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SC Court of Appeals

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

Appeal from Fairfield County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-20-00268
Appellate Case No. 2024-000596

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon,

Respondent,

v.

Pruitthealth-Ridgeway, LLC f/k/a Unihealth Post-Acute Care-Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,

Defendants,

Of which THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, are the

Appellants.

**APPELLANTS' RETURN TO RESPONDENT'S MOTION
TO DISMISS APPEAL AND FOR SANCTIONS**

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Attorneys for Appellants

By and through their undersigned counsel, the Facility¹ and the Other Appellants² (collectively, “Appellants”) submit this return in opposition to Plaintiff’s³ motion for the Court to dismiss this appeal as frivolous and sanction Appellants for taking it (the “Subject Motion”). Respectfully, the Subject Motion should be denied, as explained below.

BACKGROUND⁴

With the help of his mother, Minnie Gamble (“Ms. Gamble”), Mr. Lemon was admitted as a resident of the Facility on January 9, 2012. (**Exhibit 1** [Admission Agreement].) Ms. Gamble handled the paperwork in conjunction with the admission, and in doing so, she signed an Admission Agreement⁵ and an Arbitration Agreement⁶ on Mr. Lemon’s behalf.

Plaintiff filed this wrongful death and survival action in the Fairfield County Court of Common Pleas on August 31, 2023, based on allegedly deficient care/treatment Mr. Lemon is supposed to have received during his residency at the Facility. (**Exhibit 3** [Summons & Compl.].) The Facility timely answered on October 11, 2023, denying liability, raising numerous affirmative defenses, and expressly reserving its right to compel arbitration, which it also raised as an affirmative defense. (**Exhibit 4** [Facility’s Answer].) The Other Appellants

¹ The “Facility” refers to Defendant/Appellant THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, which is the sole licensee and operator of the skilled nursing facility known as Midlands Health and Rehabilitation Center.

² The “Other Appellants” refers to Defendants/Appellants THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, collectively.

³ “Plaintiff” refers to Plaintiff/Respondent, Thomas D. Kilpatrick as Special Administrator for the Estate of Anthony Lemon (“Mr. Lemon”).

⁴ In accordance with Rule 240(c)(3), SCACR, a number of exhibits (specifically identified below) are attached to this return because the record on appeal has not yet been filed. Please note, however, that these exhibits do not include materials that have already been filed in this Court (e.g., Appellants’ notice of appeal, Appellants’ initial brief, the Subject Motion etc.).

⁵ (**Exhibit 1** [Admission Agreement].)

⁶ (**Exhibit 2** [Arbitration Agreement].)

also timely answered on October 11, 2023, denying liability and raising numerous affirmative defenses. (**Exhibit 5** [Other Appellants’ Answers].)

On January 2, 2024, the Facility moved to compel Plaintiff’s claims against it to arbitration based on the Arbitration Agreement Ms. Gamble signed on behalf of Mr. Lemon in conjunction with his admission (the “Motion to Compel Arbitration”). (**Exhibit 6** [Facility’s Motion to Compel Arbitration; Memo in Support of the Facility’s Motion to Compel Arbitration (without exhibits)]).⁷ At the same time, the Other Appellants moved to stay the litigation pending the outcome of the Motion to Compel Arbitration and any resulting arbitration between Plaintiff and the Facility (collectively, the “Motions to Stay”). (**Exhibit 7** [Other Appellants’ Motions to Stay].) Collectively, the Motion to Compel Arbitration and the Motions to Stay are referred to as the “Underlying Motions.”

Following a hearing on February 29, 2024,⁸ the circuit court, the Honorable Patrick C. Fant, III, presiding, denied the Underlying Motions by order filed March 14, 2024. (**Exhibit 9** [Order Denying the Underlying Motions].)

