration agreement to be signed for
7 admission is something of value and that it would constitute
8 a -- an improper consideration to the facility.

9 That -- the reason that argument is without merit is
10 because the admission agreement, and this is what, you know,
11 the -- where the Solesbee Court, for instance, recognized
12 this aspect of it, which I agree with, is that it's a
13 voluntary agreement. So, it's not actually a precondition.
14 It does not have to be -- excuse me.

15 The arbitration agreement does not have to be signed to
16 be admitted. That, that can simply not be signed. But
17 obviously it was here.

18 So -- but, since it's not actually a precondition of
19 admission, then it doesn't act -- that analysis just sort of
20 fails of its essential premise, the idea that it's, that
21 it's some sort of improper consideration.

22 The only other one that I wanted to mention is -- oh,
23 oh, well, I see two more. The, the admission agreement is
24 not supported by valuable con -- consideration. It is.

25 There's a, a case, O -- O'Neil versus Hilton Head

1 Hospital, Rickborn versus Liberty Life Insurance I think is
2 the name of the case. We've cited them. Both those cases
3 say that a, a mutual and binding arbitration -- promises to
4 arbitrate, that, that -- those promises constitute good and
5 valid consideration and support a contract and it -- and I
6 would argue on top of it they have to be in the case of an
7 FAA contract because one of the, the main points of the
8 Federal Arbitration Act is that the -- it requires state
9 courts to place arbitration agreements on equal footing with
10 any other contract.

11 So you can't have a special rule requiring more
12 consideration or any other, any other standard -- elevated
13 standard to arbitration agreements than you have for any
14 other contract.

15 And so, mutual promises can provide, you know, are, are
16 sufficient consideration for, for any contract and they, and
17 they can't be denied for arbitration agreements without
18 violating the FAA's equal footing rule.

19 Similarly, and this is the last point, plaintiff's
20 argument, there's no meeting of the minds and the
21 arbitration agreement is overly vague.

22 Your Honor, the arbitration agreement includes all
23 material terms, you know, and, in particular, I would note
24 the arbitration agreement specifically states that South
25 Carolina ADR rules apply and Rule 1 of the South Carolina

1 ADR rules, it says that the arbitration shall be conducted
2 so as to bring about the just and collaborative resolution
3 of, of every, of every action and I would argue that the,
4 the, the key thing in the arbitration agreement is that it
5 has -- clearly the arbitration is agreed to. The scope
6 encompasses any and all disputes that would arise out of the
7 residency, which would encompass the, the dispute here.

8 It provides for the -- a selection of an arbitrator
9 either by the parties or, if the parties can not do that,
10 the parties have recourse to have the Court appoint one and
11 it provides for the arbitration to take place pursuant to
12 the South Carolina ADR Rules, which, again, specifically
13 provide that they shall be construed so as to provide for
14 the just and collaborative, you know, ADR process, which
15 empowers the arbitrator with all the tools that would be
16 necessary to do that.

17 And so that we do have that, you know, a meeting of the
18 minds and we do have all essential terms and there's no, you
19 know, undue, you know, vagueness, you know, for one of the
20 vague -- I interpret that as, as the argument that there's
21 not -- that there's a, a failure on the -- of the amendment
22 because of the lack of the -- of, of, of essential terms.

23 And, again, I, for the reasons I've stated, I do
24 respectfully disagree with that. And goodness, Your Honor,
25 well, I thank you. Your patience is, is amazing and I also

1 thank opposing counsel. That was quite a monologue.

2 I'll be happy to answer any questions the Court have,
3 have -- has. Otherwise I will, I will stand down and, and
4 well -- and listen to Mr. Pruitt's counter argument.

5 THE COURT: Okay. Thank you.

6 Mr. Pruitt.

7 MR. PRUITT: Thank you, Your Honor.

8 May it please the Court.

9 And I -- I'm going to get to Solesbee in just a moment.
10 But I want to make sure that -- to point out, by way of
11 argument, that the -- and we -- that -- in order for the
12 third party, Timothy Hutley, to bind the principal, they
13 would have to be some sort of authority either express or
14 apparent and, and there, there simply is no express
15 authority and there's no evidence of apparent authority.

16 And I believe that, by not arguing those, that counsel
17 ad -- admits to what we're really talking about here is, at
18 the same time or at least in the same day, Timothy Hutley
19 signed both an agreement -- the admission agreement and an
20 arbitration agreement, which were -- the admission agreement
21 is 12 pages and the arbitration agreement, which is
22 separate, it's one page and I think that's all we're talking
23 about.

24 And so he has -- there's been no evidence that he has
25 any authority to sign but he's -- he signed. And what we're

1 basically having the argument is well, simply because he
2 signed them both, even, even if he had no authority, they
3 should somehow -- the arbitration agreement should be valid
4 because it was signed at the same time as the admission
5 agreement.

6 And, you know, the Court has gone through a number of
7 cases. As accurately pointed out, in January of this year,
8 Solesbee basically -- the Court of Appeals took one of Your
9 Honor's opinions denying a, a motion to compel arbitration
10 and affirmed you. And they look at kind of the three
11 Supreme Court cases that are -- may be the seminal cases in
12 this area. Both of us have referred to them in our
13 memoranda, the Coleman case, the Hodge case, and the
14 Thompson case.

15 And in each of these you have a third party signing
16 documents roughly the same time, the admission agreement and
17 the arbitration agreement, and the, the Court says no
18 merger, no equitable -- no equitable estoppel.

19 In the Hodge case, the Court specifically stated the
20 limited range of acts performed for the principle
21 conferred -- confer no authority but it confers possibly to
22 make healthcare and financial decisions but no, no more than
23 that. And then that was the Hodge case.

24 And it's -- basically says, in the, in the Thompson
25 case, it says the authority conveyed by a principal to an

1 agent to handle finances or make healthcare decisions does
2 not encompass executing an agreement to resolve legal claims
3 by arbitration. Thereby waiving the principal's right of
4 access to the Court and to a jury trial.

5 And so I think, when we first came in, when, when
6 Mr. Hines first began, he said the reason that there should
7 be merger is that they -- that both contracts were for the
8 same purpose.

9 well, I, I don't agree that they're for the same
10 purpose. Obviously the admission agreement is for the
11 purpose of providing healthcare. The arbitration agreement
12 has a completely different and distinct purpose.

13 In addition, I would point out that we have not brought
14 a breach of con -- contract claim. We are not suing under
15 the admission agreement as a breach of contract claim.
16 We're not invoking that and there's -- some of the decisions
17 say that that is, that is an important distinction as well.

18 I, I do think it's important that, in addition to
19 reviewing the Supreme Court cases, the -- you know, the
20 Solesbee case relied upon those Supreme Court cases in
21 deciding no merger, no equitable estoppel. They did, as
22 Mr. Hodge points out, go through and they -- not only did
23 they say, legally, we don't think it happens but it is, it
24 is merged. But we also think that there are a -- there's a
25 factual distinction and, and he went through those, you

1 know, fairly well.

2 There's different pagination. There is an entire -- so
3 one is 12 pages. The other's one. They have different
4 signature lines. They -- you know, one talks about how it
5 could be canceled. The other one talks about how it can't
6 be canceled. One talks about the -- well, in the entire, in
7 the entire, entire law provision, which I think that they
8 must have modified after a certain case, it referenced -- it
9 does reference admission handbook and admission materials.
10 But there is no indication what that is.

11 More likely than not, it -- when, when a person is
12 being admitted for healthcare, they have certain rights and
13 obligations related to their healthcare as well as a patient
14 bill of rights and those things are regularly given. But
15 there -- it, it says specifically in the entire agreement
16 passage that, for the admission agreement, the, the
17 agreement represents the entire agreement, an understanding
18 between the parties, and supercedes all previous
19 representations, understanding or agreements, oral or
20 written between the parties, and may not be amended except
21 by written agreement of the parties.

22 That is one of the, the -- an important things that
23 it's not strictly relied on by the Court of Appeals. They
24 reference it in the Solesbee decision. But I think that's
25 the facility -- that's the defendants themselves saying, you

1 know, this is our agreement.

2 And so how can you have this is our agreement and then
3 say well, these other things that should just be merged in,
4 even if they are, are defective for other reasons, simply
5 because they were signed at the same time?

6 Now, we doing -- in the, in the memorandum, we do
7 indicate that there were other -- so we said basically since
8 there was no merger, there should be no equitable estoppel
9 preventing the third party, Timothy Hutley, from denying the
10 existence of arbitration. But there are, there are other,
11 other reasons.

12 We do think that the reason that they don't put the
13 arbitration agreement in the same package and, and call it
14 mandatory is because it would be -- it would potentially run
15 a foul or more than likely runs a foul of the Medicare
16 requirement that there not be any additional consideration
17 because in this case, for example, having arbitration -- one
18 of the things that the arbitration clause or agreement
19 doesn't say is how -- is who's gonna pay and how much it's
20 gonna pay.

21 To pay a single arbitrator for a, a week long hearing
22 could be 40 or \$50,000. That's not even referenced in the
23 materials. If you talk about consideration for, you know, a
24 person who's of, of modest means, that would be a
25 significant detriment or, or benefit for the facility. That

1 is certainly consideration.

2 And then if it -- so, if it's not -- there -- when
3 we're looking at the meeting of the minds issue as well,
4 there are a number -- it's extremely broad and vague and it
5 doesn't talk about who's gonna pay the cost of the
6 arbitrators.

7 It doesn't talk about -- it mentions in the agreement
8 that there should be arbitrators selected from a panel of
9 neutrals. But it does not say how that panel of neutrals is
10 to be assembled or considered. There just is no mechanism
11 for, for presenting that initial panel and obviously they're
12 trying to have a save all to have the Court appoint. But
13 that, that would defeat if, you know, if the parties
14 intended to pick from the panel. But there's no panel, then
15 that's an essential term and if -- it would be a failure of
16 essential term of the, of the contract.

17 The -- it also refers -- it sort of picks up the -- it
18 calls it the South Carolina Alternate Dispute
19 Resolution/Mediation Rules. It doesn't mention the word
20 arbitration in there. But when you go and basically try to
21 find that, you find the ADR Rules for South Carolina. And
22 to the extent it mentions arbitration, it mentions
23 nonbinding arbitration.

24 And so that, that is vague and confusing as well. Can
25 not say that there was a meeting of the minds that the rules

1 referred to, our rules that govern nonbinding arbitration.

2 And there's, there's no description about how the
3 parties were suppose to initiate an arbitration. And
4 there's also no des -- description at all for what the, the
5 credentials of the potential arbitrators would be and
6 there's no real evidence -- reference to how the, the
7 procedural or evidentiary rules would be -- what, you know,
8 what rules would be selected, you know whether it would be
9 the South Carolina Rules of Evidence or some other rules,
10 you know, governing the admission of evidence or hearing
11 live witnesses. It's just extremely deficient, you know, to
12 say that it, that it -- that the parties had any sort of
13 meeting of the minds here.

14 I don't even think we have to get that far though
15 because, as Mr. Hines has acknowledged, the Court of
16 Appeals, under virtually identical facts, same documents,
17 and no, no express authority for Mr. Hutley to bind Jane
18 Doe, that's what we have here. And so whether it is binding
19 authority or even potentially, you know, some sort of
20 preclusion because it involves the same parties, at least
21 defendants wise, is a side point.

22 The point is that it's a well reasoned opinion
23 affirming this Court's previous decision denying arbitration
24 and we would, we would suggest that it is a, a good
25 statement, an accurate statement of the Supreme Court

1 jurisprudence and the state of the law in South Carolina as
2 it is right now.

3 And so far as I know, that, that covers the basis of
4 our argument that essentially there is no right for them to
5 compel arbitration because the person who signed it had no
6 authority to sign it and there's no evidence that Jane Doe
7 did anything to grant him the authority to waive her right
8 to jury trial.

9 And, and, just briefly, I -- obviously these are things
10 that we deal with a lot and Mr. Hines and I are, are, you
11 know, in these discussions and disputes a lot. But the, the
12 Supreme Court even had a case in -- last year called
13 Arredondo where there was a power of attorney and they read
14 it and they said it does not grant to the third, you know,
15 to the third party, an attorney in fact, the right to bind
16 the principal in, you know, in an arbitration clause. And,
17 you know, how much more having a, a -- that power of
18 attorney in place was fairly broad at the time of the
19 signing would -- you know, you would say well, gosh, the
20 Supreme Court reversed the Court of Appeals and issued a
21 very -- you got to have authority to bind the principal.

22 And so how much less authority did Timothy Hutley have
23 to bind the principal in this case meaning cause there's no
24 express or apparent authority for him to do so and taking
25 away someone's jury right is very different from helping

1 somebody to get into a, a place for healthcare. And that, I
2 think, is what all of these decisions have been recognized
3 and almost uniformly now since the time we had the Thompson
4 and the Hodge and the Coleman decisions come out from our
5 Court.

6 Thank you, Your Honor.

7 THE COURT: Thank you.

8 Anything else, Mr. Hines?

9 MR. HINES: Your Honor, very quickly, and I do mean
10 that.

11 I'm -- well, in no particular order, just the points
12 that, that jumped out to me.

13 The thing about the, the alleged, you know, vagueness
14 or lack of terms in the arbitration agreement, Your Honor,
15 essentially the, the -- clearly it -- the arbitrator -- the
16 arbitration agreement provides for a manner of, of either
17 agreeing upon or having the Court appoint an arbitrator. I
18 also would note that there is a provision of the FAA, I
19 think it's Section 7, but I know the FAA has the provision
20 which would doubly allow the Court to prepare an
21 arbitrator -- to appoint an arbitrator if, for any reason,
22 there wasn't able to have one -- you know, if they -- if the
23 Court was needed to do that for any reason.

24 So then -- I -- the, the issue with, with that being a
25 material term, I think there is, there is authority to the

1 effect that if a particular arbitrator is identified in the,
2 in the agreement, then that could be a defect if, if, for
3 instance, if that arbitrator is not available for some
4 reason. But this, this isn't so limiting. Obviously allows
5 the, the parties to, to choose one by agreement or to have
6 the Court do it and I, and I think that covers that ground
7 in every way in terms of the, the essential terms analysis.

8 And, furthermore, there -- I put my hands on it now.
9 This is the, the ADR Rules. These rules oh -- shall be
10 construed to secure the just, speedy, inexpensive, and
11 collaborative, collaborative resolution in every action to
12 which they apply. They shall be construed to do that.

13 So, to, to construe these rules as lacking in terms to
14 conduct a just, speedy, inexpensive, and collaborative
15 resolution would be to construe them contrary to the express
16 way that they are intended to be construed. Essentially it
17 would be to say that these rules, South Carolina ADR Rules,
18 themselves are lacking because that is the, the process by
19 which the arbitration is to be carried out.

20 The, the I -- issue with this nonbinding arbitration
21 award, now that's true when you look at it that -- as far as
22 there -- the rules have the language nonbinding in them.
23 However, the very, the very second sentence reads nothing in
24 this rule shall be construed -- excuse me. Oh, yeah.

25 Arbitration selected by -- it was the third sentence.

1 Arbitration selected by the parties under these rules are
2 deemed not binding arbitrations unless otherwise expressly
3 agreed by the parties.

4 well, I mean that's -- we've expressly agreed that the
5 agreement in so question it provides for binding
6 arbitration. So, you know, that's, that's -- you know,
7 that's I think easily dispensed with the idea that it --
8 yes, the language for nonbinding is in there. But there --
9 it also -- the language in there expressly allows the
10 parties to agree otherwise and that's what the arbitration
11 agreement language says.

12 The -- oh, the issue of, of the admission agreement and
13 arbitration agreement not being for the same purpose, Your
14 Honor, I think that -- we've crossed that bridge both in
15 Coleman and even more recently now in Solesbee. And if the
16 Court would indulge me, this is what the Cole -- the
17 Solesbee Court actually said about Coleman.

18 The Coleman Court found the documents in that case,
19 and, again, we're talking about admission and arbitration
20 agreements executed in conjunction with the nursing home
21 admission, were executed at the same time by the same
22 parties for the same purpose and, of course, the same
23 transaction us -- unless there was a contrary intention,
24 there was a merger.

25 So, the point there is to say there's -- you know,

1 that, that point has been decided squarely that we check all
2 the boxes for the party's purposed transaction and -- oh,
3 and time.

4 And, lastly, Your Honor, the fact that there's not a
5 breach of contract claim is not the point that, that is the
6 dispositive point for the application of the direct benefits
7 analysis. The question is whether or not the benefit is
8 direct as opposed to indirect and, and that, that point is
9 actually made in the case that -- of, of Wilson versus
10 Willis, which we cite in our brief, and I would just note
11 that Wilson says South Carolina has recognized several
12 theories that could bind non signatories to arbitration
13 agreements under general principle of contract and agency
14 law including estoppel.

15 So the point being the idea that you don't -- that,
16 that you have to have authority, authority is one of the
17 means of, of binding someone to an arbitration agreement but
18 it's not exclusive. And, again, our Supreme Court, in
19 Wilson, e -- expressly recognized there are theories,
20 including an estoppel, to bind non-signatories.

21 So, the idea that you have to have authority is, is
22 it -- well, it just -- it doesn't, it doesn't undercut our
23 argument here. It would undercut an argument that was based
24 strictly on authority. For instance, an argument based on
25 agency law. But -- or argument based on power of attorney.

1 Mr. Pruitt mentioned the Arredondo case. Well, that
2 doesn't undercut us here because we're not arguing based on
3 power of attorney. And, in that case, the -- what was
4 important was not -- was the particular language of the
5 powers of attorney at issue and, and it's really not germane
6 to this case.

7 But, but to suffice it to say the Court ruled that
8 those -- the language of those powers did not include
9 authority to, to make the decision about entering into an
10 arbitration agreement. But that's, that's not an issue that
11 the, that the Court has to deal with here.

12 And, and so those decisions certainly did not say
13 anything about how to apply the merger doctrine or how to
14 apply equitable estoppel because those, those weren't issues
15 in the case.

16 Oh, and, Your Honor, on the Solesbee case, I, I
17 would -- I've prepared an email. I'm, I'm -- I've never
18 sent an email to a judge directly unless, unless told.

19 But would you, would you like for me to send that to
20 you or your, your law clerk or -- and/or I should say your,
21 your, legal -- your assistant?

22 I have -- I mean I can send it at the click of a
23 button. I just want to make sure I send it to the --
24 where -- would you like me to send it to you directly or to
25 anyone else in your chambers?

1 THE COURT: You can send it to me and copy it to Mr.
2 Pruitt.

3 okay?

4 MR. HINES: Yes.

5 okay. I'll do that right now and with---

6 THE COURT: All right.

7 MR. HINES: ---that, Your Honor, thank you very, very
8 much for your -- well, for your, for your attention and your
9 indulgence with plenty of argument time.

10 THE COURT: Okay. Anything else, Mr. Pruitt?

11 MR. PRUITT: Nothing, Your Honor.

12 THE COURT: Okay. Thank you. Y'all, to the minute,
13 stayed within your timeframe parameters. Thank you. But I
14 do have a question.

15 Mr. Hines, to be clear, do you represent the individual
16 defendants also?

17 MR. HINES: Your Honor, we -- they don't have any
18 motion in the case --

19 THE COURT: Okay.

20 MR. HINES: -- and I, and I -- and I'm -- at least they
21 don't, they don't have any right now. I -- that are
22 pending. I know -- and I want to -- I know this sounds --
23 well, I'm ashamed to say it. I -- I'd want to double-check
24 to see, to see about our representation of those folks cause
25 I -- Jay Davis is really handling the merits of the case.

1 THE COURT: Right.

2 MR. HINES: And I'm, I'm trying to look at our, at
3 our -- and see if we've answered on their behalf. But, but
4 those -- I think it's Mr. Forman and the other party,
5 they're, they're not movants today. I can---

6 THE COURT: This---

7 MR. HINES: ---confirm by email who exactly -- and I --
8 and Mr. Pruitt might know this.

9 I mean, Dan, are those folks still in the case or --
10 sometimes those defendants will, will be dismissed.

11 MR. PRUITT: I would need, I would need to check on
12 that as well but --.

13 THE COURT: Okay. And---

14 MR. PRUITT: There's a good chance---

15 THE COURT: Cause normally---

16 MR. PRUITT: ---they're not in the case.

17 THE COURT: Okay. I -- you know, and, and I know y'all
18 know that, when I issue the order or instructions for the
19 order, I, I usually do it in a pretty detailed manner and I
20 try to list who's represented by whom. And if they are not
21 represented, then, even though their interests were not
22 affected by these motions, I, I just want to make sure we
23 list them---

24 MR. PRUITT: Your Honor?

25 THE COURT: ---all of them.

1 MR. HINES: I will it -- I will find the answer to that
2 question and I will email if Your Honor, Your Honor's okay
3 with me doing that. I will, I will---

4 THE COURT: Yeah.

5 MR. HINES: ---reply to the same email I just sent
6 which hopefully has popped up and I will confirm what the
7 status of those defendants are in, in their representations.

8 THE COURT: Okay. Okay. Thank you. Thank you both.

9 I will -- I'm gonna review everything. I thank you.
10 Y'all are so well prepared and efficient and I know that
11 y'all are experts on these issues. But I, I guess I deal
12 with -- I just came off of being admin for General Sessions.
13 So I haven't had much Common Pleas in the last year and I'm
14 trying to get back in shape.

15 Okay. All right.

16 MR. HINES: Thank you.

17 THE COURT: Thank you both.

18 MR. HINES: Thank you very much, Your Honor.

19 MR. PRUITT: Thank you, Your Honor.

20 THE COURT: All right.

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22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 1st day of March, 2023.

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

November 27th, 2023



PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 TIMOTHY HUTLEY, GUARDIAN FOR JANE)
DOE,)

5 PLAINTIFF,)

6 VS.)

7
8 THI OF SOUTH CAROLINA AT MAGNOLIA)
MANOR INMAN, LLC, THI OF BALTIMORE,)
9 INC., THI OF SOUTH CAROLINA, LLC,)
HUNT VALLEY HOLDINGS, LLC, THI OF)
10 SOUTH CAROLINA AT INMAN, LLC,)
MURRAY FORMAN, AND KATHY SCROGGS,)
INDIVIDUALLY,)

11 DEFENDANTS.)

TRANSCRIPT
OF
RECORD

2022-CP-42-1163

12
13 September 5th, 2023

14
15 B E F O R E:

16 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

18 C. DANIEL PRUITT
19 ESQ.
Attorney for the Plaintiff

20
21 RUSSELL G. HINES
22 ESQ.
Attorney for the Defendants

23
24 Pamela E. Green
25 Circuit Court Reporter

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: Okay. If everybody is back.

4 The next matter is Civil Action Number 22-CP-42-1163
5 and this is the matter of Timothy Hutley, guardian ad litem
6 for Jane Doe, versus THI of South Carolina at Magnolia Manor
7 Inman, LLC, defendant, et al.

8 So, let me have counsel identify themselves for the
9 record starting with counsel for Mr. Hutley.

10 MR. PRUITT: Good morning, Your Honor. I'm Dan Pruitt
11 and I represent Mr. Hutley on behalf of his Jane Doe.

12 THE COURT: Okay. Thank you.

13 MR. HINES: And, Your Honor, good morning. Russ Hines
14 on behalf of all the, the moving parties. There are a
15 number of defendants. I can identify them specifically if
16 Your Honor would like. But they're certainly identified in
17 our motion.

18 THE COURT: Yes, sir.

19 And just to be clear, and, and, Mr. Hines, I know you
20 understand. It's fine. I just want to -- for you not to
21 recite the, the whole caption but you represent all
22 defendants?

23 MR. HINES: Well, Your Honor, that is true. There are
24 three of the defendants that are not a party or that are not
25 movants here. And, in fact, I need to follow-up with

1 Mr. Pruitt on this as far as cleaning this up and I'll do
2 that after the hearing about the---

3 THE COURT: Okay.

4 MR. HINES: ---individual defendants, Scroggs and
5 Forman, and Inman. But I think they're gonna be cleaned up
6 and, and out of the case in which point -- but, anyways,
7 technically, at least as it stands today, we do, we do
8 represent all the defendants but the, the---

9 THE COURT: Okay. Okay.

10 MR. HINES: ---all three of the parties.

11 THE COURT: Okay. We're getting a little ahead of
12 ourselves because I'm spoiled like y'all are where we
13 normally have a live court reporter and we don't. And so
14 I'm in charge of the record function and I just want to make
15 sure that we get everything on the record.

16 And so Mr. Hines is present representing all
17 defendants. Mr. Pruitt is rep -- is present representing
18 the plaintiff or plaintiffs. And I never know whether to
19 say that singular or pleural when it's guardian ad litem.

20 But, anyway, this is September the 5th, 2023. I am
21 Judge Grace Knie. This is the Seventh Judicial Circuit and
22 this is a term of Common Pleas Nonjury. This hearing is
23 being conducted today via WebEX with the WebEx record
24 function.

25 Counsel, are you in agreement with the hearing being

1 conducted this way?

2 Mr. Pruitt.

3 MR. PRUITT: Yes, Your Honor.

4 THE COURT: Mr. Hines.

5 MR. HINES: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 And so this matter is before me based on a motion for
8 reconsideration that has been filed on behalf of defendants.
9 And so let me hear from Mr. Hines first and then we'll hear
10 from Mr. Pruitt.

11 Mr. Hines, of course, if there's anything that you need
12 to clear up, I will give you an opportunity to do so after
13 Mr. Pruitt's arguments.

14 Okay?

15 MR. HINES: Thank you very much, Your Honor, and may it
16 please the Court.

17 Again, Russ Hines on behalf of all of the, the moving
18 defendants and you can basically break those defendants down
19 into two, two categories.

20 This is a case, if I can give a little bit of
21 background, that has to do with alleged nursing home
22 malpractice. The case arises out of a -- of an incident
23 where the allegation is that Jane Doe was the victim of an,
24 of an assault while in the -- while a resident of our
25 facility.

1 The facility's named and full legal name of it is THI
2 of South Carolina at Magnolia Manor Inman, LLC and I'll just
3 refer to, to the fac -- to the -- to that entity as the
4 facility.

5 There are a, are a number of others parties that I'm
6 just calling the other defendants and those are specifically
7 THI of Baltimore, Incorporated, THI of South Carolina, LLC,
8 and Hunt Valley Holdings, LLC. And the, the distinction
9 between those two is that the facility has moved to compel
10 arbitration. Those other defendants have moved in sort of
11 what you might call tagalong motions to -- for a stay
12 pending the arbitration -- depending the outcome of the
13 arbitration of the facility seeks to compel.

14 And, Your Honor, I, I will say that -- well, with that
15 introduction, very much appreciate the opportunity to, to
16 argue this motion that Your Honor has allowed us. It is a
17 motion to reconsider. Your Honor obviously has already
18 denied the motion and we made the motion pursuant to, to
19 Rule 59(e).

20 Our -- candidly, our, our main concern in making that
21 motion is to make sure we've protected our record. And so
22 I -- you know, I am, I am comfortable in saying to Your
23 Honor that, that we, we filed a very -- well, I'd say a
24 pretty exhaustive motion. It's nearly 30 pages long and I
25 guess I -- given the posture of this case as a motion to

1 reconsider, I don't want to be gluttonous in taking up too
2 much of the Court's time. I'm, I'm comfortable allowing the
3 Court to, to have our, our arguments in written form. I'm
4 also, if the Court will prefer, happy to, to try to go
5 through them and hit the high points.

6 I really just -- given, given the nature of this
7 motion, I do very much appreciate the Court's opportunity
8 for us to be heard on it. But, at the same time, I don't
9 want to replot too much ground for the Court that you've
10 already, already heard. If you prefer and to just -- to,
11 to -- for us to, to rest on the written motion that we
12 filed, which I think does cover the entirety of what I would
13 argue to Your Honor.

14 THE COURT: Okay. And I'm fine with that.

15 And so let me hear then from Mr. Pruitt.

16 Mr. Pruitt.

17 MR. PRUITT: Your Honor.

18 THE COURT: All right, sir. I'm happy to hear from
19 you.

20 MR. PRUITT: Just, just briefly, Your Honor. May it
21 please the Court.

22 We obviously argued this before. As Mr. Hines has
23 suggested, we drafted an order based on Your Honor's
24 decision and it is written -- your decision is almost
25 identical to the decision that you issued in 2018 in a case

1 called Solesbee which the Court of Appeals has affirmed.

2 So, we think Your Honor got it right. The Court of
3 Appeals is getting it right. The circumstances are
4 virtually identical and we would simply say it's a great
5 order and we think that, when we get to the Court of
6 Appeals, they're gonna affirm again. And so that's
7 essentially all we would say.

8 Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 Anything else, Mr. Hines?

11 MR. HINES: You -- Mr. Hines -- Your Honor, I think
12 Mr. Pruitt hits the, the nail on the head by, by identifying
13 Solesbee as really the -- perhaps the main point of
14 contention here and we do get into that and distinguish and,
15 and certainly, respectfully, Mr. Pruitt is, is absolutely
16 right in that Your Honor's decision in Solesbee, which has
17 been affirmed by the Court of Appeals and which we are --
18 we've, we've petitioned for the Supreme Court to review the
19 case.

20 But there's no question that Solesbee deals with the
21 same form documents that are at issue here. We very
22 respectfully get into why we, we disagree with the, you
23 know, with Solesbee and why Solesbee should be controlling
24 but that's, that's contained in our, in our brief. It's
25 actually in our motion.

1 It begins on Page 15 and, Your Honor, I don't know that
2 I have anything to say beyond what we've written there about
3 that. But we do go through those points and I think the
4 benefit of, of what, of what Mr. Pruitt just mentioned is to
5 say that, in terms of focusing Your Honor's attention, that
6 that really probably is the heart of the matter because
7 Solesbee really gets into -- and if Your, Your Honor may
8 recall that what we have here is an arbitration agreement
9 and an admission agreement.

10 They were not signed by Jane Doe. But they were rather
11 signed on behalf of Ms. Doe by Mr. Hutley. And, and our
12 argument is really a one/two punch for merger and equitable
13 estoppel and the merger part is the idea that the
14 arbitration agreement and the admission agreement merged and
15 should be considered as one document and, and if -- one,
16 one, one contract.

17 If that is the case, then we go from, from there and
18 argue for direct benefits estoppel to apply and the basic
19 idea there is that you can't receive benefits under a
20 contract containing a -- an arbitration agreement and then
21 deny the enforceability of the, of the agreement in there.
22 And the reason why we need to merge first is because the
23 benefits that we're arguing are benefits that really flow
24 through the adminis -- the admission agreement portion of
25 that benefits such as room, board.

1 There's a number of them actually that the admission
2 agreement specifically talks about in furnishing room,
3 routine meals, nursing care, personal care, providing
4 assistance, and daily living, providing an activities
5 program, bed linens, and hospital gowns, and so forth.

6 And so that we take the -- our, our argument is there's
7 no question that a whole host of direct benefits were
8 received under the admission agreement, which would trigger
9 the application of direct benefits estoppel provided the
10 admission agreement and the arbitration agreement are merged
11 and considered as one. And, and really that question of
12 merger is what the Solesbee case gets into.

13 And so, you know, for, for what it's worth, I guess I,
14 I would agree with, with Mr. Pruitt about the, about the
15 importance of Solesbee. And, and we, we have certainly
16 addressed that in our, in our briefing.

17 But our, our basic contention there is that the
18 Solesbee case should not be controlling here and that these
19 documents do merge because we most respectfully take
20 exception to the, to the Solesbee analysis of, of the
21 question of merger.

22 And I suppose, Your Honor, this is -- with the brief
23 amount of time to take viewing it, I will hit the high
24 points. For instance, in the Solesbee case, the Court of
25 Appeals found that there was an intention contrary to

1 merger. And it did so on the, on the basis of certain
2 circumstances that were present in, in terms of the, the
3 merger -- the arbitration agreement and the admission
4 agreement.

5 And if I may briefly back up and just remind the Court
6 cause I know some of this gets -- it's a lot of ground to
7 cover. The idea of merger is that when you have two
8 instruments that are signed at the same time by the same
9 parties for the same purpose and in the course of the same
10 transaction, they're, they're deemed to be merged and to be
11 considered as one unless there's evidence of a contrary
12 intention and intention that would be contrary to merger.

13 And, in Solesbee, the Court looked at a number of, of
14 things and found that that evidence existed. And it -- and,
15 again, I guess unless the Court would, would like me to, to
16 go through this, I know you've had a long morning of
17 hearings already, we address all of our qualms with this in
18 our written brief and I'm happy to leave it at that unless
19 the Court would prefer that I go through the, the high
20 points.

21 THE COURT: No, sir, I don't think it's necessary. I,
22 I do appreciate the effort that it takes to write the 30
23 page brief for the Court.

24 And so let, let me ask, Mr. Pruitt, is there anything
25 else, sir?

1 MR. PRUITT: Well, just with emphasizing, there's no
2 (indiscernible) that the purpose of the admission agreement
3 was to get healthcare, which is a separate and different
4 purpose from an arbitration clause, which was a separate
5 document to deal with dispute resolution and might -- there
6 is not one bit of evidence that Jane Doe did anything to
7 suggest that Mr. Hutley had any sort of authority to bind
8 her to, to that agreement such that there was no merger or
9 equitable estoppel.

10 That's essentially it and I think we wrote up in our
11 order based on your decision before and I think it says it
12 all.

13 THE COURT: Okay. Okay. So, Mr. Hines, sir, thank
14 you. And, and I want to commend both of you because this is
15 a very specialized area of the law. Probably 90 percent of
16 the attorneys in the state don't ever deal with these
17 issues.

18 And so I, I know it's very detailed oriented. But
19 you-all are, are truly always well prepared and I do
20 appreciate that. I, I will issue an order. I'll issue an
21 order in writing. And if I need any further information
22 from y'all, I'll have my AA or my law clerk contact you.

23 Okay?

24 MR. PRUITT: Yes, Your Honor. Thank you.

25 MR. HINES: Yes, Your Honor.

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THE COURT: Thank you so much.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 5th day of September, 2023.

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

November 28th, 2023



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	DEFENDANT THI OF SOUTH
MAGNOLIA MANOR	)	CAROLINA AT MAGNOLIA MANOR
INMAN, LLC, THI OF BALTIMORE,	)	INMAN, LLC'S MOTION TO COMPEL
INC., THI OF SOUTH CAROLINA,	)	ARBITRATION
LLC, HUNT VALLEY HOLDINGS,	)	
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant THI of South Carolina at Magnolia Manor Inman, LLC (hereinafter referred to as “this Defendant” or “the Facility”) by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying or dismissing this action and compelling arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Jane Doe’s admission to the Facility. (See Arbitration Agreement attached as **Exhibit A**). The Arbitration Agreement is expressly binding on the Plaintiff and this Defendant and requires that Plaintiff’s claims against this Defendant be submitted to arbitration.

This Defendant further requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions or discovery filed or served by Plaintiff while the current motion is pending. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

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tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant THI of South Carolina
at Magnolia Manor Inman, LLC

Charleston, South Carolina

Dated: January 17, 2023

PLEASE READ CAREFULLY**FACILITY - RESIDENT/REPRESENTATIVE ARBITRATION AGREEMENT**

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

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

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

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

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

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

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

Timothy Hultey 8/22/18
Resident/Representative Signature Date

Timothy Hultey
Printed Name of Resident/Representative

Darlene Rile 8/22/18
Authorized Agent of Facility Date

Darlene Rile AD
Printed Name & Title

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT HUNT VALLEY
INC., THI OF SOUTH CAROLINA,	)	HOLDINGS, LLC'S MOTION STAY
LLC, HUNT VALLEY HOLDINGS,	)	
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Hunt Valley Holdings, LLC (hereinafter "this Defendant"), by and through its undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Manor Inman, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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

tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant Hunt Valley Holdings,
LLC

Charleston, South Carolina

Dated: January 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
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TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	DEFENDANT THI OF BALTIMORE,
INMAN, LLC, THI OF BALTIMORE,	)	INC.'S MOTION TO STAY
INC., THI OF SOUTH CAROLINA,	)	
LLC, HUNT VALLEY HOLDINGS,	)	
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,,	)	
	)	
DEFENDANTS.	)	
	)	

TO: C. DANIEL PRUITT, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that THI of Baltimore, Inc. (hereinafter “this Defendant”), by and through its undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Manor Inman, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, Inc.

Charleston, South Carolina

Dated: January 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
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TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT THI OF SOUTH
INC., THI OF SOUTH CAROLINA,	)	CAROLINA, LLC'S MOTION TO STAY
LLC, HUNT VALLEY HOLDINGS,	)	
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,,	)	
	)	
DEFENDANTS.	)	
	)	

TO: TO: C. DANIEL PRUITT, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that THI of South Carolina, LLC (hereinafter "this Defendant"), by and through its undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Manor Inman, LLC ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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

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tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant THI of South Carolina,
LLC

Charleston, South Carolina

Dated: January 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	DEFENDANT THI OF SOUTH
MAGNOLIA MANOR	)	CAROLINA AT MAGNOLIA MANOR
INMAN, LLC, THI OF BALTIMORE,	)	INMAN, LLC'S MEMORANDUM IN
INC., THI OF SOUTLI CAROLINA,	)	SUPPORT OF MOTION TO COMPEL
LLC, HUNT VALLEY HOLDINGS,	)	ARBITRATION
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
	)	

TO: DAN PRUITT, ATTORNEY FOR THE PLAINTIFF:

COMES NOW the Defendant THI of South Carolina at Magnolia Manor Inman, LLC (this “Defendant” or the “Facility”) and submits the following Memorandum in Support of its Motion to Compel Arbitration pursuant to the Federal Arbitration Act (“FAA”) 9 U.S.C. § 1, et seq., and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

The Plaintiff, Timothy Hutley, as Guardian for Jane Doe has the Defendants based on incident which occurred while Jane Doe was a resident at the Facility. In conjunction with Ms. Doe’s admission to the Facility, Ms. Doe’s son, Timothy Hutley, on behalf of Ms. Doe, executed an Arbitration Agreement that is enforceable—or, alternatively, that Plaintiff should be estopped to deny the enforceability of—that covers the entirety of Plaintiff’s claims against the Facility.

As such, this Defendant respectfully requests that this Honorable Court stay the pending action and compel this matter to arbitration.

BACKGROUND

With the help of her son, Ms. Doe, age 74, was admitted to the Facility in August of 2018 for skilled nursing following a recent hospitalization. Mr. Hutley handled the paperwork in conjunction with his mother's admission, and in so doing, Mr. Hutley executed an Admission Agreement and an Arbitration Agreement on Ms. Doe's behalf, both of which were duly countersigned by the Facility's representative Darlene Rice. (See **Exhibits 1** and **2**, respectively, attached hereto). Subsequent to the admission, Ms. Doe executed a durable power of attorney in favor of Mr. Hutley. (Power of Attorney attached hereto as **Exhibit 3**).

Based on the Admission Agreement and pursuant to the terms thereof, Ms. Doe was admitted to the Facility and received skilled nursing care and treatment. During her stay at the Facility, Ms. Doe received and accepted the benefits of the Admission Agreement, which included the Facility furnishing Ms. Doe a room, providing routine meals, and rendering nursing, personal, and custodial care. Ms. Doe has never challenged any agreement's validity until now. Notably, Plaintiff does not assert that the Admission Agreement is invalid or that he entered the Facility unwillingly or without consent.

Upon admission, Mr. Hutley explicitly represented that she was authorized to admit Ms. Doe to the Facility and execute the documents she executed on his behalf, including the Arbitration Agreement. Indeed, the very first provision of the Admission Agreement states that *all information provided to the Facility* is truthful and correct, including Mr. Hutley's authority to bind Ms. Doe (See **Ex. 1**). Mr. Hutley signed the Admission Agreement on behalf of Ms. Doe as her responsible party and representative.

The Arbitration Agreement provides:

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

The Arbitration Agreement further provides:

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

Regarding Mr. Hutley's authority to sign on behalf of his mother, the Arbitration Agreement states:

By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident...

(See **Ex. 2**).

Because the acts complained of by Plaintiff fall within the scope of the Arbitration Agreement, the Court should stay or dismiss these proceedings, and compel this matter to arbitration. 9 U.S.C. § 3.

ARGUMENT

I. THE FAA GOVERNS THE ARBITRATION AGREEMENT.

The Arbitration Agreement, by its terms and by law, is governed by the FAA. For one reason, the Arbitration Agreement expressly states that the FAA applies:

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the [FAA], notwithstanding any contrary provision of this Agreement or contrary state law.

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

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

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

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”¹ and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] leaves no place for the exercise of discretion by a . . . court, but instead *mandates* that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis added); *see also* 9 U.S.C. § 4 (“The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*”) (emphasis added).

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

¹ *Allied–Bruce*, 513 U.S. at 270.

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

III. THE ARBITRATION AGREEMENT IS VALID ON ITS FACE.

The Arbitration Agreement is valid on its face. In other words, there is nothing within the four corners of the document itself that calls its validity into question. It bears Mr. Hutley’s signature on behalf of Ms. Doe, along with Mr. Hutley’s express representation that he is authorized to sign for Ms. Doe.² Additionally, the Agreement lists Ms. Doe as a party. It is countersigned by Ms. Rice for the Facility. It is duly supported by consideration and sets forth all necessary terms, containing, as it does, the parties’ mutual promises to submit a certain defined scope of disputes to binding arbitration³ before an arbitrator who is either agreed upon by the parties themselves or selected by the Court, in a proceeding to be conducted pursuant to the South

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

³ The parties’ mutual promises to arbitrate constitute sufficient consideration. *O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”) (citing *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“[T]he exchange of promises qualified as consideration.”); see also *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) (“Mutual promises also constitute a good consideration.”)).

Carolina ADR Rules, which will result in a decision that is enforceable in a court of competent jurisdiction. To require more just because an arbitration agreement is in issue would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

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

The party alleging that the enforcement of a contract would be unconscionable bears the burden of proving both prongs of the definition. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000); accord *Marzulli v. Tenet S.C., Inc.*, No. 2015-002363, 2018 WL 1531507, at *3 (S.C. Ct. App. Mar. 28, 2018). In this case, Plaintiff bears that burden. "Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Simpson*, 373 S.C. 14, 25, 644 S.E.2d 663, 669. "Meaningful choice" refers specifically to the bargaining process involved in entering into the Arbitration Agreement. The Arbitration Agreement clearly articulates that the resident entering into the Agreement is fully aware of his or her healthcare options and other potential providers of nursing home facilities. The Agreement states:

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

(See Ex. 2, ¶ 2.) Furthermore, on that same signature page, the Arbitration Agreement states clearly in bold lettering in a separate heading: **“I understand and agree that I am giving up and waiving my right to a jury trial.”** See Ex. 2, ¶ 6.