By notice served and filed April 12, 2024, Appellants timely took this appeal. In due course, Appellants served and filed their initial brief and designation of matter to be included in the record on appeal. After first obtaining a thirty-day extension of time to serve and file his

⁷ Without question, Plaintiff’s claims against the Facility are within the scope of the Arbitration Agreement, the plain language of which calls 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 [Mr. Lemon’s] stay at [the] Facility, or to the provisions of care or services to [Mr. Lemon]” (Arbitration Agreement.) But even if there were “any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

⁸ (**Exhibit 8** [Transcript of Hearing on February 29, 2024].)

initial respondent's brief, Plaintiff made the instant motion on October 31, 2024, some six months after Appellants noticed this appeal.

This return follows.

ARGUMENT

As fully set forth in their initial brief, which is hereby incorporated herein by reference, Appellants contend that the circuit court erred in denying and Motion to Compel Arbitration and, in turn, the Motions to Stay. For present purposes, the most noteworthy aspect of Appellants' appeal is their contention that the circuit court erred in rejecting the Facility's merger/equitable estoppel argument, i.e., the argument that the circuit court should have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Lemon 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. In particular, it is the merger prong of this argument that is the basis of the Subject Motion. (*See* Subject Motion p. 2 (asserting that "the purported merger of [the] Arbitration and Admission Agreements" "is entirely unsupported by any South Carolina precedent substantiating Appellants' arguments"); *id.* at 5 ("The dispositive argument that is being raised to the Court in this Appeal is whether the Circuit Court erred in finding that the subject Agreements did not merge pursuant to *Solesbee*⁹] as well as the numerous other unpublished decisions of this Court affirming *Solesbee*'s conclusion that the subject Agreements do not merge.").)

According to Plaintiff, this appeal is frivolous in view of this Court's published decision in *Solesbee* and numerous other unpublished decisions. As an initial matter, the unpublished

⁹ *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

decisions to which Plaintiff refers include the following language atop the first page of each of them: **“THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR”** (emphasis in original).¹⁰ Besides being improper under Rule 268(d)(2), Plaintiff’s reliance on these unpublished decisions in support of the Subject Motion is illogical. No precedential value means no precedential value, and just as the value of each of them is zero, the value of all of them adds up to zero.

This leaves *Solesbee* as the sole basis of the Subject Motion, and as set forth at length in Appellants’ initial brief, most respectfully, *Solesbee* should not control the disposition of case because the *Solesbee* Court (a) erred as to those aspects of the merger argument that it addressed and (b), in any event, did not actually address all material aspects of the argument, leaving gaps in the *Solesbee* decision through which the Facility’s position still fits. (See Initial Brief of Appellants pp. 20–29.) Plaintiff does not even recognize this, much less attempt to rebut it, in the Subject Motion, but simply asserts, in conclusory fashion, that “Appellants cannot factually distinguish between the issue’s presentation in this Appeal and the nineteen others that have come before it”—without ever actually explaining why this is supposed to be so. (Subject Motion p. 6.)

Indeed, at the hearing on the Underlying Motions, in accordance with his duty of candor to the Court, Appellants’ counsel brought the *Solesbee* decision to the attention of the circuit court, and explained why it should not control the disposition of this case. (Exhibit 8 pp. 9:6–17:17; *id.* at 27:17–29:13.) And contrary to the position Plaintiff now takes in the Subject

¹⁰ The only instance in which Rule 268(d)(2) allows citation to unpublished opinions is “in proceedings in which they are directly involved,” and of course, this separate case is not such an instance.

Motion, Plaintiff’s counsel actually conceded that South Carolina precedent “ha[s]n’t maybe touched on the exact arguments of counsel.” (**Exhibit 8** p. 21:7–12.) To concede that is to concede Appellants’ point.

The *Solesbee* Court’s explanation of its finding against merger reads as follows:

Here, [1] the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law. [2] 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.” [3] 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.” [4] The Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages. [5] Magnolia’s attorney admitted at the hearing that “[i]t’s perfectly true that [Dover] did not have to sign the arbitration agreement to move forward with [Solesbee] being admitted. It was voluntary” Thus, like the *Coleman*^[11] and *Hodge*^[12] courts, we find there was no merger in this case and Magnolia’s equitable estoppel argument was properly denied.

Solesbee, 438 S.C. at 648–49, 885 S.E.2d at 149.