By signing the Arbitration Agreement and Admission Agreement, Mr. Hutley, acting on behalf of Ms. Doe, represented that he understood and assented to their terms. Indeed, he was given the option of entering into the Arbitration Agreement – *or not* – and he freely and voluntarily made the decision to proceed. The Arbitration Agreement by its plain language was not a precondition of admission to the Facility and simply could not have been an adhesion or “take it or leave it” contract. Mr. Hutley had the option not to enter into the Arbitration Agreement on behalf of his mother, yet he voluntarily did so, voluntarily did not retract his agreement thereto, and his mother stayed at the Facility and received skilled nursing care after admission.

Defendant gave Ms. Doe the option of entering into the Arbitration Agreement and her authorized agent made the decision to proceed. Mr. Hutley did not have to accept this offer nor has there been any allegation or evidence that he was coerced into signing anything. Nonetheless, even if Plaintiff could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiff must still show that the “terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, this Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 25, 644 S.E.2d at 668. Under the terms of the Arbitration Agreement, the parties are to select a third party arbitrator *jointly* “from a panel having experience and knowledge of the health care industry.” See Ex. 2. If the parties are unable to agree upon such an arbitrator, the agreement vests

the Court with authority to make a selection. The selected neutral arbitrator is vested with authority to hear the case and make a decision which is “binding on all parties.” As a result, it can only be said that the Arbitration Agreement allows for complete mutuality of remedies. Neither party is given an advantage by its terms. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration. And there is nothing about the Arbitration Agreement—which, again, calls for arbitration conducted pursuant to the South Carolina ADR Rules—that would suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker. Indeed, Rule 1 of the South Carolina ADR Rules expressly states, “These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.”

Lastly, the United States District Court for the District of South Carolina and trial courts around South Carolina have repeatedly upheld the validity of arbitration agreements nearly identical to the one at issue in this matter. In evaluating these arbitration agreements in the context of nursing home admissions, federal courts in South Carolina have all agreed that these agreements are not unconscionable. *McCutcheon, supra*, at *3; *THI of S.C. at Columbia, LLC v. Wiggins, C/A* No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011) (Currie, J.); *Benson, supra*. Along similar lines, any holding that the Arbitration Agreement at issue is unconscionable simply because it was executed in the context of an admission to the skilled nursing facility would be in violation of the clear precedent under *Kindred* and the FAA, which instruct that arbitration agreements must be placed on equal footing with all other types of contracts. Accordingly, any argument by Plaintiff that the Arbitration Agreement is unconscionable is unfounded and must be rejected.

IV. PLAINTIFF'S CLAIMS ARE WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT.

Without question, Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement. In pertinent part, the Arbitration Agreement reads as follows:

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

This plain language clearly embraces the subject matter of Plaintiff's claims. And even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration" *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

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

A. The Plain Language of the Agreement Binds Plaintiff.

According to the plain language of the Arbitration Agreement and consistent with his actions during the admissions process, Mr. Hutley represented himself to admissions personnel at the Facility as his mother's representative with the authority to sign documents and enter

agreements on her behalf.⁴ It was clearly Mr. Hutley’s intention to bind Ms. Doe according to the terms of the Admission Agreement and Arbitration Agreement. Moreover, Mr. Hutley evinced no intentions or directions to the contrary. Accordingly, the plain language of the Arbitration Agreement confirms that Mr. Hutley was authorized to enter this Agreement binding his mother to arbitration, and the Agreement directly applies to the instant dispute. The Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has recently found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances nearly identical to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit 4**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit 5**). In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident’s wife in each case executed an admissions agreement and an arbitration agreement *identical* to the ones in the case at bar, and as here represented to the facility that she had authority to enter these agreements on her husband’s behalf. (See **Ex. 4**, p. 2-3; see **Ex. 5**, p. 1). Unlike the present case, the plaintiffs in *Price* and *Spears* later executed contradictory affidavits in opposition to the Defendants’ motion to compel arbitration, disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs’ attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. The Court should reach the same conclusion in the present case, and enforce the Arbitration

⁴ See **Ex. 2** (“By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident...”)

Agreement, particularly in the apparent absence of any affidavits or other evidence to contradict the plain language of the Agreement.

Specifically, this Court determined in *Price* that “the terms of the Arbitration Agreement clearly apply to the instant dispute[,]” because was it clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 4**, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident identical to Mr. Hutley’s attestation in the Arbitration Agreement noted above. As such, this Court in *Spears* held, in part, that the wife’s authority to sign the arbitration agreement at issue was “valid on its face” by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff’s authority beyond her own attestation. (See **Ex. 5**, p. 4). As in *Price* and in *Spears*, Mr. Hutley in this matter expressly attested to his own authority to enter into the Arbitration Agreement on behalf of his mother, Ms. Doe. He has not submitted an affidavit or other evidence disclaiming his authority to enter such an agreement on her behalf. Therefore, the Court should find that Plaintiff is bound by the plain language of the Arbitration Agreement and compel this matter to arbitration.

B. Mr. Hutley Possessed the Apparent and Inherent Authority to Execute and Bind Ms. Doe to the Arbitration Agreement and/or Plaintiff Should be Estopped to Deny Mr. Hutley’s Authority.

1. Agency Relationship

In addition to representing himself as authorized to enter the Arbitration Agreement on his mother’s behalf by the plain language of the Arbitration Agreement, Mr. Hutley possessed the *apparent and inherent authority* to bind Ms. Doe under this Agreement. A true agency

relationship may be established by evidence of actual or apparent authority. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). “Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal's behalf and subject to the principal's control.” *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)).

Alternatively, “[a]n agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties.” *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145-146, 425 S.E.2d 764, 773 (Ct. App. 1992.) The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

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

agreement in *Carraway* was a separate document and was not a condition of admission to the facility. *Id.*

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

Clearly, in this matter, Mr. Hutley held himself out as an agent for his mother without any indication to the contrary when he executed various admission documents on her behalf, including the Arbitration Agreement. Based on Mr. Hutley and Ms. Doe's conduct and explicit representations, the Facility believed she possessed the authority to execute all admissions documents on his behalf, including the Arbitration Agreement. It was the Facility's reasonable and justified belief that Mr. Hutley was his mother's authorized representative and had the authority to execute the documents on her behalf.

Moreover, by allowing Mr. Hutley to procure her admission to the Facility and, thereafter, by accepting the benefits of the contracts entered into in connection with that admission, Ms. Doe represented that Mr. Hutley was her authorized representative to act on her

behalf in connection with admission. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances”) (emphasis added).

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable belief that the agent has been authorized to act.* The Facility had reason to believe that, by allowing Mr. Hutley to sign the admissions paperwork, including the documents providing for Ms. Doe's stay and the skilled nursing care provided at the Facility, Ms. Doe cloaked Mr. Hutley with the authority to execute those documents. Further, neither Ms. Doe nor any other family member repudiated or invalidated Mr. Hutley's actions. Instead, Ms. Doe accepted the benefits of the contracts with the Facility by remaining at the Facility and receiving skilled nursing care and services, thereby ratifying her son's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, the Facility was further justified in believing Mr. Hutley had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Arbitration Agreement should be deemed enforceable.

Even if Mr. Hutley lacked the actual or apparent authority to enter into the terms of the Arbitration Agreement, he still possessed sufficient inherent agency powers to render the agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” *See*, §§ 8A, 161 *Restatement (Second)*

of Agency (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (*abrogated on unrelated grounds*) (examining whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987) (“[t]he powers of an agent are, prima facia, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”) (citing *Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established legal principle follows from one of the cardinal principles of agency law: that third parties, such as the Facility, should not be disadvantaged because they dealt with an agent rather than a principal. As set forth above, there is no dispute as to whether Mr. Hutley was authorized to admit his mother to the Facility. To the extent Plaintiff takes issue with Mr. Hutley’s authority to bind his mother to the Arbitration Agreement and the specific terms therein, such actions merely accompanied and were incidental to Mr. Hutley’s authority to admit her to the Facility. The Facility should not be disadvantaged for acting in accordance with the express representations of Mr. Hutley regarding his authority.

2. Agency by Estoppel

“When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.” *R & G*, *supra*, 343

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

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

In the case at the bar, [the facility] had no knowledge or reason to believe that Plaintiff was not [her husband’s] authorized agent for purposes of executing the Arbitration Agreement or and other admissions paperwork. [The facility] relied on the affirmative representations of Plaintiff in admitting her husband to the Facility for the provision of the skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by [the facility] for years only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, agency by estoppel is present based upon the record before this Court such that the arbitration agreement is similarly enforceable.

(See **Ex. 4**, p. 9). Accordingly, the court concluded that the arbitration agreement was valid and enforceable.

Similarly, in *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) the United States District Court of South Carolina concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (Attached hereto as **Exhibit 6**). As in the present case, the husband in *McCutcheon* executed a number of documents on his wife’s behalf upon her admission to a nursing home facility, including an admissions agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife’s legal

representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

Like in *Price* and *McCutcheon*, it would be disingenuous and inequitable to allow the Plaintiff in this case to assert that he was authorized to sign the Admissions Agreement, and other forms he signed on admission but not the Arbitration Agreement. In the case at bar, the Facility had no knowledge or reason to believe that Mr. Hutley was not his mother's authorized agent for purposes of executing the Arbitration Agreement and other admissions paperwork. The Facility relied on the affirmative representations and conduct of Mr. Hutley in admitting his mother to the Facility for the provision of the skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by the Facility, only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, Plaintiff should be estopped from denying the validity of the Arbitration Agreement.

C. The Arbitration Agreement and the Admission Agreement Merged (i.e., Should be Construed Together as a Single Contract), and Plaintiff Should Be Estopped from Denying the Enforceability of the Arbitration Agreement.

As an additional ground to compel arbitration, the Admissions Agreement and Arbitration Agreement should be construed together (i.e., merged) and, Plaintiff having

effectively embraced and directly benefitted from the Admission Agreement, should be equitably estopped to deny the enforceability of the Arbitration Agreement merged therewith.

1. Merger

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

Indeed, in *Coleman v. Mariner Health Care, Inc.*, even though our Supreme Court found against merger on the particular facts of the case, it nonetheless confirmed the validity of the general proposition of law on which the *Coleman* appellants based their merger/equitable estoppel argument in the very context of nursing home admission agreements and arbitration agreements. 407 S.C. 346, 354–355, 755 S.E.2d 450, 455 (2014) (“Appellants’ equitable

estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. . . . Here, the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.”).

As indicated previously, the court in *McCutcheon* analyzed facts almost identical to the case at bar and determined that the arbitration agreement and admissions agreement had merged for purposes of equitable estoppel. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011WL6318575 (See **Ex. 6**). Indeed, this Court has cited to *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admission agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC et al*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* attached hereto as **Exhibits 7 and 8, respectively**). More recently, this Court held that an admission agreement and arbitration agreement identical to the ones at the bar which had been signed by a resident’s daughter-in-law on admission to a skilled nursing facility, were merged and that the Plaintiff was estopped from denying the validity of the arbitration agreement. *William Haynes as Personal Representative of the Estate of Elizabeth Varner vs. THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab et al*, Case Nos. 2021- CP-10- 01437 and 02477. S. C. Com. Pls. Feb. 24, 2022)(attached hereto as **Exhibit 9**).

The Admission Agreement and the Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.⁵ They should be considered merged, i.e., they should be considered and construed together as effectively one contract.

2. Equitable Estoppel of Merged Agreement

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

⁵ To be clear, *Coleman* unequivocally answers the question of whether the Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

on writ of certiorari, which followed the Court of Appeals' earlier decision in *Pearson*, 400 S.C. 281, 733 S.E.2d 597, and under which the Facility contends Plaintiff is estopped to deny the enforceability of the Arbitration Agreement here, where Ms. Doe received direct benefits (in the form of her admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement merged); *see also id.* at 340, 827 S.E.2d at 175 n. 6 (while expressing no opinion on the petitioner's alternative argument based on the application of the state's "traditional" six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., "[t]he traditional test referenced by [the] [p]etitioners," "has been analyzed most-often in *non*-arbitration cases") (emphasis added).

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

"Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract." *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(citing *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (finding non-

signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

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

....

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

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing in part *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).⁶

Of note, this Court applied this precise reasoning in *Spears*, referenced above. (See **Ex. 5**, pg. 9). In that case and as discussed above, a woman admitted her husband to a skilled nursing facility and in connection with his admission, executed admission and arbitration agreements *identical* to the ones here. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from refusing to comply with the

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

arbitration agreement where, like here, the resident received “direct benefits from the Admission Agreement in the form of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein.” *Id.*, pg. 10 (footnote omitted).

The Court in *Haynes*, referenced above, also applied the same reasoning in holding that the Plaintiff was estopped from denying the validity of an arbitration agreement, where the resident received “direct benefits from the Admission Agreement throughout her residency at the facility, including, without limitation, the room, board, care/treatment she received therein.” (**Ex. 9** at 18). The Court went on to explain that the resident “effectively embraced and directly benefited from the Admission Agreement” and therefore the Plaintiff could not deny the enforceability of the arbitration agreement, which had merged with the admission agreement. (*id.*).

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

Here, Ms. Doe embraced all aspects of the Admission Agreement with the Facility. Indeed, her receipt of direct benefits under the Admission Agreement (with which the Arbitration Agreement merged) cannot reasonably be denied. Undoubtedly, Ms. Doe received direct benefits (in the form of room, board, various amenities/services, and the care/treatment she received at the Facility). To deny her receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of her residency: every night's stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility— Plaintiff's amended complaint does not go nearly so far as that. (*See generally* Amended Compl.)

It would be manifestly inequitable to permit a party to claim the other is liable in tort based upon a contractual relationship, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. In other words, Plaintiff cannot “have it both ways” by relying upon certain terms of the Admission Agreement when it works to her advantage and repudiating the Arbitration Agreement when it works to her disadvantage.

As described, the Plaintiff's allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against the Facility based upon certain terms of the Admission Agreement while repudiating the Arbitration Agreement and should be prevented from doing so pursuant to the doctrine of equitable estoppel. Pursuant to numerous orders of this Court and numerous other courts on essentially identical facts and concerning identical arbitration agreements, where a non-signatory receives the benefits of the contract, which Ms. Doe certainly did here, she must be prevented from refusing to comply with the Arbitration Agreement merely because he did not sign it.

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

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

In *Coleman*, Ann Coleman signed a number of documents, including arbitration agreements, when admitting her sister to a health care facility. 407 S.C. at 350, 755 S.E.2d at 452. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. In determining that the arbitration and admission agreements in the case had not merged, the Supreme Court found, “On its face, this clause recognizes the ‘separatedness’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts. Moreover, the [arbitration agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate.” *Id.* at 452. “By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply.” *Id.*

Similarly, in *Hodge*, the admission agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law. 422 S.C. 544, 813 S.E.2d at 302. Furthermore, like in *Coleman*, the arbitration agreement in *Hodge* recognized a separateness, as it referenced the two documents separately, stating “[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.” *Id.* Finally, the arbitration agreement in *Hodge* stated it could be revoked within thirty days, whereas the admission agreement contained no

such indication. *Id.* In *Thompson*, the arbitration agreement also contained a disclaimer provision but the admission agreement did not.

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

Instead, in the present case, the agreements were effectively executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction and, therefore, the documents merged. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts*, *supra*, 268 S.C. at 88, 232 S.E.2d at 24).⁷ Specifically, the Admission and Arbitration Agreements were signed by Mr. Hutley, on his mother’s behalf, on August 22, 2018 and were both countersigned by the Facility the same day. The documents were signed by the exact same people: Mr. Hutley as representative for his mother and by Darlene Rice for the Facility. The documents were signed for the same purpose and transaction of establishing Ms. Does’ residency at the skilled nursing facility.

While the Admission Agreement in this case does contain an “Entire Agreement” clause, unlike the admission agreements in those other cases, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn’t refer to it at all). Indeed,

⁷ To be clear, even though the *Coleman* Court found evidence of an intent contrary to merger on the particular facts before it, it nonetheless recognized as *correct* the general proposition of law on which the *Coleman* Appellants’ based their merger argument, i.e., the *Coleman* Court expressly observed that the admission agreements and arbitration agreements before it (which, in this respect, are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), “the documents were [indeed] executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court⁸), the “Entire Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” And without question, the Arbitration Agreement is among these other admissions materials. See *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission documentation—including the Arbitration Agreement.”) (emphasis added) (internal footnote omitted).

Also, absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (providing “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration Agreement (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action;” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules”).) Essentially, both instruments provide that South Carolina law applies except where it is displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

⁸ 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike in the instant case—the “Entire Agreement” clause expressly referred to a separate arbitration agreement and, thus, “recognize[d] the ‘separatedness’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.”) (emphasis added).

Similarly, the termination provisions provide no evidence of “separatedness.” Again, the only reason for the Arbitration Agreement is the Admission Agreement—the only point of the Arbitration Agreement is to cover disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still *connected* to the Admission Agreement even after the termination of the Admission Agreement. This is simply how agreements to arbitrate work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”⁹ there is evidence to upset the *default presumption* that the contracting parties intended the instruments to be construed together as effectively one contract. As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties’ possessed a contrary intention. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. It does not even make sense that the

⁹ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

parties would not have intended the Admission Agreement and the Arbitration Agreement to merge.

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

And to fall back on the idea that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context. It must be remembered that, as a matter of law, *merger is the default position*, i.e., it is *presumed*, and that this presumption arises only upon the occurrence of a specific set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these align—same time, same parties, same purpose, same transaction—our courts will consider and construe the documents together *unless* there is evidence of a contrary intention. The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. To allow the merger presumption to be upset based on evidence that is

merely ambiguous—i.e., that does not even go so far as to clearly indicate a contrary intention, but at most might (or might not) reflect a contrary intention—is to allow the exception to devour the rule.

Even though, as noted above, the Arbitration Agreement was not a precondition to admission, this does not mean that the two instruments did not work hand-in-hand once the arbitration agreement came into existence (i.e., once it was in fact entered into). While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true; the Admission Agreement is indeed necessary to the Arbitration Agreement. In other words, yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with; *but that is not what happened*. The Arbitration Agreement was in fact executed, of course, and it was executed under circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction. Unlike the Admission Agreement, however, which is capable of making sense either standing alone or, alternatively, together with the Arbitration Agreement, the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being.

It matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission; and, here, there can be no question that the Arbitration Agreement—once agreed upon—was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Ms. Does' relationship with the Facility. Indeed, this conclusion finds direct support in the Admission Agreement's "Entire Agreement" provision, which states, "[t]he undersigned further acknowledges that he/she has received and read the

Admission Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.” (Ex. 2, p. 12 (emphasis added)). Had the Arbitration Agreement not been executed, it would not constitute admissions material, but, of course, it was executed, and it does constitute admissions material; most respectfully, to conclude otherwise simply does not make sense.

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

VI. ALTERNATIVELY, THE PARTIES SHOULD BE PERMITTED TO CONDUCT ADDITIONAL DISCOVERY.

If the Court is not inclined to grant the instant motion on the grounds contained in this memorandum, this Defendant requests that the parties be permitted to conduct additional discovery on the issues raised herein, and in particular, the nature of Ms. Does’ agency relationship with her son and the circumstances surrounding the admissions process.

In a case involving similar issues, the Honorable Perry Gravely allowed the parties to conduct additional discovery on the issue of a mother’s authority to execute an Arbitration Agreement on her son’s behalf in connection with his admission to a skilled nursing facility. See *James Boyd v. THI of South Carolina, LLC d/b/a at Magnolia Place-Greenville, et. Al*, 2018-CP-23-01934 (S.C. Com. Pls. July 9, 2018)(attached hereto as **Exhibit 10**). Critical to the court’s decision in that case was whether the son’s conduct and admissions director’s understanding of that conduct created apparent agency so as to bind the son to an arbitration agreement. The court permitted the parties to take the depositions of the mother, the son, the admissions coordinator for the skilled nursing facility, and the case manager for the hospital the son was transferred

from. After considering the testimony of those individuals, the court found there was evidence to support a finding of apparent agency.

Likewise, the Honorable Alison Lee allowed the parties to conduct additional discovery on a wife's authority to execute an arbitration agreement on behalf of her husband. *See Priscilla Brown, as Personal Representative of the Estate of James Brown v. THI of South Carolina at Columbia at Magnolia Manor d/b/a Midlands Health and Rehabilitation Center*, 2017-CP-40-00516 (S.C. Com. Pls. Nov. 7, 2019) (attached hereto as **Exhibit 11**). The case at the bar involves Mr. Hutley's own authority to execute the Arbitration Agreement and the circumstances surrounding its execution. As in *Boyd and Brown*, if the Court determines the record is insufficient to properly rule on the issues before it, additional discovery should be permitted as necessary.

Most respectfully, if the Court should make such a determination, it is only fair to allow this Defendant to engage in some appropriately limited discovery to attempt to protect its arbitration rights. It must be remembered that this Defendant moved to compel arbitration under a facially valid arbitration agreement. This Defendant firmly believes Mr. Hutley had the authority to execute the Arbitration Agreement on behalf of his mother. Nevertheless, neither Plaintiff, Ms. Doe, nor Mr. Hutley ever called his authority to enter into the Arbitration Agreement into question until now. This Defendant had no reason to conduct discovery until this dispute arose, and even then, it still maintain its primary position that the Arbitration Agreement was enforceable based on the record as is. If further development of the record is needed on any point material to arbitrability, the Court should expressly allow this Defendant to protect its legitimate interests through discovery into the relevant subject matter without exposing itself to a claim of waiver by Plaintiff, i.e., without having to expose themselves to a potential Catch-22

where they could be said to have waived their arbitration rights simply by endeavoring to prove them.

CONCLUSION

For the reasons set forth herein, this Defendant respectfully requests that this Court enter an Order dismissing or staying the pending action and compelling arbitration. Alternatively, and if the Court is not inclined to grant the instant motions on any of the grounds asserted above, this Defendant requests that the parties be permitted to conduct additional discovery. This Defendant also requests permission to be heard after such discovery is conducted and requests that they be permitted to submit supplemental memoranda along with any additional evidence procured.

CLEMENT RIVERS, LLP

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

D. Jay Davis, Jr.

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*Attorneys for the Defendant THI of South Carolina
at Magnolia Manor-Inman, LLC*

Charleston, South Carolina

Dated: February 28, 2023

ADMISSION AGREEMENT – SOUTH CAROLINA

RESIDENT NAME: [REDACTED]

RESIDENT NUMBER: 301974

DATE OF ADMISSION: 8/22/18

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among MAGNOLIA MANOR ("Facility"), [REDACTED] ("Resident") and/or [REDACTED] ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

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

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.

2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and no damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aids and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.

3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.

4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.

5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

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

Original: Business File • Photocopy: Resident/Representative

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

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.

2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.

3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative have the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.

4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.

5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the Facility's *Policy and State Requirements for a Temporary Leave Bed-Hold*.

6. Provide and be responsible for personal items of clothing and property.

7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.

8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.

9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

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

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

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

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

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

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

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

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

III. FINANCIAL AGREEMENT

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

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☒-semi-private) accommodations, for a basic fee of \$ 195.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

- a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
- b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
- c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.

2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.

3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

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

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

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

IV. TERMINATION

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

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

3. This Agreement may be terminate immediately upon the occurrence of any of the following:

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

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

V. MEDICAID BENEFICIARIES

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

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

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

3. **Non-Covered Services.**

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

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

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

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

VI. MEDICARE BENEFICIARIES

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

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

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

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

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

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

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

VII. PRIVATE PAY/INSURANCE

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

Original: Business File • Photocopy: Resident/Representative

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

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

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

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

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

VIII. NOTICES

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

SC 0

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

SC 0

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

IX. GOVERNING LAW

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

X. SEVERABILITY

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

XI. CAPTIONS

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

XII. MODIFICATIONS

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

XIII. WAIVER

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

XIV. RESIDENT

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

XV. ASSIGNABILITY

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

Original: Business File • Photocopy: Resident/Representative

XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required and permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days' notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.

2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.

3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.

4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.

2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.

3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.

4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, and durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

Original: Business File • Photocopy: Resident/Representative

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

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

XVIII. ENTIRE AGREEMENT

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

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

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

Signature of Resident

Date

Printed Name of Resident

Social Security Number

Witness Signature

Date

Printed Name of Witness

OR

Timothy Hutley 8/22/18
Signature of Representative, if any Date

Timothy Hutley
Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

Darlene Rife
Signature of Facility Official

Darlene Rife AD
Printed Name of Facility Official & Title

8/22/18
Date

Original: Business File • Photocopy: Resident/Representative

DURABLE POWER OF ATTORNEY OF

I, [REDACTED] hereby appoint Timothy Leon Hutley to serve as my agents ("Agent") and to exercise the powers and discretions set forth below.¹

Statement of intent. By this instrument I intend to create a Durable Power of Attorney under the law of the state of South Carolina.²

ARTICLE I.

Modification of Agency. This instrument, and the appointments and succession of persons to serve as Agent hereunder, are subject to modification, as follows:

(1) **Revocation, amendment and resignation.** This instrument may be amended or revoked by me, at any time by the execution by me of a written instrument of revocation or amendment delivered to my Agent and to all Alternate Agents. If this instrument has been filed or recorded in the public records, then the instrument of revocation or amendment shall be filed or recorded in the same public records. My Agent and any Alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or, in the case of an Agent's resignation, by delivery to the Alternate Agent.³

(2) **Alternate Agent.** Any party dealing with any person named as Alternate Agent hereunder may rely upon as conclusively correct an affidavit or certificate under penalties of perjury of such Alternate Agent that those persons named as prior Agents are no longer serving.⁴

ARTICLE II.

Property and financial. My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, as follows:⁵

(1) **Power to sell.** My Agent is authorized to sell any and every kind of property that I may own now or in the future, real, personal, intangible and/or mixed, including without being limited to contingent and expectant interests, marital rights and any rights of survivorship incident to joint tenancy or tenancy by the entirety, upon such terms and conditions and security as my Agent shall deem appropriate and to grant options with respect to sales thereof.⁶ My Agent is authorized to make such disposition of the proceeds of such sale or sales, including expending such proceeds for my benefit, as my Agent shall deem appropriate.⁷

¹ This clause appoints your Agent.

² This clause makes clear that you are creating a durable power of attorney in accordance with the provisions of state law that permit such a power.

³ This paragraph describes how the Power of Attorney may be revoked or amended and how the Agent may be removed or may resign.

⁴ This paragraph permits any alternate Agent to certify to third parties that such Alternate Agent is now able to serve because the Agents first named have died, resigned, etc.

⁵ This article contains a list and description of the powers you have granted your Agent to manage your property and make financial decisions for you.

⁶ This paragraph grants your agent broad power to sell your property.

⁷ This grants your agent the power to dispose of the sales proceeds from a sale of your property made by your Agent.

(2) **Power to buy.** My Agent is authorized to buy every kind of property, real, personal, intangible and/or mixed, upon such terms and conditions as my Agent shall deem appropriate; to obtain options with respect to such purchases; to arrange for appropriate disposition, use, safekeeping and/or insuring of any such property.⁸ My Agent is authorized to buy United States Government bonds redeemable at par in payment of the federal estate tax imposed at my death.⁹ My Agent is authorized to borrow money for the purposes described herein and to secure such borrowings in such manner as my Agent shall deem appropriate.¹⁰ My Agent is authorized to use any credit card held in my name to make such purchases and to sign such charge slips as may be necessary to use such credit cards.¹¹ My Agent is authorized to repay from any funds belonging to me any money borrowed and to pay for any purchases made or cash advanced using credit cards issued to me.¹²

(3) **Power to invest.** My Agent is authorized to invest and reinvest all or any part of my property in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interests in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether may be me or any Agent; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds.¹³ My Agent is authorized to establish, utilize and terminate accounts with security brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my Agent may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account.¹⁴ My Agent is authorized to establish, utilize and terminate agency accounts with corporate fiduciaries.¹⁵ My Agent is authorized to employ, compensate and terminate the services of financial and investment advisors and consultants.¹⁶

(4) **Power to manage real property.** With respect to real property, including but not limited to any real property I may hereafter acquire or receive and my personal residence, my Agent is authorized to lease, sublease, release: to eject, remove tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, such for, receive and receipt for rents and profits and to conserve, invest or utilize any and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.¹⁷ My Agent is authorized to sell and to buy real property.¹⁸ My Agent is authorized to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by me, whether acquired by me or for me by my Agent.¹⁹

⁸ This paragraph grants your agent the authority to purchase items for you.

⁹ This grants your agent authority to buy certain United States Government Savings Bonds that can be redeemed at full face value in payment of estate taxes at your death.

¹⁰ This grants your agent the authority to borrow money, if needed, to make purchases.

¹¹ This grants your agent the power to use your credit cards to make purchases for you.

¹² This grants your agent the power to repay your loans.

¹³ This paragraph grants your agent the power to invest your money to produce an income for you.

¹⁴ This clause grants your agent the power to establish brokerage accounts.

¹⁵ This clause grants your agent the power to establish agency accounts.

¹⁶ This grants your agent the power to employ financial consultants for your benefit.

¹⁷ This paragraph grants your agent broad authority to manage your real estate for your benefit.

¹⁸ This grants your agent the power to buy and sell your real estate.

¹⁹ This grants your agent the power to borrow money and grant real estate mortgages to secure such borrowing, all for your benefit.

(5) **Power to manage personal property.** With respect to personal property, my Agent is authorized to lease, sublease, and release; to recover possession of by all lawful means; to collect, sue for, receive and receipt for rents and profits therefrom; to maintain, protect, repair, preserve, insure, alter or improve all or any part thereof.²⁰ My Agent is authorized to sell and to buy the same or other personal property.²¹ My Agent is authorized to mortgage or grant deeds of trust, pledge and/or grant other security interests in any personal property or intangibles now or hereafter owned by me, whether acquired by me or for me by my Agent.²²

(6) **Power to operate businesses.** My Agent is authorized to continue the operation of any business, including a ranch or farm, belonging to me or in which I have a substantial interest, for such time and in such manner as my Agent shall deem appropriate, including but not limited to hiring and discharging my employees, paying my employees' salaries and providing for employee benefits, employing legal, accounting, financial and other consultants; continuing, modifying, terminating, renegotiating and extending any contractual arrangements with any person, firm, association or corporation whatsoever made by me or on my behalf; executing business tax returns and other government forms required to be filed by my business, paying all business related expenses, transacting all kinds of business for me in my name and on my behalf, contributing additional capital to the business, changing the name and/or the form of the business, incorporating the business, entering into such partnership agreement with other persons as my Agent shall deem appropriate; joining in any plan of reorganization, consolidation or merger of such business, selling, liquidating or closing out such business at such time and upon such terms as my Agent shall deem appropriate and representing me in establishing the value of any business under "Buy-out" or "Buy-Sell" agreements to which I may be a party; to create, continue or terminate retirement plans with respect to such business and to make contributions which may be required by such plans; to borrow and pledge business assets.²³ My Agent is authorized to exercise any right, power, privilege or option I may have or may claim under any contract of partnership whether as a general, special or limited partner; to modify or terminate my interest upon such terms and conditions as my Agent may deem appropriate; to enforce the terms of any such partnership agreement for my protection, whether by action, proceeding or otherwise as my Agent shall deem appropriate; to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which I am a party because of my membership in such partnership.²⁴

(7) **Power to exercise rights in securities.** My Agent is authorized to exercise all rights with respect to corporate securities which I now own or may hereafter acquire, including the right to sell, grant security interests in and to buy the same or different securities; to establish, utilize and terminate brokerage accounts, including margin accounts; to make such payments as my Agent deems necessary, appropriate, incidental or convenient to the owning and holding of such securities; to receive, retain, expend for my benefit, invest and reinvest or make such disposition of as my Agent shall deem appropriate all additional securities, cash or property, including the proceeds from the sales of my securities, to which I may be or become entitled by reason of my ownership of any securities.²⁵ My Agent is authorized to vote at all meetings of securities holders, regular or special.²⁶ My Agent is authorized to lend money to any corporation in which I hold any shares and to guarantee or endorse loans made to such corporation by third parties.²⁷

(8) **Power to demand and receive.** My Agent is authorized to demand, arbitrate, settle, sue for, collect, receive, deposit, expend for my benefit, reinvest or make such other appropriate disposition

²⁰ This paragraph grants your agent the power to manage your personal property for your benefit.

²¹ This clause grants your agent the power to buy and sell your personal property if needed for your benefit.

²² This clause grants your agent the power to borrow money and give liens to secure the borrowing if necessary for your benefit.

²³ This paragraph grants your agent the power to operate any business you now or in the future may own.

²⁴ This clause grants your agent power over any partnership interest that you may own now or in the future.

²⁵ This paragraph grants your agent the power to exercise your rights in stocks and bonds.

²⁶ This clause grants your agent the power to vote stock.

²⁷ This clause grants your agent the power to lend money to any corporation in which you have an interest and to guarantee its loans.

of as my Agent deems appropriate, all cash, rights to the payment of cash, property, real, personal, intangible and/or mixed, debts, dues, rights, accounts, legacies, bequests, devises, dividends, annuities, rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved, including but not limited to benefits payable to or for my benefit by any governmental agency or body, such as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and for the purposes of receiving social security benefits, my Agent is herewith appointed my "Representative Payee"; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf, and to compromise claims and grant discharges in regard to the matters described herein.²⁸ My Agent is authorized to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf. The authority herein granted shall include but not be limited to converting my assets into assets that do not disqualify me from receiving such benefits or divesting me of such assets. In any divestment actions or assets conversions, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent, whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt such plan, then my Agent is directed to use my Agent's best efforts to restore such plan as and when the opportunity to do so is available to my Agent. If a transfer of cash by my Agent is made to a pecuniary legatee under my will, my Agent shall insure that such transfer is deemed a satisfaction of such legacy, pro tanto.

(9) **Exercise elective share rights.** My Agent is authorized to elect to take against any will and conveyances of my deceased spouse and/or any other person, if appropriate; to retain any property which I have the right to elect to retain; to file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments; and to take all other actions that my Agent deems appropriate in order to effectuate the election; provided however, that if any such actions by my Agent require the approval of any court, my Agent is authorized to seek such approval.²⁹

(10) **Power with respect to employment benefits.** My Agent is authorized to create and contribute to an employee benefit plan, including a plan for a self-employed individual, for my benefit; to elect retirement on my behalf; to select any payment option under any IRA or employee benefit plan in which I am a participant, including plans for self-employed individuals, or to change options I have selected; to make voluntary contributions to such plans; to make "roll-overs" of plan benefits into other retirement plans; to apply for and receive payments and benefits; to waive rights given to non-employee spouses under state or federal law.³⁰

(11) **Power with respect to bank accounts.** My Agent is authorized to establish accounts of all kinds, including checking and savings, for me with financial institutions of any kind, including but not limited to banks and thrift institutions; to modify, terminate, make deposits to and write checks on or make withdrawals from and grant security interests in all accounts in my name or with respect to which I am an authorized signatory, except accounts held by me in a fiduciary capacity, whether or not any such account was established by me or for me by my Agent, to negotiate, endorse or transfer any checks or other instruments with respect to such accounts; to contract for any services rendered by any bank or financial institution; and to execute, on my behalf as principal, agency or power of attorney forms furnished by any bank with respect to accounts with such bank, appointing as agent my Agent or any other person or persons.³¹

(12) **Power with respect to safe-deposit boxes.** My Agent is authorized to contract with any institution for the maintenance of a safe deposit box in my name; to have access to all safe-deposit boxes in

²⁸ This paragraph gives your agent the power to collect or receive any money or property to which you may be entitled.

²⁹ This paragraph permits your Agent to exercise any right you may have to elect against any will under which you may be a beneficiary or, in the alternative, not to make an election.

³⁰ This paragraph gives your agent authority to exercise your rights and collect your benefits as an employee.

³¹ This paragraph gives your agent the power to write checks on your bank accounts, etc.

my name or with respect to which I am an authorized signatory, whether or not the contract for such safe-deposit box was executed by me, either alone or jointly with others, or by my Agent in my name; to add to and remove from the contents of any such safe deposit box and to terminate any and all contracts for such boxes.³²

(13) **Power with respect to legal and other actions.** My Agent is authorized to institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving me in any way, including but not limited to claims by or against me arising out of property damages or personal injuries suffered by or caused by me or under such circumstances that the loss resulting therefrom will or may be imposed on me and otherwise engage in litigation involving me, my property or any interest of mine, including any property or interest or person for which or whom I have or may have any responsibility.³³

(14) **Power to borrow money.** My Agent is authorized to borrow money from any lender for my account upon such terms and conditions as my Agent shall deem appropriate and to secure such borrowing by the granting of security interests in any property or interests in property which I may now or hereafter own; to borrow money upon any life insurance policies owned by me upon my life for any purpose and to grant a security interest in such policy to secure any such loans, including the assignment and delivery of any such policies as security; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds by my Agent.³⁴

(15) **Power to create, fund, amend and terminate revocable trusts.** My Agent is authorized to execute a revocable trust agreement with such trustee or trustees as my Agent shall select, and such trust shall provide that all income and principal shall be paid to me, to some person for my benefit or applied for my benefit in such amounts as I or my Agent shall request or as the trustee or trustees shall determine, and that on my death any remaining income and principal shall be paid to my personal representative, and that the trust may be revoked or amended by me or my Agent at any time and from time to time; provided, however, that any amendment by my Agent must be such that by law or under the provisions of this instrument such amendment could have been included in the original trust agreement; to deliver and convey any or all of my assets to the trustee or trustees thereof; to add any or all of my assets to such a trust already in existence at the time of the creation of this instrument or created by me at any time thereafter; and for the purpose of funding any trust, to enter and remove any of my assets from any safe-deposit box of mine, whether the box is registered in my name alone or jointly with one or more other persons.³⁵

(16) **Power to fund trusts created by the principal.** My Agent is authorized to transfer from time to time and at any time to the trustee or trustees of any revocable trust agreement created by me before or after the execution of this instrument, as to which trust I am, during my lifetime, a primary income and principal beneficiary, any and all of my cash, property or interests in property, including any rights to receive income from any source; and for this purpose to enter and remove from any safe-deposit box of mine, whether the box is registered in my name alone or jointly with one or more other persons, any of my assets and to execute such instruments, documents and papers to effect the transfers described herein as may be necessary or appropriate; incidental or convenient; to make such transfers absolutely in fee simple or for my lifetime only with the remainder or reversion of the property so transferred, remaining in me so that such property will be disposed of at my death by my will or by the intestacy laws of the state in which I shall die a resident.³⁶

³² This paragraph gives your agent access to your safe deposit box.

³³ This paragraph gives your agent authority to sue on your behalf and to defend you if you are sued.

³⁴ This paragraph gives your agent the power to borrow money for your benefit, including borrowing money on your insurance policies.

³⁵ This paragraph allows your agent to create a trust for you, transfer your property to the trust, and to amend or terminate the trust.

³⁶ This paragraph gives your agent power to transfer property to a trust created for your benefit.

(17) **Power to withdraw funds from trusts.** My Agent is authorized to withdraw and/or receive the income or corpus of any trust over which I may have a right of receipt or withdrawal; to request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distributions to or on my behalf, and to execute and deliver to such trustee or trustees a receipt and release or similar document for the income or corpus so received; to exercise in whole or in part, release or let lapse any power of appointment held by me, whether general or special, or any power of amendment or revocation under any trust, including any trust with respect to which I may exercise any such power only with the consent of another person, even if my Agent is such other person, whether or not such power of appointment was created by me, subject however, to any restrictions upon such exercise imposed upon my Agent and set forth in other provisions of this instrument.³⁷

(18) **Power to renounce and resign from fiduciary positions.** My Agent is authorized to renounce any fiduciary position to which I have been or may be appointed or elected, including but not limited to personal representative, trustee, guardian, attorney-in-fact, and officer or director of a corporation; and any governmental or political office or position to which I have been or may be elected or appointed; to resign any such positions in which capacity I am presently serving; to file an accounting with a court of competent jurisdiction or settle on a receipt and release or such other informal method as my Agent shall deem appropriate.³⁸

(19) **Power to disclaim, renounce, release, or abandon property interests.** My Agent is authorized to renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts, including the right to alter, amend, revoke or terminate, and to exercise any right to claim an elective share in any estate or under any will. In exercising such discretion, my Agent shall consider any reduction in estate or inheritance taxes that may be due upon my death, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that my Agent shall make no disclaimer that is expressly prohibited by other provisions of this instrument.³⁹

(20) **Power with respect to insurance.** My Agent is authorized to purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of any one in whom I have an insurable interest; (b) liability insurance protecting me and my estate against third party claims; (c) hospital insurance, medical insurance, Medicare supplement insurance, custodial care insurance, and disability income insurance for me or any of my dependents; and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft, or other commonly insured risk; to pay all insurance premiums, to select any options under such policies, to increase coverage under any such policy, to borrow against any such policy, to pursue all insurance claims on my behalf, to adjust insurance losses, and the foregoing powers shall apply to private and public plans, including but not limited to Medicare, Medicaid, SSI and Worker's Compensation.⁴⁰

(21) **Power with respect to taxes.** My Agent is authorized to represent me in all tax matters; to prepare, sign, and file federal, state, and/or local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts, including the tax court, regarding tax matters, and any and all other tax related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue Code or any successor section thereto and consents to split

³⁷ This paragraph grants your agent the power to exercise any power you may have to withdraw funds from a trust for your benefit and exercise any power of appointment or power to amend or revoke the trust.

³⁸ This paragraph grants your agent the power to submit your resignation from any position you may hold.

³⁹ This paragraph grants your agent the power to disclaim, renounce, release or abandon any property that you may not need, which in some instances may provide a tax benefit for you or your family.

⁴⁰ This paragraph grants your agent authority over your life insurance, and permits your agent to buy insurance on you or surrender or cancel it.

gifts, closing agreements, and any power of attorney form required by the Internal Revenue Service and/or any state and/or local taxing authority with respect to any tax year; to pay taxes due, collect and make such disposition of refunds as my Agent shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and/or any state or local tax law; to allocate any generation-skipping tax exemption to which I am entitled, and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and/or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have an interest or responsibility; and on my behalf to execute IRS Form 2848 and appoint my Agent or any suitable person selected by my Agent as my representative before the Internal Revenue Service.⁴¹

(22) **Power to make loans.** My Agent is authorized to lend money and property at such interest rate, if any, and upon such terms and conditions, and with such security, if any, as my Agent may deem appropriate; to renew, extend, and modify any such loan or loans that I may have previously made.⁴² My Agent is authorized to guarantee the obligations of any such person; to consent to the renewal, extension and modification of such obligations.⁴³

(23) **Power to make gifts.** My Agent is authorized to make gifts, grants or other transfers without consideration, either outright or in trust, including the forgiveness of indebtedness, to and among my descendants and their spouses, as hereinafter described:⁴⁴

- a. Gifts made by my Agent may be made that qualify for treatment under IRC Section 2053(b), with or without spousal gift splitting.
- b. Gifts made by my Agent may be made for educational purposes as described in IRC Section 2503(e) (2) (A) and in such a way as to not be subject to the federal gift tax.
- c. Gifts made by my Agent may be made for medical expenses as described in IRC Section 2503(e) (2) (B) and in such a way as to not be subject to the federal gift tax.

In connection with tax procedures occasioned by gifts made by my Agent on my behalf or gifts as to which I may consent, my Agent is authorized and directed at my expense to cause federal and local gift tax and generation skipping transfer tax returns to be prepared and filed on my behalf, if necessary and to pay any tax shown to be due. My Agent shall not be disqualified from receiving a gift under this paragraph by reason of serving as my Agent.

ARTICLE III.

Care and control of the person. My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, with respect to the control and management of my person, as follows:⁴⁵

(1) **Power to provide for principal's support.** My Agent is authorized to do all acts necessary for maintaining my customary standard of living, to provide a place of residence by purchase, lease or other arrangement, or by payment of the operating costs of my existing place of residence, including interest, amortization payments, repairs and taxes, to transportation, medicine, food and incidentals, and if necessary to make all necessary arrangements, contractual or otherwise, for me at

⁴¹ This paragraph grants your agent the power to sign your tax returns and to represent you before taxing authorities and take other actions in regard to your tax rights and obligations.

⁴² This paragraph grants your agent the power to lend your money or property to other persons.

⁴³ This clause grants your agent the power to guarantee, renew or extend your loans.

⁴⁴ This paragraph grants the power to make gifts of your property or cash.

⁴⁵ This article grants to your Agent broad authority over the care and control of your person.

any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and to assure that all of my essential needs are provided for at such a facility or in my own residence, as the case may be.⁴⁶

(2) Power to provide for recreation and travel. My Agent is authorized to provide opportunities for me to engage in recreational and sports activities, including travel, as my health permits.⁴⁷

(3) Power to provide for spiritual or religious needs. My Agent is authorized to provide for the presence and involvement of religious clergy or spiritual leaders in my care, provide them access to me at all times, maintain my membership in religious or spiritual organizations or arrange for membership in such groups, and enhance my opportunities to derive comfort and spiritual satisfaction from such activities, including religious books, tapes and other materials.⁴⁸

(4) Power to provide for companionship. My Agent is authorized to provide for such companionship for me as will meet my needs and preferences at a time when I am disabled or otherwise unable to arrange for such companionship myself.⁴⁹

(5) Power to make advance funeral arrangements. My Agent is authorized to make advance arrangements for my funeral and burial, including the purchase of a burial plot and marker, and such other related arrangements as my Agent shall deem appropriate, if I have not previously done so myself.⁵⁰

ARTICLE IV.

Health Care. My Agent is authorized in my Agent's discretion from time to time and at any time to exercise the authority described below relating to matters involving my health care. In exercising the authority granted to my Agent herein, I first direct my Agent to try to discuss with me the specifics of any proposed decision regarding my health care and treatment if I am able to communicate in any manner, however rudimentary. If I am unable to consent, or to refuse to consent, to my health care, and my Agent cannot determine the choice I would want made under the circumstances, my Agent shall give, withhold, modify, or withdraw such consent for me based upon any health care choices that I may previously have expressed on the subject while competent, whether under this instrument or otherwise. If my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent shall make such choice for me based upon what my Agent believes to be in my best interests. Accordingly, my Agent is authorized as follows:⁵¹

(1) Medical records. My Agent is authorized to request, receive and review any information, verbal or written, regarding my personal affairs or my physical or mental health, including medical and hospital records, and to execute any releases or other documents that may be required in order to obtain such information, and to disclose or deny such information to such persons, organizations, firms or corporations as my Agent shall deem appropriate.⁵²

(2) Health care personnel. My Agent is authorized to employ and discharge health care personnel including physicians, psychiatrists, dentists, nurses, and therapists as my Agent shall deem

⁴⁶ This paragraph grants the power to spend your money for your support.

⁴⁷ This paragraph grants your agent the authority to provide for your recreation and travel.

⁴⁸ This paragraph grants your agent the power to maintain your membership in religious organizations and obtain tapes, books and other materials from such organizations for you.

⁴⁹ This paragraph grants your agent the power to provide for companionship for you.

⁵⁰ This paragraph grants your agent the power to make advance funeral arrangements for you.

⁵¹ This Article grants to your Agent broad powers to provide for your medical care based on treatment choices that you have expressed, and if none, then based on your agent's opinion as to your best interests.

⁵² This paragraph gives your Agent access to your medical records and similar information and the power to disclose that information to others, if necessary or appropriate.

necessary for my physical, mental and emotional well-being, and to pay them, or cause them to be paid, reasonable compensation.⁵³

(3) Health care treatment. My Agent is authorized to give, withhold, withdraw or modify consent to any health care procedures, tests or treatments, including surgery; to arrange for my hospitalization, convalescent care, hospice or home care; to summon paramedics or other emergency health care personnel and seek emergency treatment for me, as my Agent shall deem appropriate; to give, withhold, withdraw or modify consent to such procedures, tests and treatments, as well as hospitalization, convalescent care, hospice or home care which I or my Agent may have previously allowed or consented to or which may have been implied due to emergency conditions. My Agent's decisions should be guided by taking into account (1) the provisions of this instrument, (2) any reliable evidence of preferences that I may have expressed on the subject, whether before or after the execution of this document, (3) what my Agent believes I would want done in the circumstances if I were able to express myself, and (4) any information given to my Agent by the physicians treating me as to my health care diagnosis and prognosis and the intrusiveness, pain risks and side effects of the treatment.

(4) Psychiatric treatment. My Agent is authorized to arrange, upon the execution of a certificate by two independent psychiatrists who have examined me and in whose opinions I am in immediate need of hospitalization because of mental disorder, alcoholism or drug abuse, for my voluntary admission to an appropriate hospital or institution for treatment of the diagnosed problem or disorder; to arrange for private psychiatric and psychological treatment for me; and to revoke, modify, withdraw or change consent to such hospitalization, institutionalization or private treatment which I or my Agent may have previously given. The consent of my Agent to my hospitalization for psychiatric help, alcoholism or drug abuse shall have the same legal effect, subject to applicable local law, as a voluntary admission made by me.⁵⁴

(5) Right to privacy. My Agent is authorized to exercise all state and federal rights that I may have, including but not limited to my right of privacy to make decisions regarding my health care even though the exercise of those rights might hasten my death or be against conventional health care advice.⁵⁵

(6) Relief from pain. My Agent is authorized to consent to and arrange for the administration of pain-relieving drugs of any kind, or other surgical or health care procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful to me, even though such drugs or procedures may lead to permanent physical damage, addiction or even hasten the moment of, but not intentionally cause, my death.⁵⁶

(7) Releases. In conjunction with any instructions given under this Article, my Agent is authorized to grant releases to hospital staff, physicians, nurses and other health care providers who act in reliance on instructions given by my Agent or who render written opinions to my Agent in connection with any matter described in this Article from all liability for damages suffered or to be suffered by me; to sign documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" as well as any necessary waivers of or releases from liability required by any hospital or physician to implement my wishes regarding medical treatment or non-treatment.⁵⁷

ARTICLE V.

⁵³ This paragraph allows your Agent to hire and fire doctors, nurses and other medical personnel for you.

⁵⁴ This paragraph grants your agent the power to consent or withhold consent to psychiatric treatment.

⁵⁵ This paragraph grants your agent the power to protect your right to privacy, particularly in health care decisions.

⁵⁶ This paragraph grants your agent the power to authorize medical or surgical procedure or drugs to relieve pain, even if there are damaging side effects, if your agent thinks such action is in your best interest.

⁵⁷ This paragraph allows your Agent to grant releases to hospitals, physicians, and other medical personnel who are called upon by the agent to render or withdraw medical treatment. Such a power may be necessary to persuade hospitals and medical personnel to act under the agent's instructions.

Withdrawal of life support.⁵⁸ I wish to live and enjoy life as long as possible. However, I do not wish to receive health care treatment that will only postpone the moment of my death from an incurable and terminal condition or prolong an irreversible coma. For purposes of this instrument, (1) "terminal condition" shall refer to a condition that is reasonably expected to result in my death within twelve (12) months regardless of the treatment I may receive, and (2) "irreversible coma" shall refer to a permanent loss of consciousness from which there is no reasonable possibility that I will return to a cognitive and sapient life and shall include but shall not be limited to that condition known as a persistent vegetative state.

Therefore, if two licensed, qualified physicians who are familiar with my condition have diagnosed and noted in my health care records that:

- (i) I am unable to give informed consent to my health care treatment that is proposed or available for my condition and my condition is terminal as defined above, or
- (ii) I have been in a coma for at least sixty days and that the coma is irreversible as defined above,

Then, my Agent is authorized to:

- (a) direct that health care treatment which will only postpone the moment of my death or prolong my irreversible coma, whether or not such treatment is directed toward my terminal condition, be withheld or, if previously begun, to direct that such treatment be withdrawn; whether or not such treatment is related to my terminal condition or irreversible coma; and
- (b) request, require or consent to the writing of a "No-Code" or "Do Not Resuscitate" order by any of my attending physicians; and
- (c) sign on my behalf any documents necessary to carry out the authorizations described in this instrument, including waivers or releases of liability required by any health care provider; and
- (d) order whatever is appropriate to keep me as comfortable and free of pain as is reasonably possible, including the administration of pain relieving drugs of any kind or other surgical or medical procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful, even though such drugs or procedures may lead to permanent physical damage, addiction or hasten the moment of, but not intentionally cause, my death.

I desire that my wishes be carried out through the authority given to my Agent by this instrument despite any contrary feelings, beliefs or opinions of members of my family, relatives, friends, conservator or guardian.

In exercising the authority granted to my Agent herein, my Agent shall first follow the instructions of this document and any other subsequent instructions, oral or written, that I may give my Agent while I am competent. Notwithstanding such instructions, if my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent should make such choice for me based upon what my Agent believes to be in my best interest.

⁵⁸ This Article authorizes your Agent to refuse medical treatment on your behalf and withdraw life-support systems based on instructions contained in this document. Your agent is instructed to carry out any treatment choices you may have expressed and if none, then to act in your agent's opinion as to your best interests. Your agent may also authorize pain relief treatment, even if there are damaging side effects, if your agent believes it to be in your best interest.

If no Agent designated in this instrument is able or willing to serve as my Agent or to exercise the powers granted in this article, then I request that this document be given the same force and effect as any other written expression of intent under applicable law.

It is my intention that this instrument, both as a self-executing document and a delegation of power to my Agent, shall be deemed an exercise of all rights and interests that I may have under the United States Constitution, the constitution of the state of my domicile, state and federal laws, rules, regulations and decisions, judicial and administrative, to refuse health care treatment, including but not limited to artificially administered nutrition and artificial hydration.

I authorize my Agent to establish a new residency or domicile for me, from time to time and at any time, within or without this state, and within or without the United States, for the purpose of exercising effectively the powers granted to my Agent in this Article.

In addition, if I have been in an irreversible coma, as defined above, for sixty (60) days or more, or if because of my terminal condition as defined above it is no longer possible to nourish me without severe discomfort, and the two physicians described above also conclude that the nourishment will not improve my physical condition and I will not experience pain as a result of the withdrawal of nutrition or hydration, then my Agent may require that procedures used to provide me with nutrition and hydration, including, by way of example only, all forms of intravenous and parenteral feeding, all forms of tube feeding and misting, be withheld or, if previously instituted, to require that they be withdrawn.⁵⁹

Custodian of "Living Will". In addition, my Agent is authorized to receive and retain custody of any instrument signed by me that is effective under law to require the withdrawal or withholding of life sustaining treatment or procedures, including but not limited to a "Living Will," "Directive to Physician" and a "Declaration of a Desire for Natural Death," hereinafter referred to in the aggregate as my "Advance Directives" and if the circumstances described above authorizing my Agent to require that life sustaining treatment be withheld or withdrawn have occurred, then as an alternative or supplement act, I authorize my Agent to deliver to my physicians, health care providers and other appropriate recipients, this instruments and any other writings and Advance Directives signed by me that express my desire under the circumstances to require the withholding or withdrawal of futile health care treatment, and to instruct such physicians, health care providers and other appropriate recipients to act immediately in accordance with my desires.⁶⁰

ARTICLE VI.

Incidental Powers. In connection with the exercise of the powers and discretions herein described, my Agent is fully authorized and empowered to perform any acts and things and to execute and deliver any documents, instruments, affidavits, certificates and papers necessary or appropriate to such exercise or exercises, including without limitation the following:⁶¹

(1) **Resort to courts.** My Agent is authorized to seek on my behalf and at my expense:

- a. a declaratory judgment from any court of competent jurisdiction interpreting the validity of this instrument and any of the acts authorized by this instrument, but such declaratory judgment shall not be necessary in order for my Agent to perform any act authorized by this instrument:

⁵⁹ This clause states that the life-support systems that may be withdrawn include food and water.

⁶⁰ Your agent also is authorized to retain custody of any "living will" you may have made and may give it to your physician when your Agent believes that you should no longer be kept alive with life-sustaining devices.

⁶¹ This clause is an introduction to certain administrative, incidental and other powers that are necessary or helpful to the agent in carrying out the primary authorizations in this power of attorney.

- b. a mandatory injunction requiring compliance with my Agent's instructions by any person, organization, corporation, or other entity obligated to comply with instructions given by me;
- c. actual and punitive damages, and the recoverable costs, fees and expenses of such litigation, against any person, organization, corporation or other entity obligated to comply with instructions given by me who negligently or willfully fails or refuses to follow such instructions.⁶²

(2) **Hire and fire.** My Agent is authorized to employ, compensate and discharge such domestic, health care and professional personnel including lawyers, accountants, doctors, nurses, brokers, financial consultants, advisors, consultants, companions, servants and employees as my Agent deems appropriate.⁶³

(3) **Sign documents and incur costs.** My Agent is authorized to sign, execute, endorse, seal, acknowledge, deliver and file or record instruments and documents, including but not limited to contracts, agreements, and conveyance of real and personal property, instruments granting and perfecting security instruments and obligations, orders for the payment of money, receipts, releases, waivers, elections, vouchers, consents, satisfactions and certificates. In addition, any Agent of mine who has the authority to incur costs on my behalf may render the bills for such costs to any Agent of mine who has been granted the authority to pay such costs or to any trustee of any revocable living trust of mine, or guardian, committee or conservator who has authority to pay such costs and I request that such costs be paid promptly. Any recipient thereof (i.e. my Agent with authority to pay or my trustee) shall promptly pay such costs.⁶⁴

(4) **Borrow, spend, liquidate, secure.** My Agent is authorized to expend my funds and to liquidate my property or to borrow money in order to produce such funds and to secure any such borrowings with security interests in any property, real, personal, or intangible that I may now or hereafter own.⁶⁵

(5) **Miscellaneous.** My Agent is authorized to open, read, respond to and redirect my mail; to represent me before the U.S. Postal Service in all matters relating to mail service; to establish, cancel, continue or initiate my membership in organizations and associations of all kinds, to take and give or deny custody of all of my important documents, including but not limited to my will, codicils, trust agreements, deeds, leases, life insurance policies, contracts and securities and, bearing in mind the confidential nature of such documents, to disclose or refuse to disclose such documents; to obtain and release or deny information or records of all kinds relating to me, to any interest of mine or to any person for whom I am responsible; to house or provide for housing, support and maintenance of any animals or other living creatures that I may own and to contract for and pay the expenses of their proper veterinary care and treatment; and if the care and maintenance of such animals or other living creatures shall become unreasonably expensive or burdensome in my Agent's opinion, to irrevocably transfer such animals to some person or persons willing to care for and maintain them.⁶⁶

ARTICLE VII.

⁶² This paragraph grants your agent the power to ask the courts to enforce the Agent's instructions.

⁶³ This paragraph allows the Agent to hire and fire employees, professionals (such as lawyers, accountants, etc.) and others who perform services for you.

⁶⁴ This paragraph allows your Agent to sign papers and incur costs on your behalf. It also requires that such costs be paid by any Agent having power over your funds or by a trustee of a revocable living trust, if you have previously created or should later create such a trust.

⁶⁵ This paragraph allows your Agent to borrow money to do the things you have instructed the Agent to do, to spend it for such purposes, to sell assets in order to raise money for you, and to secure borrowings.

⁶⁶ This paragraph allows your Agent to do other miscellaneous acts on your behalf, including dealing with the U.S. Mail, having access to your important documents, care of pet animals, etc.

Third party reliance. For the purpose of inducing all persons, organizations, corporations and entities, including but not limited to any physician, hospital, nursing home, health care provider, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other party, all of whom will be referred to in this article as a "Person" to act in accordance with the instructions of my Agent as authorized in this instrument, I hereby represent, warrant and agree that:⁶⁷

(1) **Revocation and amendments.** If this instrument is revoked or amended for any reason, I, my estate, my personal representative, will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person", harmless from any loss suffered, or liability incurred by such Person acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.⁶⁸

(2) **Agent has power to act alone.** The powers conferred on my Agent by this instrument may be exercised by my Agent along and my Agent's signature or act under the authority granted in this instrument may be accepted by Persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. Consequently, all acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and shall inure to the benefit of and bind me, my estate and personal representative.⁶⁹

(3) **No liability for reliance on Agent.** No person who relies in good faith upon the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no person who acts in reliance upon any representations my Agent may make as to (a) the fact that my Agent's powers are then in effect, (b) the scope of my Agent's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked or amended, or (e) the fact that my Agent continues to serve as my Agent shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.⁷⁰

(4) **Principal's heirs bound.** No Person who relies upon any affidavit or certificate under penalties of perjury that this instrument specifically authorizes my Agent to execute and deliver shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.⁷¹

(5) **Authorization to release information.** All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my Agent's requests.⁷²

(6) **Authorization to release medical information.** I hereby authorize all physicians and psychiatrists who have treated me, and all other providers of health care, including hospitals, to release to

⁶⁷ This Article contains provisions designed to persuade persons (with whom the agent will deal) to honor the power of attorney.

⁶⁸ This paragraph provides that third parties dealing with the Agent are not liable for revocation or amendment of the Power of Attorney if they are unaware of such changes.

⁶⁹ This paragraph provides that your Agent has the power to act alone, without the consent of any other person and that the agent's actions legally bind you.

⁷⁰ This paragraph provides that third parties dealing with the Agent will not be liable to you because they relied on your Agent.

⁷¹ This paragraph allows your Agent to give third parties some assurances in the form of an affidavit that your agent has the power to act.

⁷² This paragraph authorizes third parties to release general confidential information to your Agent.

my Agent all information or photocopies of any records which my Agent may request. If I am incapacitated at the time my Agent shall request such information, all Persons are authorized to treat any such request for information by my Agent as the request of my legal representative and to honor such requests on that basis. I hereby waive all privileges which may be applicable to such information and records and to any communication pertaining to me and made in the course of any confidential relationship recognized by law. My Agent may also disclose such information to such Persons as my Agent shall deem appropriate.⁷³

ARTICLE VIII.

Restrictions on powers. Notwithstanding any provision herein to the contrary, my Agent:⁷⁴

(1) **Life insurance on Agent's life.** My Agent shall have no power or authority whatsoever with respect to any interest in or incidents of ownership in any policy of insurance I may own on the life of my Agent.⁷⁵

(2) **Prior transfers.** My Agent shall have no power or authority whatsoever with respect to (a) any irrevocable trust created by my Agent as to which I am a trustee or a beneficiary or (b) any asset given to me by my Agent.⁷⁶

(3) **Benefits to Agent.** My Agent shall be prohibited, excepted as specifically authorized in this instrument, from (a) appointing, assigning or designating any of my assets, interests or rights directly or indirectly to my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (b) exercising any power of appointment I may hold in favor of my Agent, my Agent's estate, my Agent's creditors, or the creditor's of my Agent's estate, (c) disclaiming assets to which I would otherwise be entitled if the effect of such disclaimer is to pass assets directly or indirectly to my Agent or his or her estate, or (d) using my assets to discharge any of my Agent's legal obligations, including any obligation of support which my Agent may owe to others, excluding those whom I am legally obligated to support.⁷⁷

(4) **Fiduciary Powers.** My Agent shall be prohibited from exercising any fiduciary powers that I now hold or may hereafter acquire.⁷⁸

(5) **Avoid disrupting estate plan.** If it becomes necessary for my Agent to liquidate my assets in order to provide support for me, or if liquidation or conversion of assets becomes necessary for any other reason, whether specified in this instrument or otherwise, or such liquidation is deemed by my Agent to be appropriate or convenient, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent, whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt the dispositive provisions of such plan, then my Agent is directed to use my Agent's best efforts to restore the dispositive provisions of such plan as and when the opportunity to do so is available to my Agent. My Agent shall make reasonable efforts to obtain and review my estate plan and any person having knowledge thereof or possession of any documents implementing such estate plan is authorized to make disclosure thereof to my Agent, and to furnish my Agent with copies of such documents.

⁷³ This paragraph authorizes doctors and hospitals to release medical information to your Agent and permits your agent to disclose it to such persons as your agent may deem necessary.

⁷⁴ This Article contains certain restrictions on the powers of your Agent which might otherwise create tax problems for you or your estate.

⁷⁵ This paragraph provides that your Agent has no authority over any life insurance owned by you insuring your Agent's life.

⁷⁶ This paragraph provides that your Agent has no authority over an irrevocable trust created by your Agent so as to avoid the inclusion of the trust principal in your Agent's estate upon your Agent's death.

⁷⁷ This paragraph prohibits your Agent from using any of your cash or property for your Agent's benefit.

⁷⁸ This paragraph prohibits your Agent from exercising any power you as a trustee or other fiduciary may now have or later acquire.

ARTICLE IX.

Durability provision. This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders principal incapable of managing principal's own estate.⁷⁹

ARTICLE X.

Administrative provisions. The following provisions shall apply:⁸⁰

(1) **Reimbursement of Agent.** My Agent shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my Agent on my behalf at any time under any provision of this instrument.⁸¹ My Agent shall not be entitled to compensation for services rendered hereunder.⁸²

(2) **No guardian or conservator appointed.** By executing this instrument upon the advice of legal counsel, I have carefully and deliberately created the means and manner by which I desire that my person and property be cared for, managed and protected in the event I shall become unable to execute such responsibilities myself. Accordingly, it is my intention and my desire that I herewith express in the strongest possible terms, that no Guardian or Conservator be appointed for me so long as there is an Agent named in this instrument who is willing and able to act and is acting under this instrument. I request that any court of competent jurisdiction that receives and is asked upon a petition for the appointment of a guardian or conservator for me give the greatest possible weight to my intention and desires expressed herein.⁸³

(3) **Waiver for acts of omission.** My Agent and my Agent's estate and personal representative, acting in good faith, is hereby released and forever discharged from any and all civil liability and from all claims or demands of all kinds whatsoever by me or my estate or my personal representative arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence.⁸⁴

(4) **Waiver of duty to produce income and against self-dealing transactions.** My Agent shall have no responsibility to make my property productive of income, to increase the value of my estate or to diversify my investments. My Agent shall have no liability for entering into transactions authorized by this instrument with my Agent in my Agent's individual capacity so long as my Agent believes in good faith that such transactions are in my best interests or the best interests of my estate and those persons interested in my estate. My Agent shall be eligible to serve in all other fiduciary capacities, for me or my benefit, but (not in my place where I may serve as a fiduciary for others) including but not limited to serving as Trustee, Guardian, Conservator, Committee, Executor and/or Administrator.⁸⁵

⁷⁹ This clause is required by law in order for your power of attorney to be durable. "Durable" means that the power of attorney continues to be effective even after your incapacity.

⁸⁰ This Article contains certain administrative powers and provisions which facilitate the use of the Power of Attorney and provide guides for its use.

⁸¹ This paragraph provides the Agent is entitled to reimbursement for any expenses.

⁸² This sentence provides that your Agent is not to receive any pay or commission for serving as Agent.

⁸³ This paragraph requests that no guardian or conservator be appointed for you so long as your Agent is serving under this Durable Power of Attorney.

⁸⁴ This paragraph releases your Agent for any acts or omissions that your Agent may be guilty of, except for willful misconduct or gross negligence.

⁸⁵ Under this paragraph, your Agent does not have a duty to make sure that your property produces an income and is authorized to enter into transactions between your Agent and you and is authorized to serve as a guardian or conservator for you as well.

(5) **No duty to monitor health.** My Agent shall have no responsibility to monitor on any regular basis the state of my physical health or mental capacity to determine if any actions need be taken under this instrument.⁸⁶

(6) **Severability.** If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.⁸⁷

(7) **This instrument unaffected by lapse of time.** I intend that this power of attorney be legally unaffected by reason of lapse of time or staleness.

(8) **Agent authorized to sign power of attorney forms.** In carrying out the authorizations set forth in this instrument, if in the sole opinion of my Agent it is necessary or convenient for my Agent to sign my name, as principal, on forms of powers of attorney (the "Forms") required by governmental agencies, corporations or other entities in transactions with me, my agent is authorized to execute such Forms, appointing as agent to represent me, my Agent or any other suitable person.

(9) **Governing law.** This instrument shall be governed by the laws of the state of South Carolina in all respects, including its validity, construction, interpretation and termination.⁸⁸ To the extent permitted by law this instrument shall be applicable to all property of mine, real, personal, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located, and whether such property is now owned by me or hereafter acquired by me or for me by my Agent.⁸⁹ In addition, in regard to health care treatment affecting me, I intend for this Power of Attorney to be honored in any jurisdiction when it may be presented and given the most liberal interpretation available for purposes of granting my Agent the fullest amount of discretion in making health care decisions on my behalf. I also intend that any such jurisdiction refer to the laws of the state referred to above to interpret and determine the validity of this instrument and any of the powers granted hereunder. Should any physician or health care provider fail to honor this Power of Attorney, then my Agent is authorized to terminate the services of such persons and to transfer my care to another physician or health care provider that will honor the instructions of my Agent.⁹⁰

(10) **Definitions.**⁹¹ Whenever the word:

- (a) "Agent" or any modifying or equivalent word or substituted pronoun therefore is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.
- (b) "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary, appointed by a court of competent jurisdiction or by other lawful means, responsible for the person and/or the property of an individual.
- (c) "Descendants" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively

⁸⁶ This paragraph provides that your Agent has no responsibility to check on the state of your health.

⁸⁷ This paragraph provides that if, for any reason (and we know of none), a court would decide that any paragraph of your Power of Attorney is invalid, such invalidity will not affect the validity of other paragraphs of your power of attorney.

⁸⁸ This paragraph provides that the Power of Attorney is governed by the law of this state.

⁸⁹ This clause states your intention that the Power of Attorney be effective as to any property, real or personal, you may own in another state or country.

⁹⁰ This clause states your intention that the Power of Attorney be effective as to medical decisions your Agent may need to make in other states or counties.

⁹¹ This paragraph defines agent and guardian/conservator for purposes of your power of attorney.

children, grandchildren and other lineal issue of all degrees of the designated ancestor. The reference to “descendants” or “children” in the plural shall include a single descendant or child where the context so requires. References to “descendants”, a “child”, or “children” shall exclude stepchildren and foster children and shall include (a) a person adopted into the class during minority, (b) a person adopted into the class as an adult if the adopted person lived for a significant period during minority as a member of the household of the adopting parent or if the adopting parent is the spouse of a natural parent of the adopted person, and (c) a person naturally born into the class out of wedlock if the person lived for a significant period during minority as a member of the household of the relevant natural parent. An adoption of a descendant by another within or outside the family shall be disregarded for purposes of this instrument. Whether a person has “lived for a significant period during minority as a member of the household” of an adoptive or natural parent shall be determined in the reasonable discretion of the Agent.

(11) **Counterpart originals.** If this instrument has been executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.⁹²

(12) **Photocopies.** My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. Each photocopy shall have the same force and effect as any original.⁹³

(13) **Binding effect.** This instrument and actions taken by my Agent properly authorized hereunder shall be binding upon me, my estate, and my personal representative.⁹⁴

ARTICLE XI.

Declarations of the Principal. As Principal, I make the following declarations relevant to my execution of this Durable Power of Attorney:

(1) **Employment and assistance of attorney.** I have employed my attorney to prepare this instrument according to my desires and intention expressed to my attorney.

(2) **Principal’s Review and Acceptance of DPA.** The provisions that my attorney has included in this instrument, including but not limited to those referred to in this article, were discussed with me by my attorney and I have expressly approved the inclusion of such provisions in this instrument.

(3) **Direction to Attorney about Exculpatory Clauses.** In order to induce my Agent to serve as my agent under this instrument, I have directed my attorney to include in this instrument a provision exculpating my Agent from liability in certain instances.

(4) **Legal advice about DPA generally.** My attorney has explained to me the purposes of this instrument and in general, both the applicable law and the consequences of signing it or not signing it. After being so advised, I have executed this instrument.

(5) **Acceptance of risk.** I have carefully considered the risks involved in creating this Durable Power of Attorney, and the alternatives to a Durable Power of Attorney, as explained to me by my attorney. I have determined that accepting such risks offers benefits to me that I desire, and I therefore accept such risks.

⁹² This paragraph provides that any copy of the Durable Power signed by you has the same force and effect as an original.

⁹³ This paragraph provides that photocopies of original powers of attorney have the same force and effect as an original.

⁹⁴ This paragraph makes the actions of your Agent binding not only upon you and also, in the event of your death, upon your heirs and executors.

(6) **Withdrawal of life support.** I declare that I have read the provisions of this power of attorney authorizing and/or directing my Agent to withhold or withdraw health care treatment for me under the circumstances specified in this power of attorney, that such provisions have been explained to me to my satisfaction, that I understand such provisions, and that such provisions state my wishes and desires under the circumstances described.

IN WITNESS WHEREOF, I have executed this Durable Power of Attorney this 7th day of January, 2019



Principal

ATTESTATION

The foregoing durable power of attorney was this 7th day of January, 2019, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Ashley R. Butler
Witness
TERRENCE BUTLER
Witness

PROBATE

Personally appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within power of attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

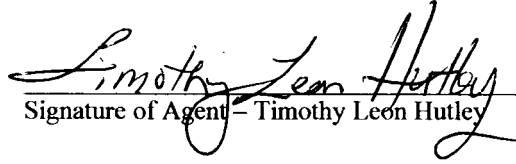
Terrence R. Duncanson
Witness
Ashley R. Butler

SWORN to before me this 7th day of January, 2019

Terrence R. Duncanson
Notary Public for South Carolina
My commission expires: 7/17/24

ACKNOWLEDGMENT AND ACCEPTANCE BY AGENT

The undersigned acknowledges and accepts appointment as Agent, and agrees to serve as Agent, under this instrument.



Signature of Agent - Timothy Leon Hutley

Address

Phone

ACKNOWLEDGMENT AND ACCEPTANCE BY AGENT

The undersigned acknowledges and accepts appointment as Agent, and agrees to serve as Agent, under this instrument.

Signature of Agent –

Address

Phone

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT HUNT VALLEY
INC., THI OF SOUTH CAROLINA,	)	HOLDINGS, LLC'S MEMORANDUM IN
LLC, HUNT VALLEY HOLDINGS,	)	SUPPORT OF MOTION TO STAY
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
	)	

TO: DAN PRUITT, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, Defendant Hunt Valley Holdings, LLC (hereinafter “this Defendant”), by and through her undersigned attorneys and submits this Memorandum in Support of its Motion to Stay.

BACKGROUND FACTS

In this nursing home malpractice case, Defendant THI of South Carolina at Magnolia Manor Inman, LLC (hereinafter “Facility Defendant”) has filed a motion to compel Plaintiff’s claims against it to arbitration. See **Exhibit 1**. Per the statutory mandate of the FAA and this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter must be stayed as to this Defendant until such time as the Facility Defendant’s motion to compel arbitration is finally determined and any arbitration proceedings are finally concluded, to

include the final determination/conclusion of any and all appellate proceedings relating thereto. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, a stay would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

The FAA, 9 U.S.C. § 3, entitled “Stay of proceedings where issue therein referable to arbitration,” states the following:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, **the court** in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement**, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis added.)¹

Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); *see also Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) (“The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement.”).

¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See* S.C. Code Ann. § 15-48-20(d) (“Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section...” (emphasis added))

Moreover, this Court possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court's discretion. *Id.* See also *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

In the instant matter, the Plaintiff's claims against this Defendant arise out of the exact same factual underpinnings as his claims against Magnolia Manor-Inman, a party to the Arbitration Agreement. To be sure, the claims against both this Defendant and the Facility Defendant are solely concerned with Ms. Does' residency at Magnolia Manor-Inman. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration between Plaintiff and the Facility Defendant. Without the issuance of a stay, disposition of the Plaintiff's claims against this Defendant may affect the disposition of the matter against Magnolia Manor-Inman, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Plaintiff's allegations of liability in the Amended Complaint make very little distinction between this Defendant and the Facility Defendant. Rather, Plaintiff repeatedly lumps this Defendant in with others referring to them collectively as the “Defendants” throughout the Amended Complaint. If this Defendant is forced to continue with this litigation, the arbitration proceedings against the Facility Defendant could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Magnolia Manor-Inman. Should discovery and the trial of this matter continue against this

Defendant in this Court, the right to arbitration of the Facility Defendant would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000) (Stay granted to defendant non-signatory to arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.). Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

CLEMENT RIVERS, LLP

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

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Russell G. Hines

SC State Bar ID No.: 72100

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

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

rhines@ycrlaw.com, tgandy@ycrlaw.com,

gdottere@ycrlaw.com

*Attorneys for the Defendant Hunt Valley Holdings,
LLC*

Charleston, South Carolina

Dated: February 28, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
TIMOTHY HUTLEY, GUARDIAN FOR	)	CASE NO. 2022-CP-42-01163
JANE DOE,	)	
	)	
INDIVIDUAL,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
INMAN, LLC, THI OF BALTIMORE,	)	DEFENDANT THI OF BALTIMORE,
INC., THI OF SOUTH CAROLINA,	)	INC.'S MEMORANDUM IN SUPPORT OF
LLC, HUNT VALLEY HOLDINGS,	)	MOTION TO STAY
LLC, THI OF SOUTH CAROLINA AT	)	
INMAN, LLC, MURRAY FORMAN,	)	
AND KATHY SCROGGS,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	
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TO: DAN PRUITT, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, Defendant THI of Baltimore, Inc. (hereinafter “this Defendant”), by and through her undersigned attorneys and submits this Memorandum in Support of its Motion to Stay.

BACKGROUND FACTS

In this nursing home malpractice case, Defendant THI of South Carolina at Magnolia Manor Inman, LLC (hereinafter “Facility Defendant”) has filed a motion to compel Plaintiff’s claims against it to arbitration. See **Exhibit 1**. Per the statutory mandate of the FAA and this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter must be stayed as to this Defendant until such time as the Facility Defendant’s motion to compel arbitration is finally determined and any arbitration proceedings are finally concluded, to

include the final determination/conclusion of any and all appellate proceedings relating thereto. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, a stay would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

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¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See* S.C. Code Ann. § 15-48-20(d) (“Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section...” (emphasis added))

Moreover, this Court possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court's discretion. *Id.* See also *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

In the instant matter, the Plaintiff's claims against this Defendant arise out of the exact same factual underpinnings as his claims against Magnolia Manor-Inman, a party to the Arbitration Agreement. To be sure, the claims against both this Defendant and the Facility Defendant are solely concerned with Ms. Does' residency at Magnolia Manor-Inman. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration between Plaintiff and the Facility Defendant. Without the issuance of a stay, disposition of the Plaintiff's claims against this Defendant may affect the disposition of the matter against Magnolia Manor-Inman, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Plaintiff's allegations of liability in the Amended Complaint make very little distinction between this Defendant and the Facility Defendant. Rather, Plaintiff repeatedly lumps this Defendant in with others referring to them collectively as the “Defendants” throughout the Amended Complaint. If this Defendant is forced to continue with this litigation, the arbitration proceedings against the Facility Defendant could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Magnolia Manor-Inman. Should discovery and the trial of this matter continue against this

Defendant in this Court, the right to arbitration of the Facility Defendant would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000) (Stay granted to defendant non-signatory to arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.). Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

CLEMENT RIVERS, LLP

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

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SC State Bar ID No.: 12084

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James D. Gandy, III

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gdottere@ycrlaw.com

Attorneys for the Defendant THI of Baltimore, Inc.

Charleston, South Carolina

Dated: February 28, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
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JANE DOE,	)	
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THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR	)	
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INC., THI OF SOUTH CAROLINA,	)	CAROLINA, LLC'S MEMORANDUM IN
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	)	
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TO: DAN PRUITT, ATTORNEY FOR THE PLAINTIFF:

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CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

CLEMENT RIVERS, LLP

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

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SC State Bar ID No.: 12084

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Charleston, South Carolina

Dated: February 28, 2023

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2022-CP-42-01163

Timothy Hutley, Guardian for Jane Doe,	)
	)
Plaintiff,	)
	)
v.	)
	)
THI of South Carolina at Magnolia Manor	)
Inman, LLC, THI of	)
Baltimore, Inc., THI of South Carolina,	)
LLC, Hunt Valley Holdings, LLC, THI of	)
South Carolina at Inman, LLC, Murray	)
Forman, and Kathy Scroggs, Individually,	)
	)
	)
Defendants.	)
_____	)

**MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTIONS
TO STAY AND TO COMPEL ARBITRATION**

Statement of Facts/ Procedural Posture

Jane Doe, a Medicare recipient, was admitted to Magnolia Manor Inman (hereinafter Defendants' facility) on August 22, 2018. While a resident, Ms. Doe experienced a violent attack with resulting injury and other circumstances that deviated from the accepted standard of care on or around September 8, 2018. Plaintiffs filed a Summons and Complaint alleging certain wrongful conduct and seeking a jury trial. Defendants filed a Motion to Compel Arbitration.

Notably, Defendants have not submitted any affidavits to support their account of the admission process. Plaintiff therefore strongly objects to any characterization of the process itself not contained in the documents in question.

Defendants attached the "Facility-Resident/Representative Arbitration Agreement" (Def. Exh 2) but apparently mistakenly failed to attach the separate Facility Admission Agreement in their Memorandum. Defendants conceded in their Memorandum that neither agreement is signed by Jane Doe.

The separate one-page Arbitration Agreement states:

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

The agreement purports to waive Jane Doe's right to Jury Trial and require that any controversy or dispute between the parties be submitted to binding arbitration in accordance with the South Carolina Alternate Dispute/ Resolution Rules.

On January 7, 2019, approximately four and one-half months after Jane Doe was admitted into Defendants' facility and approximately four months after Jane Doe was attacked in Defendants' facility, Jane Doe executed a Power of Attorney in favor of Timothy Hutley. This POA was filed on January 9, 2019. (Def. Exh. 3)

Plaintiff strongly objects to the Motions. The purported agreement is invalid and unenforceable because Timothy Hutley lacked authority, either express or implied, to waive Jane Doe's right to jury trial and to enter the purported agreement for binding arbitration.

I. There is no evidence Timothy Hutley had authority to bind Jane Doe as of the time he signed the purported Arbitration agreement.

In deciding a motion to compel arbitration, the Court looks to contract law to determine whether a valid and enforceable contract to arbitrate has been entered by the parties. "[A]rbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law." [Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 130, 678 S.E.2d 435, 438 \(2009\)](#).

Here, the POA was not signed until **long after** the admission and the attack. Therefore, Mr. Hutley had no express authority to sign the separate Arbitration Agreement. (See Def. Exh. 3). To be effective to grant express authority to an Attorney-in-Fact, the Power of Attorney must be executed prior to the time the Attorney in Fact signs the document in question. Stott v. White Oak Manor, 828 SE2d 82 (2019).

In addition because arbitration exists solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate. Wilson v. Willis, 426 S.C. at 337, 827 S.E.2d at 173.

Earlier this year our Court of Appeals has issued an Order addressing the **precise** Resident/Representative Arbitration Agreement in the present case. Solesbee v. Fundamental (Op. 5963 Ct. App. Filed Jan. 25, 2023). In reviewing the agreement used by Magnolia Manor-Inman which is the same facility in question in the present case, the Court of Appeals found there was no express authority because in Solesbee, at the time her son signed the agreement, he was not operating under a Power of Attorney.

In Solesbee, the Court examined a number of factors in determining that there was no merger. The Court of Appeals concluded there was no merger because the Arbitration Agreement was a separate and distinct agreement from the Admission agreement and the two separate agreements did not merge. The Court construed the agreement and relied on Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); and Thompson v. Pruitt Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016).

The Court in Solesbee reviewed the agreement and concluded that the Admission Agreement provided that it was to be governed by South Carolina law. The Arbitration Agreement provided it was governed by federal law.

The Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement "shall survive any termination or breach of this Agreement or the Admission Agreement." The Arbitration Agreement was silent as to whether it could be revoked. The Admission Agreement provided, "Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility."

The Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages.

The Admission Agreement also indicates an Entire Agreement sections indicates that the twelve pages of the Admission Agreement constitute the "Entire Agreement" of the parties. The Admission Agreement does not mention the Arbitration Agreement.

Because there was no merger there, Magnolia Manor Inman's equitable estoppel argument was properly denied. Solesbee.

The facts are identical here as the same facility and same agreements were in use. Hutley did not have express authority. In addition, there was no apparent or implied authority, merger, or equitable estoppel for the same reasons the Court of Appeals held in the Solesbee case.

The Coleman court also considered whether the Adult Health Care Consent Act (Act)^[7] gave a family member authority to execute an arbitration agreement on behalf of another. The court held:

The scope of Sister's authority [under the Act] to consent to "decisions concerning Decedent's health care" extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

[407 S.C. at 353-54, 755 S.E.2d at 454](#). In [Thompson v. Pruitt Corporation](#), this court also held the admission agreement did not merge with the arbitration agreement and the son's authority under the Act to execute the admission agreement did not cover the terms of the arbitration agreement. [416 S.C. at 52-53, 784 S.E.2d at 684-85](#).

In the present case, Hutley had no authority to bind Jane Doe to the agreement for binding arbitration because there was no express or implied authority to do so. There is no evidence Jane Doe did anything to create an agency relationship with the person who signed the arbitration agreement. See [Thompson, 416 S.C. at 55, 784 S.E.2d at 686](#) ("[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial."); [Hodge, 422 S.C. at 572, 813 S.E.2d at 307](#) (quoting [Thompson](#)).

II. Whether an agreement for binding arbitration is enforceable where the resident in question is a recipient of Medicare.

An illegal contract is unenforceable. Berkebile v. Outen, 311 S.C. 50,53 n.2, 426 S.E.2d 760, 762 n.2 (1993). “The general rule is that courts will not enforce a contract is violative of public policy, statutory law, or provisions of the Constitution.” Id. Federal regulations require Medicare and Medicaid certified facilities to accept Medicare reimbursement rates as payment in full. See 42 C.F.R Section 489.30; 42 C.F.R. Section 447.15 Moreover, such facilities, in the case of an individual who is entitled to medical assistance, must “not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan...any other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual’s continued stay at the facility.” 42 U.S.C. Section 1396r(c)(5)(A)(iii).

Clearly here, it is undisputed that Jane Doe was a recipient of Medicare at the time of her admission and throughout her stay at Defendants’ facility and the Defendants’ facility was billing and accepting payment from Medicare for Jane Doe’s care. As such, the purported agreement for binding arbitration which the facility mandated that Hutley sign is not valid or enforceable because by its terms it violates federal law.

III. Whether the agreement for binding arbitration was valid or enforceable where not supported by valuable consideration.

It is well settled that to be valid and enforceable, a contract must be supported by valuable consideration. Benya v. Gamble, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984) (“a contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act”). Consideration may consist of “consist of “some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship, 331 S.C. 385, 389,503 S.E.2d 184, 186 (Ct. App. 1998).

As such, this requirement was a clear violation of Federal Law. 42 U.S.C. Section 1396r(c)(5)(A)(iii) prohibits a facility such as Defendants' from soliciting or accepting "any other consideration" as a condition to admission outside of the Medicare payments when admitting a patient in Jane Doe's position. By requiring Hutley to sign the document attempting to require waiver of the right to jury trial as a condition of admission, Defendants were requiring and accepting consideration in addition to Medicare payments. Therefore, the arbitration agreement in question is not valid or enforceable.

IV. There was no meeting of the minds as the arbitration agreement is overly vague.

For many reasons there is no way that the parties had a meeting of the minds such as to create an enforceable agreement for binding arbitration. First, the agreement makes no mention of who would be responsible for paying the costs of the arbitrators. Second, the agreement does not provide how the "panel or arbitrators" would be selected in the first instance. See Resident/Representative Agreement. Third the reference to the South Carolina Alternate (sic.) Dispute Resolution/Mediation Rules is no help. The Rules cover court-related mediation and non-binding arbitration. Fourth, there is no description of how the parties initiate arbitration. Fifth, the credentials of potential arbitrators is overly vague as well. Sixth, there is no reference to what rules of procedure or evidence would govern a hearing.

Conclusion

The arbitration agreement was not valid because Jane Doe did not sign it. In addition, Hutley did not have authority to bind Jane Doe to an arbitration agreement. In addition, the agreement used by Defendants is also not valid or enforceable because it is illegal and without consideration. Finally, there was no meeting of the minds. As Such, Plaintiff respectfully asks the Court to deny Defendants' Motions.

Respectfully Submitted,

s/ C. Daniel Pruitt

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Dated: February 28, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	CASE NO. 2022-CP-42-01163
 TIMOTHY HUTLEY,	)	
Guardian for Jane Doe,	)	
	)	
Plaintiff,	)	MOTION TO ALTER, AMEND, AND/OR
	)	RECONSIDER ORDER DENYING
vs.	)	MOTION TO COMPEL ARBITRATION
	)	AND MOTIONS TO STAY
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA MANOR INMAN, LLC,	)	
THI OF BALTIMORE, INC.,	)	
THI OF SOUTH CAROLINA, LLC,	)	
HUNT VALLEY HOLDINGS, LLC,	)	
THI OF SOUTH CAROLINA AT INMAN,	)	
LLC, MURRAY FORMAN, and	)	
KATHY SCROGGS, Individually,	)	
	)	
Defendants.	)	

TO: THE HONORABLE GRACE GILCHRIST KNIE, Presiding Judge, and C. DANIEL PRUITT, ESQUIRE, Attorney for Plaintiff

NOW COME the Facility¹ and the Other Defendants² (collectively, “Defendants”), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCP, and, on the grounds set forth below, hereby most respectfully move this Honorable Court to alter, amend, and/or reconsider its order filed May 15, 2023 (the “Subject Order”),³ which denied the Facility’s motion, filed January

¹ The “Facility” refers to Defendant THI of South Carolina at Magnolia Manor–Inman, LLC (named in this action as “THI of South Carolina at Magnolia Manor Inman, LLC,” i.e., without the dash), which is the sole licensee and operator of the skilled nursing facility known as Magnolia Manor Inman.

² The “Other Defendants” refers to Defendants THI of Baltimore, Inc. (“THIB”); THI of South Carolina, LLC (“THISC”); and Hunt Valley Holdings, LLC (“HVH”).

³ The Subject Order follows a form order filed March 21, 2023, wherein the Court announced its decision and directed Plaintiff’s counsel to submit a proposed formal order in accordance therewith. Out of an abundance of caution, Defendants would note that their challenge to the Subject Order applies with equal force to the form order.

17, 2023, to compel Plaintiff's⁴ claims against it in this lawsuit to arbitration (the "Motion to Compel Arbitration") and the Other Defendants' respective motions, also filed January 17, 2023, to stay the lawsuit as to them pending the outcome of the Motion to Compel Arbitration and any arbitration proceedings (the "Motions to Stay") (collectively, the Motion to Compel Arbitration and the Motions to Stay are the "Underlying Motions").

1. **Most respectfully, Defendants ask the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Underlying Motions, i.e., each and every distinct issue/argument set forth in the Underlying Motions themselves, in the Memos in Support of the Underlying Motions,⁵ and via oral argument, all of which is/are hereby incorporated herein by reference.**

See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") (emphasis in original).

2. **Out of an abundance of caution, regarding the Court's use of the plural noun "Defendants" in referring to Magnolia Manor Inman as "Defendants' facility"⁶ (and any way otherwise that the language of the Subject Order might be said to obscure distinctions between Defendants⁷), the Facility admits that it is the sole licensee and operator of Magnolia Manor Inman⁸ and the Other**

⁴ "Plaintiff" refers to Plaintiff, Timothy Hutley ("Mr. Hutley"), Guardian for Jane Doe.

⁵ The "Memos in Support of the Underlying Motions" refers, collectively, to Defendants' respective supporting memoranda, filed February 28, 2023.

⁶ (Subject Order p. 2.)

⁷ (*See, e.g.*, Subject Order p. 2 ("Defendants had [Mr. Hutley] sign the admission agreement and a separate 'Facility-Resident/Representative Arbitration Agreement'"); *id.* at p. 9 ("[T]here was no evidence that Jane Doe did or said anything to mislead the Defendants so as to support an argument of equitable estoppel.").)

⁸ (Facility's Answer to Am. Compl. ¶ 7 ("[T]his Defendant admits that it is the sole licensee and operator of the Facility").)

Defendants deny that they manage, operate, or control any skilled nursing facility, including the Facility, or have ever delivered nursing care to any person, including Jane Doe, and Defendants object to anything in the Subject Order to the contrary.⁹

Plaintiff's allegations regarding the Other Defendants' relationship to the Facility/Magnolia Manor Inman are very much in dispute,¹⁰ and obviously, it would be improper, both procedurally¹¹ and evidentially,¹² for the Court to weigh in on the dispute at this time. Accordingly, even though the Subject Order does not actually purport to determine any factual issue in this regard, out of an abundance of caution, to the extent that it might potentially expose Defendants to any threat of prejudice going forward, Defendants object to the Subject Order's inclusion of any language that is inconsistent with the Facility's admission that it is the sole licensee and operator of Magnolia Manor Inman¹³ and the Other Defendants' respective denials that they manage, operate, or control any skilled nursing facility, including the Facility, or have ever delivered nursing care to any person, including Jane Doe. (HVVH's Answer to Am. Compl. ¶ 7; THIB's Answer to Am. Compl. ¶ 7; THISC's Answer to Am. Compl. ¶ 7.)

⁹ (HVVH's Answer to Am. Compl. ¶ 7 ("[T]his Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe."); THIB's Answer to Am. Compl. ¶ 7 ("[T]his Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe."); THISC's Answer to Am. Compl. ¶ 7 ("[T]his Defendant asserts that it does not manage, operate, or control any skilled nursing facility, including the Facility and has never delivered nursing care to any person, including Jane Doe."))

¹⁰ (*Compare* Am. Compl. ¶¶ 10–11 *with* HVVH's Answer to Am. Compl. ¶ 7 and THIB's Answer to Am. Compl. ¶ 7 and THISC's Answer to Am. Compl. ¶ 7.)

¹¹ *See Worsley Companies, Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000) ("If triable issues exist, those issues must go to the jury.").

¹² *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.").

¹³ (Facility's Answer to Am. Compl. ¶ 7.)

3. Out of an abundance of caution, Defendants’ object to the language in the Subject Order that Defendants “had” Mr. Hutley sign the Admission Agreement or the Arbitration Agreement.¹⁴

Defendants’ objection to the Court’s use of the plural noun “Defendants” is already addressed in No. 2 above. The focus here (in No. 3) is on the idea that Mr. Hutley was forced to sign anything. Here again, even the Subject Order does not actually purport to determine any factual issue in this regard, out of an abundance of caution, to the extent that it might potentially expose Defendants to any threat of prejudice going forward, Defendants object to any suggestion that Mr. Hutley was in any way required to sign the Admission Agreement or the Arbitration Agreement. Indeed, the Arbitration Agreement expressly states, “It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident’s healthcare needs and that there are numerous other health care providers in the State where the Facility is located that are qualified to provide such care to Resident,”¹⁵ and by virtue of his signature thereon, Mr. Hutley “is presumed to have read, understood, and assented to” the same. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”). As explained in the Facility’s memo in support of the Motion to Compel Arbitration, the Arbitration Agreement was optional and was not required as a condition of Jane Doe’s admission to the Facility,¹⁶ and there is no evidence whatsoever in the record to the contrary. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). Lastly, to the extent that the language of the Subject Order in this regard (“had”) might suggest

¹⁴ (Subject Order p. 2 (emphasis added).)

¹⁵ (Arbitration Agreement.)

¹⁶ (See Facility’s Mem. in Supp. of Motion to Compel Arbitration p. 8.)

any duress, which is, of course, denied, duress is an affirmative defense to contract enforceability¹⁷ that Plaintiff would have to have raised and proved, neither of which he did. (*See generally* Pl.’s Mem. in Opp’n. to the Underlying Motions.)

4. **Most respectfully, the merger/equitable estoppel analysis in the Subject Order is erroneous. The Court should have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Jane Doe effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith—and, thus, granted the Motion to Compel Arbitration and, in turn, the Motions to Stay.**

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that, as indeed reflected by the Subject Order’s primary focus on the Motion to Compel Arbitration, the denial of the Motion to Compel Arbitration dictated the denial (as moot) of the Motions to Stay. Accordingly, to show why the Court should have granted the Motion to Compel Arbitration is, in turn, to show why it should have granted the Motions to Stay. *See* 9 U.S.C. § 3 (“If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the*

¹⁷ (*See* Rule 8(c), SCRCP (“[A] party shall set forth affirmatively the defense[] [of] . . . duress . . . and any other matter constituting an avoidance or affirmative defense.”); *Gainey v. Gainey*, 382 S.C. 414, 428, 675 S.E.2d 792, 799 (Ct. App. 2009) (“If a party’s manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.”); *id.* (“Three factors must be proved in order to establish that a contract was procured through duress: (1) that the person was coerced to enter into the contract; (2) that the person was put in such fear that he was bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind.”); *id.* (“Wife contends that she was forced to enter the property and separation agreement and as such, the court erred in refusing to vacate the judgment. We disagree. Wife’s argument was properly rejected because Wife failed to present sufficient evidence that she was under duress when she entered into the agreement.”).

action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.”) (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (“[The] FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.”).

The core question here is this: Is the Arbitration Agreement (which Mr. Hutley signed for Jane Doe) enforceable against Jane Doe—or, more precisely, against Plaintiff, who brings this action on Jane Doe’s behalf as her guardian—even though it was not signed by Jane Doe herself? The answer is yes. The Arbitration Agreement is enforceable against Plaintiff—or, more precisely, Plaintiff is estopped to deny that the Arbitration Agreement (and, for that matter, the Admission Agreement) is enforceable.

To be clear, the Facility’s merger/equitable estoppel argument is a standalone argument. It does not depend on any showing of authority (actual or apparent or otherwise) on the part of Mr. Hutley or otherwise on the existence of any valid agreement per se. *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (“South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel.”); *see also Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354–55, 755 S.E.2d 450, 455 (2014) (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel); *id.* (explaining that “Appellants’ equitable estoppel argument,” which “[wa]s premised on [Appellants’] contention that, under state law, the admission agreements and the [arbitration agreements] merged,” as follows: “Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] . . . , she is

nevertheless *equitably estopped to deny the [arbitration agreement's] enforceability.*") (emphasis added).

Conceptually, the Facility's merger/equitable estoppel argument is *not* an argument for the *enforceability* of the Admission Agreement/Arbitration Agreement *but rather* an argument for *Jane Doe, and, in turn, Plaintiff (her guardian), to be estopped to deny the enforceability* of the Admission Agreement/Arbitration Agreement. In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and Jane Doe having effectively embraced and directly benefitted from the Admission Agreement, Plaintiff (who stands in her shoes as her guardian) is now estopped to deny the enforceability not only of the Admission Agreement but also the Arbitration Agreement merged therewith. And by its very nature, i.e., because the Facility's argument in favor of direct benefits estoppel is based on the direct benefits Jane Doe received under the Admission Agreement (with which the Arbitration Agreement merged), this argument applies with equal force to estop Plaintiff, i.e., Jane Doe's guardian, from denying the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith.

Accordingly, as to the Facility's merger/equitable estoppel argument, any contrary analysis regarding the Admission Agreement/Arbitration Agreement's supposed lack of validity—e.g., that Mr. Hutley lacked authority to sign the Admission Agreement/Arbitration Agreement on behalf of Jane Doe under the law of agency¹⁸ and/or under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. §§ 44-66-10 to -80 (the "AHCCA"),¹⁹ and/or because Mr. Hutley lacked power of attorney over Jane Doe²⁰—is beside the point and unavailing to refute the Facility's merger/equitable estoppel argument, which, again, turns not on the question of whether the

¹⁸ (See Subject Order pp. 3, 8–9 (referring to lack of express or apparent authority).)

¹⁹ (See Subject Order p. 8 (referring to lack of authority under the AHCCA).)

²⁰ (See Subject Order pp. 2, 7–8 (referring to lack of power of attorney).)

Admission Agreement/Arbitration Agreement is enforceable per se but whether Jane Doe, and, in turn, Plaintiff (her guardian), is estopped to deny its enforceability.

(a) The Court's merger analysis is erroneous.

In *Coleman*, even though our Supreme Court found against merger on the particular *facts* of the case, it nonetheless confirmed the validity of the general proposition of *law* on which the *Coleman* appellants based their merger/equitable estoppel argument:

Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is nevertheless equitably estopped to deny the [arbitration agreement's] enforceability. The circuit court held there was no estoppel here, and we agree.

Appellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. In South Carolina,

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

Klutts Resort Realty, Inc. v. Down 'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

Here, *the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.*

407 S.C. at 354–355, 755 S.E.2d at 455 (emphasis added).

Here, the Court erred in rejecting the Facility's merger argument, failing to recognize material differences between the facts and arguments involved in the instant case and those that controlled (or were simply not addressed in) *Coleman* and its progeny *Thompson v. Pruitt Corp.*,

416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).²¹

The Court wrongfully concluded that the Admission Agreement and the Arbitration Agreement are separate contacts that do not merge. (Subject Order p. 7.) The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”²² as undoubtedly the Admission Agreement and the Arbitration Agreement were here,²³ there is evidence to upset the *presumption in favor of merger*, i.e., the presumption that the instruments were intended to be construed together as effectively one contract. This is a question of intention. *Id.* at 355, 755 S.E.2d at 455 (“in the absence of anything indicating a contrary *intention* . . .”) (emphasis added). And “in attempting to ascertain th[e] [parties’] intention,” our courts “endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into.” *Klutts*, 268 S.C. at 89, 232 S.E.2d at 25.

It must be remembered that, where, as here, the instruments in question were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, merger is *presumed*. For the merger presumption to mean anything in practice it cannot be upset

²¹ The Court also erred in its reliance on the recent case of *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), which is separately addressed below.

²² *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

²³ To be clear, *Coleman* unequivocally answers the question of whether the instant Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

based on mere conjecture, but only by actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. Indeed, under the circumstances, the idea that there would have been an intention contrary to merger does not make sense.

Unlike the arbitration agreements at issue in *Coleman*, *Thompson*, and *Hodge*, all of which contained a provision allowing them to be disclaimed or revoked within 30 days of signing while the corresponding admission agreements did not, the instant Arbitration Agreement has no disclaimer/revocation provision. (Arbitration Agreement.) Moreover, while the instant Admission Agreement does contain an “Entire Agreement” clause, it does not reference the Arbitration Agreement as a separate contract. (Admission Agreement p. 12.) Indeed, directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court²⁴), the “Entire Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” (Admission Agreement p. 12.) Without question, the Arbitration Agreement is among these other materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission

²⁴ 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the “Entire Agreement” clause expressly referred to a separate arbitration agreement and, thus, “recognize[d] the ‘separatedness’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.”) (emphasis added).

documentation—including the Arbitration Agreement.”) (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295 (“Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.”) (emphasis added)). And any notion that there is ambiguity in this regard is unsupported and erroneous.

To be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required as a precondition of Jane Doe’s residency at the Facility. But all this means is that the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become part of the admissions materials once it was in fact executed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

Moreover, while it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: The Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement’s) sole reason for being. (Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or

relating to [the] Facility's Admission Agreement, or breach thereof, or relating in any way to [Jane Doe's] stay at [the] Facility, or to the provisions of care or services to [Jane Doe]"); *id.* ("This [Arbitration] Agreement shall remain in effect for all care rendered at [the] Facility").)

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

Also absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 ("This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.") *with* Arbitration Agreement (providing that, "because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action," but also providing that arbitration shall be "as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules").) Essentially, both instruments provide that South Carolina law applies except where displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

Similarly, the survival of the Arbitration Agreement is no evidence of “separatedness.” Again, the only reason for the Arbitration Agreement is the Admission Agreement, as the point of the Arbitration Agreement is to cover disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. This is simply how arbitration agreements work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

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

And—besides the fact that there is indeed no ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement—to fall back on the idea that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context.

Merger is *presumed* upon the occurrence of a particular set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these align—same time, same parties, same purpose, same transaction—our courts will consider and construe the documents together *unless* there is evidence of a contrary intention. The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. To allow the merger presumption to be upset based on evidence that is merely ambiguous—i.e., that does not even go so far as to clearly indicate a contrary intention, but at most might (or might not) reflect a contrary intention—is to allow the exception to devour the rule.

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

overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

The Court should have found that the Arbitration Agreement merged with the Admission Agreement. The instruments were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, the whole of which related to Jane Doe's admission to the Facility and would not have been done at all but for her admission to the Facility.

(1) The Court erred in its reliance on *Solesbee*, 438 S.C. 638, 885 S.E.2d 144²⁵—indeed, the *Solesbee* Court's merger analysis is itself erroneous.

During the pendency of this case, the Court of Appeals decided *Solesbee*, wherein it affirmed the denial of a motion to compel arbitration in the face of a merger/equitable estoppel argument substantially the same as the Facility's here. Indeed, the Arbitration Agreement and Admission Agreement in issue in the instant case are the same form documents as in *Solesbee*.

In affirming the denial of the motion to compel arbitration in *Solesbee*, the Court of Appeals likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no merger of the Admission Agreement and the Arbitration Agreement and, in turn, had properly denied the Facility's equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 ("Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case

²⁵ (Subject Order p. 7 (tracking the language of *Solesbee*, 438 S.C. at 648–49, 885 S.E.2d at 149, en route to the conclusion that "there was no merger in this case and Defendants' equitable estoppel argument is denied"); *id.* at pp. 8–9 ("Earlier this year our Court of Appeals issued an Order addressing the precise Resident/Representative Arbitration Agreement in the present case. . . . In *Solesbee*, the Court construed the agreement and relied on *Coleman* . . . ; *Hodge* . . . ; and *Thompson* . . . to rule the Arbitration Agreement in question in the present case was unenforceable. The critical circumstances are virtually identical and therefore the result is the same in the present case.").)

and [the Facility's] equitable estoppel argument was properly denied.”).²⁶ Most respectfully, the Court erred in its reliance on *Solesbee*—and, indeed, the *Solesbee* Court's merger analysis is itself erroneous—and *Solesbee* should not control the disposition of the Underlying Motions.²⁷

First, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.” 438 S.C. at 648, 885 S.E.2d at 149. It is simply not true that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.”

Regarding governing law, what the Admission Agreement actually states is this: “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which the Facility is located.” (Admission Agreement p. 10.) And what the Arbitration Agreement actually states is this:

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

(Arbitration Agreement.)

²⁶ To be clear, the Court of Appeals' decision in *Solesbee* turned on its affirmance of the circuit court's ruling against *merger* of the Arbitration Agreement and the Admission Agreement. Consequently, the *Solesbee* Court did not address the substance of the *equitable estoppel* prong of the merger/estoppel argument.

²⁷ In this regard, the Facility would also note that it is still possible that the Supreme Court might review *Solesbee* via a writ of certiorari.

Without question, the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the “FAA”), applies to the Arbitration Agreement.²⁸ Again, the FAA applies whenever an arbitration agreement involves interstate commerce—and this is so even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (The FAA “create[d] a body of federal substantive law,” which is “applicable in state and federal courts.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.”); *see also Allied-Bruce*, 513 U.S. 265, 270–77. Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its

²⁸ The Arbitration Agreement expressly states that the FAA applies (Arbitration Agreement), and this must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020) (“We first consider whether the FAA applies. We hold it does, for two reasons. First, the [subject contract] provides the parties ‘specifically agree that this transaction involves interstate commerce.’ We must enforce this agreement like any other contract term.”) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (finding the FAA applied because the parties had agreed that the subject contract involved interstate commerce)). Moreover, and in any event, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363; *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted). Further still, the Arbitration Agreement expressly calls for the arbitration proceedings to be conducted pursuant to the South Carolina ADR Rules. (Arbitration Agreement.)

Again, essentially, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are to the effect that South Carolina law applies except where displaced by federal law, and they do not support any reasonable inference of any intent contrary to merger.

Second, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement ‘shall survive any termination or breach of this Agreement or the Admission Agreement.’” 438 S.C. at 648–49, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger here. Unlike in *Coleman* and *Hodge*, the supposed textual recognition of the Admission Agreement as being separate from the Arbitration Agreement is not included in any “Entire Agreement” provision. Rather, the “Entire Agreement” provision of the Admission Agreement expressly states, “other Admissions materials . . . are made a part of this Agreement by reference.” (Admission Agreement p. 12.) And as in the instant case, the Arbitration Agreement that was signed in conjunction with the admission is clearly among these “other Admissions materials.” Moreover, that the Arbitration Agreement “shall survive any termination or breach of this Agreement or the Admission Agreement” just means that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still

connected to the Admission Agreement even after the termination of the Admission Agreement. Again, this is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. 2d at 612–13 (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

Third, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, ‘Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. The absence of a “revocation” provision is one way in which the Arbitration Agreement is materially different from those at issue in *Coleman* and *Hodge*, and, for that matter, *Thompson*. Moreover, the *Solesbee* Court drew a false equivalency between the concepts of “revocation” and “termination.” A “revocation” is an annulment (i.e., making something a nullity),²⁹ whereas “termination” is putting or bringing something that properly exists to an end—which is materially different from making something a nullity, i.e., void and never having properly existed in the first place. *Id.* at p. 1482. And, again, that the Arbitration Agreement survives the termination of the Admission Agreement is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. at 612–13.

Fourth, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement and Arbitration Agreement were separately paginated and had their own

²⁹ *Black’s Law Dictionary* p. 1321 revocation (7th ed. 1999); *id.* at 89 annulment (“The act of nullifying or making void.”).

signature pages.” 438 S.C. at 648, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, the fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about whether they were intended to be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. Again, the very nature of *merger* is to *merge* multiple things together as one.

Finally, the *Solesbee* Court erroneously found against the Facility on merger on the basis that Arbitration Agreement was voluntary. 438 S.C. at 648, 885 S.E.2d at 149. While, again, it is certainly true that the Arbitration Agreement was voluntary (*see* No. 3 above), this fact provides no reasonable inference of an intent contrary to merger. Again, to be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for the resident to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. Again, the two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

To say that the Arbitration Agreement was not required for admission, which it was not, is not to say that it was not intended to be part of the admissions materials in the event it was agreed to, which it was, by Mr. Dover on Ms. Solesbee's behalf in *Solesbee* and by Mr. Hutley on Jane Doe's behalf in the instant case. While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: the Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement's) sole reason for being. (See Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident”); *id.* (“This [Arbitration] Agreement shall remain in effect for all care rendered at Facility”).)

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

(setting forth the terms of the admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of the admission).)

(b) The Court’s equitable estoppel analysis is erroneous.

The view of equitable estoppel reflected in the Subject Order misapprehends our Supreme Court’s decision in *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174 (observing that South Carolina has recognized a number of theories that could bind nonsignatories to arbitration agreements, including estoppel). The *Wilson* Court favorably discussed the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and under which the Facility contends Plaintiff is estopped from refusing to comply with the Arbitration Agreement here, where Jane Doe received direct benefits (in the form of her admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement merged. *Wilson*, 426 S.C. at 340–345, 827 S.E.2d at 175–177; *see also id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added). In other words, *Wilson* supports the use of the direct benefits test to answer the question of equitable estoppel in an arbitration case like this.

The statement in the Subject Order that “there [i]s no evidence that Jane Doe did or said anything to mislead the [Facility] so as to support an argument of equitable estoppel”³⁰ is

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(Subject Order p. 9.)

misplaced, as the direct benefits test does not require the Facility to have been misled. The key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the nonsignatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (“Under direct benefits estoppel, [a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable.

Here, Jane Doe was a direct beneficiary. Indeed, to deny her receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of her

residency: every night's stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility—even Plaintiff's complaint does not go nearly so far as that. (*See* Am. Comp.)

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Jane Doe received the benefit of her admission to the Facility, including, without limitation, the room, board, care, and treatment she received therein. Respectfully, the Court should have found that the Arbitration Agreement merged with the Admission Agreement and that Plaintiff is estopped to deny the Admission Agreement/Arbitration Agreement's enforceability, Jane Doe having effectively embraced the contract with the Facility for the purpose of her admission and receipt of the benefits thereof.

5. **At a minimum, the Court should have granted the Facility's alternative request for permission to conduct limited discovery to address gaps in the evidentiary record bearing on the Arbitration Agreement's enforceability under principles relating to the law of agency.**

At a minimum, the Court should have allowed the Facility to engage in some appropriately limited discovery to investigate fairly the Arbitration Agreement's enforceability under principles relating to the law of agency.^{31 32 33} This would entail, at the least, allowing the Facility to depose Mr. Hutley and to follow up on any pertinent evidentiary leads revealed by his deposition.

³¹ A true agency relationship may be established by evidence of actual or apparent authority. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). "An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties." *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145–46, 425 S.E.2d 764, 773 (Ct. App. 1992). The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

³² "When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const.*, 343 S.C. at 433, 540 S.E.2d at 118 (Ct. App. 2000).

³³ Moreover, authority can be supplied to an agent retroactively by express or implied ratification. *See Brazell Bros. Contractors v. Hill*, 245 S. C. 69, 74, 138 S.E.2d 835, 837 (1964) ("Ratification, as the term implies, is the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for his subsequent assent."). "Ratification, as it relates to the law of agency, may be defined as the express or implied adoption and confirmation by one person of an act or contract performed or entered into on his behalf by another who at the time assumed to act as his agent." *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S. C. 75, 89, 124 S.E.2d 602, 608 (1962). It is not necessary for a principal to be present at the time of the commission of his agent's act in order for him to ratify that act. *See State v. Waldrop*, 73 S. C. 60, 52 S.E. 793, 795 (1905) ("The presiding judge ruled that he could ratify the act of the agent, whether he was present or not, and in this we see no error.").

Otherwise, the Facility is in a Catch-22: vulnerable on the one hand to the argument that it has not presented sufficient evidence to prove the Arbitration Agreement is enforceable based on Mr. Hutley's agency (or related principles, such as agency by estoppel or ratification), which is a fact-intensive question, while at the same time vulnerable on the other hand to the argument that it waived its arbitration rights by making use of the tools of litigation (i.e., discovery) to prove them.

It must be remembered that the Arbitration Agreement is valid on its face, bearing, as it does, Mr. Hutley's express representation of authority to bind Jane Doe. (Arbitration Agreement ("By his . . . signature below, the executing party [(i.e., Mr. Hutley)] represents that he . . . has the authority to sign on [Jane Doe's] behalf so as to bind [Jane Doe] as well as [himself].").)³⁴ It cannot be the case that the proponent of arbitration (who, it must be remembered, may well be attempting to vindicate a valid right to arbitrate that the arbitration opponent has wrongfully denied) has the burden to establish that right in a fact-based judicial proceeding in which it is disallowed use of the fact-finding tools (discovery procedures) available in other judicial proceedings.

Obviously, if this were an action to determine the validity of a contract other than an arbitration agreement there would be no question about the Facility's ability to conduct discovery relevant to the facts/circumstances bearing on the contract's validity. To force the Facility into a situation where it cannot conduct relevant discovery to vindicate its arbitration rights without risking a waiver of those rights by the very act of attempting to vindicate them is not only patently

³⁴ The Facility would note here that, having signed the Arbitration Agreement, Mr. Hutley "is presumed to have, read, understood, and assented to its terms." *Gibson*, 426 S.C. at 352, 827 S.E.2d at 181 ("[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms."); *see also Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 86 (1995) (South Carolina law implies a covenant of good faith and fair dealing in every contract).

unjust but also a violation of the FAA’s requirement that arbitration agreements must be placed on equal footing with other contracts. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*”); *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.”) (citing *Concepcion*, 563 U.S. at 339); *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted)).

Principles relating to the law of agency may potentially provide an additional, independent basis on which to grant the Motion to Compel Arbitration and, in turn, the Motions to Stay. Their application is fact dependent, and the allowance of discovery—without the threat of waiver—into Jane Doe and Mr. Hutley’s course of dealing and the potential creation of an agency relationship between them (or other potential bases for enforcement of the Arbitration Agreement under related principles) is only reasonable.

WHEREFORE, for the foregoing reasons (and, again, for that matter, for all of the reasons previously advanced to the Court in and in support of the Underlying Motions (both those advanced in writing and those advanced via oral argument), all of which Defendants incorporate

by reference herein and asks the Court to (re)consider and expressly rule upon in full), Defendants ask that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Underlying Motions or, as a lesser alternative, an order granting the Facility's request for limited discovery (and allowing additional briefing to be submitted to the Court in light of such discovery and providing that the Court will hear and decide the Underlying Motions anew with the benefit of the same) or, as a lesser alternative, to the extent that the matters raised therein might potentially expose Defendants to any threat of prejudice going forward, an order addressing Nos. 2 and 3 above.

PLEASE NOTE: Defendants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
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*Attorneys for Defendants THI of South
Carolina at Magnolia Manor Inman, LLC;
THI of Baltimore, Inc.; THI of South
Carolina, LLC; and Hunt Valley Holdings,
LLC*

Charleston, South Carolina

May 25, 2023

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

Appeal from Spartanburg County
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Case No. 2022-CP-42-01163

Timothy Hutley, Guardian for Jane Doe,

Respondent,

v.

THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC,
Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC,
Murray Forman, and Kathy Scroggs, Individually,

Defendants.

Of which THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC, and
Hunt Valley Holdings, LLC, are the

Appellants.

NOTICE OF APPEAL

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
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Attorneys for Appellants

Other Counsel of Record:

C. Daniel Pruitt (SC Bar No. 66497)
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Greenville, South Carolina 29601
(864) 232-4273

Attorney for Respondent

Defendants/Appellants THI of South Carolina at Magnolia Manor Inman, LLC (the “Facility”),¹ THI of Baltimore, Inc. (“THIB”), THI of South Carolina, LLC (“THISC”), and Hunt Valley Holdings, LLC (“HVH”) (collectively, “Appellants”) hereby appeal the following orders of the Honorable Grace Gilchrist Knie, Circuit Court Judge:

- **Form 4 Order [Denying the Facility’s Motion to Compel Arbitration and the Other Appellants’² Motions to Stay]**, filed March 21, 2023;
- **Formal Order [Denying the Facility’s Motion to Compel Arbitration and the Other Appellants’ Motions to Stay]**, filed May 15, 2023; and
- **Order Regarding Defendants’ Motion for Reconsideration**, filed September 13, 2023.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on September 13, 2023.

<SIGNED ON THE FOLLOWING PAGE>

¹ The “Facility” refers to Defendant THI of South Carolina at Magnolia Manor–Inman, LLC (named in this action as “THI of South Carolina at Magnolia Manor Inman, LLC,” i.e., without the dash), which is the sole licensee and operator of the skilled nursing facility known as Magnolia Manor Inman.

² The “Other Appellants” refers to THIB, THISC, and HVH, collectively.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
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Attorneys for Appellants

Charleston, South Carolina

October 12, 2022

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

Appeal from Spartanburg County
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Case No. 2022-CP-42-01163

Timothy Hutley, Guardian for Jane Doe,

Respondent,

v.

THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC,
Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC,
Murray Forman, and Kathy Scroggs, Individually,

Defendants.

Of which THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC, and
Hunt Valley Holdings, LLC, are the

Appellants.

PROOF OF SERVICE

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
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(843) 720-5488

Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on Respondent on October 12, 2023, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

C. Daniel Pruitt, Esquire
danlaw@bellsouth.net
300 Pettigru Street
Greenville, SC 29601
Attorney for Respondent

I further certify that a copy of Appellants' **NOTICE OF APPEAL** was this day, October 12, 2023, E-Filed with the lower court (see attached NEF), thus also, i.e., in addition to service by email, effecting service of the notice today on Respondent's above-identified counsel of record via the E-Filing System.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

October 12, 2022

From: [Hines, Russell](#)
To: [Dan Pruitt](#); [Dan Pruitt](#)
Cc: [Dan Pruitt-paralegal](#); [Gandy, III, James D. \(Tripp\)](#); [Brown, Stephen L.](#); [Davis, Jay](#); [Gandy, III, James D. \(Tripp\)](#); [Dotterer III, Gaillard T. \(Gilly\)](#); [Peterson, Susan](#); [Preiser, Skyla](#); [Wakeham, Rebecca \(Becky\)](#); [Eversole, Amy R.](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#)
Subject: Hutley (Jane Doe) v. THI of SC at Magnolia Manor Inman (2022-CP-42-01163) -- Notice of Appeal
Date: Thursday, October 12, 2023 7:06:42 PM
Attachments: [image001.png](#)
[Hutley v. THI \(2022-CP-42-01163 \) -- Notice of Appeal.pdf](#)
[2023 03-21 -- Form 4 Order Denying MTCA Mots. to Stay.pdf](#)
[2023 05-15 -- Formal Order Denying MTCA & Mots. to Stay.pdf](#)
[2023 09-13 -- Order Denying MTR.pdf](#)

Dan,

Attached for service please find our **Notice of Appeal** and copies of the **Appealed Orders** in the above-referenced matter.

Russ

Russell G. Hines
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***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP4201163

Official File Stamp: 10-12-2023 07:12:21 PM
Court: CIRCUIT COURT
Common Pleas
Spartanburg
Case Caption: Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina At Magnolia Manor Inman, Llc , defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

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

The following people were served electronically:

Russell Grainger Hines for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
Gaillard Townsend Dotterer, III for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
Charles Daniel Pruitt for Timothy Hutley, Guardian For Jane Doe
Donald Jay Davis, Jr. for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
James D. Gandy, III for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.

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

Murray Forman
Thi Of South Carolina At Inman
Kathy Scroggs

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

Appeal from Spartanburg County
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Case No. 2022-CP-42-01163

Timothy Hutley, Guardian for Jane Doe,

Respondent,

v.

THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC,
Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC,
Murray Forman, and Kathy Scroggs, Individually,

Defendants.

Of which THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC, and
Hunt Valley Holdings, LLC, are the

Appellants.

AMENDED NOTICE OF APPEAL *

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
Gaillard T. Dotterer III (SC Bar No. 103620)
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(843) 720-5488

Attorneys for Appellants

* PLEASE NOTE: The only reason for this amended, or, more accurately, corrected, notice of appeal is that the notice of appeal that Appellants served and filed in this matter yesterday, October 12, 2023, was inadvertently dated “October 12, 2022.” The instant notice of appeal is being served and filed today, October 13, 2023, solely out of an abundance of caution and to the extent that correcting the scrivener’s error in the date on yesterday’s notice of appeal, and the corresponding proof of service, may be necessary to ensure that this appeal is properly perfected.

Other Counsel of Record:

C. Daniel Pruitt (SC Bar No. 66497)
300 Pettigru Street
Greenville, South Carolina 29601
(864) 232-4273

Attorney for Respondent

Defendants/Appellants THI of South Carolina at Magnolia Manor Inman, LLC (the “Facility”),¹ THI of Baltimore, Inc. (“THIB”), THI of South Carolina, LLC (“THISC”), and Hunt Valley Holdings, LLC (“HVH”) (collectively, “Appellants”) hereby appeal the following orders of the Honorable Grace Gilchrist Knie, Circuit Court Judge:

- **Form 4 Order [Denying the Facility’s Motion to Compel Arbitration and the Other Appellants’² Motions to Stay]**, filed March 21, 2023;
- **Formal Order [Denying the Facility’s Motion to Compel Arbitration and the Other Appellants’ Motions to Stay]**, filed May 15, 2023; and
- **Order Regarding Defendants’ Motion for Reconsideration**, filed September 13, 2023.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on September 13, 2023.

<SIGNED ON THE FOLLOWING PAGE>

¹ The “Facility” refers to Defendant THI of South Carolina at Magnolia Manor–Inman, LLC (named in this action as “THI of South Carolina at Magnolia Manor Inman, LLC,” i.e., without the dash), which is the sole licensee and operator of the skilled nursing facility known as Magnolia Manor Inman.

² The “Other Appellants” refers to THIB, THISC, and HVH, collectively.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
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Attorneys for Appellants

Charleston, South Carolina

October 13, 2023

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

Appeal from Spartanburg County
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Case No. 2022-CP-42-01163

Timothy Hutley, Guardian for Jane Doe,

Respondent,

v.

THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC,
Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC,
Murray Forman, and Kathy Scroggs, Individually,

Defendants.

Of which THI of South Carolina at Magnolia Manor Inman, LLC,
THI of Baltimore, Inc., THI of South Carolina, LLC, and
Hunt Valley Holdings, LLC, are the

Appellants.

PROOF OF SERVICE

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
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(843) 720-5488

Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **AMENDED NOTICE OF APPEAL** was served on Respondent on October 13, 2023, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

C. Daniel Pruitt, Esquire
danlaw@bellsouth.net
300 Pettigru Street
Greenville, SC 29601
Attorney for Respondent

I further certify that a copy of Appellants' **AMENDED NOTICE OF APPEAL** was this day, October 13, 2023, E-Filed with the lower court (see attached NEF), thus also, i.e., in addition to service by email, effecting service of the notice today on Respondent's above-identified counsel of record via the E-Filing System.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

October 13, 2023

From: [Hines, Russell](#)
To: [Dan Pruitt](#); [Dan Pruitt](#)
Cc: [Dan Pruitt-paralegal](#); [Gandy, III, James D. \(Tripp\)](#); [Brown, Stephen L.](#); [Davis, Jay](#); [Gandy, III, James D. \(Tripp\)](#); [Dotterer III, Gaillard T. \(Gilly\)](#); [Peterson, Susan](#); [Preiser, Skyla](#); [Wakeham, Rebecca \(Becky\)](#); [Eversole, Amy R.](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#)
Subject: Hutley (Jane Doe) v. THI of SC at Magnolia Manor Inman (2022-CP-42-01163) -- Amended Notice of Appeal
Date: Friday, October 13, 2023 7:32:34 PM
Attachments: [image001.png](#)
[Hutley v. THI \(2022-CP-42-01163 \) -- Am. Notice of Appeal.pdf](#)
[2023 03-21 -- Form 4 Order Denying MTCA Mots. to Stay.pdf](#)
[2023 05-15 -- Formal Order Denying MTCA & Mots. to Stay.pdf](#)
[2023 09-13 -- Order Denying MTR.pdf](#)

Dan,

Attached for service please find our **Amended Notice of Appeal** and copies of the **Appealed Orders** in the above-referenced matter.

As explained in the amended notice, I'm only serving/filing it out of an abundance of caution because I inadvertently dated yesterday's notice for "October 12, 2022," instead of "October 12, 2023."

Russ

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***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP4201163

Official File Stamp: 10-13-2023 07:38:14 PM
Court: CIRCUIT COURT
Common Pleas
Spartanburg
Case Caption: Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina At Magnolia Manor Inman, Llc , defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

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

The following people were served electronically:

Russell Grainger Hines for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
Gaillard Townsend Dotterer, III for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
Charles Daniel Pruitt for Timothy Hutley, Guardian For Jane Doe
Donald Jay Davis, Jr. for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.
James D. Gandy, III for Thi Of South Carolina At Magnolia Manor Inman, Llc, Hunt Valley Holdings, Llc, Thi Of South Carolina, Llc, Thi Of Baltimore, Inc.

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

Murray Forman
Thi Of South Carolina At Inman
Kathy Scroggs

Jul 22 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
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July 22, 2024