Most respectfully, as demonstrated in the merger analysis in Appellants’ initial brief, the *Solesbee* Court’s explanation is not only erroneous but also incomplete, leaving unanswered material questions that Appellants may now appropriately put to the Court,¹³ along with good

¹¹ *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).

¹² *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

¹³ For instance, and, of course, without limitation, as further explained in Appellants’ initial brief, the *Solesbee* Court never dealt with the fact that, in this case, unlike in *Coleman*, *Hodge*, and *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), the “Entire Agreement” provision in the Admission Agreement expressly disclaims the idea of its “separatedness” (in the parlance of the *Coleman* Court) by stating that “other Admissions materials” are a part of it. (**Exhibit 1** p. 12.) Without question, the plain and ordinary meaning of the language “other Admissions materials” is such as to embrace the Arbitration Agreement. See *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019)

faith argument for the Court to revisit the *Solesbee* Court’s reasoning. See Rule 3.1, RPC, Rule 407, SCACR (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”).¹⁴

As an advocate, a lawyer is duty bound to “use the legal procedure for the fullest benefit of the client’s cause” while at the same time “not abusu[ing] legal procedure.” Rule 3.1, RPC, Rule 407, SCACR, cmt. 1. The undersigned humbly submits that, in pursuing the instant appeal, Appellants’ counsel honors both of these obligations and that the proof of this fact is in the pudding, i.e., Appellants’ initial brief, the argument set forth in which cannot reasonably be condemned as frivolous.

(“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); *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)). But even if there were some ambiguity in this regard, the *Solesbee* decision (a) does not say so and (b) does not address the Facility’s argument in this case that the language in *Coleman* about construing ambiguity against the drafter is, first off, *dicta* and, in any event, illogical and internally inconsistent with the *Coleman* Court’s recognition that the instruments executed at the same time, by the same parties, for the same purpose, in the course of the same transaction (as, without question, the Admission Agreement and Arbitration Agreement here were) are presumed to merge absent evidence allowing for a conclusion to the contrary.

¹⁴ To be clear, Plaintiff is incorrect in asserting that, “by repeatedly denying certiorari to review the outcome of *Solesbee* . . . , the Supreme Court has essentially conveyed that under these identical facts and Agreements, it does not see a clear legal error that necessitates reversal or an issue of sufficient importance to grant judicial review.” (Subject Motion pp. 5–6.) A writ of certiorari is not a matter of right but solely a matter of the Supreme Court’s discretion. Rule 242(b), SCACR (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”). By denying certiorari, the Supreme Court has only expressed its decision to exercise its discretion to not review the case. It has not implicitly blessed the *Solesbee* Court’s analysis as correct. And in any event, by denying certiorari, the Supreme Court has neither answered any of the unanswered questions left by the *Solesbee* Court nor, for that matter, foreclosed the possibility that this Court may be persuaded to revisit the *Solesbee* Court’s reasoning.

CONCLUSION

For the foregoing reasons, Appellants ask that the Court deny the Subject Motion.

Respectfully submitted,
CLEMENT RIVERS, LLP

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December 12, 2024

ADMISSION AGREEMENT – SOUTH CAROLINA

RESIDENT NAME:

Anthony Lemon

RESIDENT NUMBER:

300 295

DATE OF ADMISSION:

1-9-2012

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among Magnolia Manor of Colleyville ("Facility"), Anthony Lemon ("Resident") and/or Minnie Chumble ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

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

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.
2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aides 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 reserves 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 has 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 has the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.
5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.
6. Provide and be responsible for personal items of clothing and property.
7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.
8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.
9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.
11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.
12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.
13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.
14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.
15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.
16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.
17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.
18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.
19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

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 \$ 153.00 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

Original: Business File • Photocopy: Resident/Representative

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 has 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.

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 agrees 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 authorizes 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 remains 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.

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 agrees 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 authorizes 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 remains 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:

MOC
1507 N. King St
Cole SC
29223

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:

Anthony Leman
735 7501 York House Rd
Cole SC
29223

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

Original: Business File • Photocopy: Resident/Representative

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.

XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

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

XVII. MISCELLANEOUS

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

Resident Social Security Number

Witness Signature

Date

Printed Name of Witness

OR

Signature of Representative, if any

Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

Signature of Facility Official

Printed Name of Facility Official & Title

Date

Original: Business File • Photocopy: Resident/Representative

PLEASE READ CAREFULLY

EXHIBIT

2

**FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT**

This Agreement is made between Magnolia Manor of La. ("Facility"), its agents, employees and servants, and Anthony Lemon ("Resident") or MINNIE GAMBLES ("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.

Minnie Gambles
Resident/Representative Signature Date
Barry W. Williams Admin. Dir.
Authorized Agent of Facility Date

MINNIE GAMBLES
Printed Name of Resident/Representative
Barry W. Williams Admin. Dir.
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)
)
THOMAS D. KILPATRICK AS SPECIAL)
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)
)
Plaintiff,)
)
v.)
)
PRUITTHEALTH - RIDGEWAY, LLC)
F/K/A UNIHEALTH POST-ACUTE)
CARE - TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC.,)
PRUITTHEALTH THERAPY)
SERVICES, INC. F/K/A UNITED)
REHAB, INC., PRUITTHEALTH, INC.,)
NEIL PRUITT, JR., THI OF SOUTH)
CAROLINA AT COLUMBIA, LLC)
D/B/A MIDLANDS HEALTH AND)
REHABILITATION CENTER, THI OF)
SOUTH CAROLINA, LLC,)
FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC, FUNDAMENTAL)
LONG TERM CARE HOLDINGS, INC.,)
FUNDAMENTAL ADMINISTRATIVE)
SERVICES, LLC, AND HUNT VALLEY)
HOLDINGS, LLC,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-20-

SUMMONS

(Jury Trial Requested)

EXHIBIT

3

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 690 North Green Street, Post Office Box 2530, Ridgeland, SC 29936, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PARKER LAW GROUP, LLP

BY: s/Neil E. Alger
Neil E. Alger, Esquire
Bar # 100530
P.O. Box 2530
Ridgeland, SC 29936

ATTORNEY FOR PLAINTIFF

August 31, 2023
Ridgeland, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CIVIL ACTION NO.: 2023-CP-20-
	)	
THOMAS D. KILPATRICK AS SPECIAL	)	
ADMINISTRATOR FOR THE ESTATE	)	
OF ANTHONY LEMON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>COMPLAINT</u>
	)	<i>(Jury Trial Demanded)</i>
	)	
PRUITTHEALTH - RIDGEWAY, LLC	)	
F/K/A UNIHEALTH POST-ACUTE	)	
CARE - TANGLEWOOD, LLC, UNITED	)	
HEALTH SERVICES OF SOUTH	)	
CAROLINA, INC., PRUITTHEALTH	)	
CONSULTING SERVICES, INC.,	)	
PRUITTHEALTH THERAPY	)	
SERVICES, INC. F/K/A UNITED	)	
REHAB, INC., PRUITTHEALTH, INC.,	)	
NEIL PRUITT, JR., THI OF SOUTH	)	
CAROLINA AT COLUMBIA, LLC	)	
D/B/A MIDLANDS HEALTH AND	)	
REHABILITATION CENTER, THI OF	)	
SOUTH CAROLINA, LLC,	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC,	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC, FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, INC.,	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC, AND HUNT VALLEY	)	
HOLDINGS, LLC,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff alleges:

1. That the Decedent, Anthony Lemon, was a citizen and resident of the County of Richland, State of South Carolina.
2. That Thomas D. Kilpatrick, an estate planning attorney, has been appointed the Special Administrator of the Estate of Anthony Lemon and brings this action pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

3. That upon information and belief, Defendant, Pruitthealth – Ridgeway, LLC f/k/a Unihealth Post-Acute Care – Tanglewood, LLC, is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Fairfield, South Carolina.

4. That upon information and belief, Defendant, United Health Services of South Carolina, Inc., is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina and provides services in the County of Fairfield, South Carolina.

5. That upon information and belief, Defendant, Pruitthealth Consulting Services, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

6. That upon information and belief, Defendant, Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

7. That upon information and belief, Defendant, Pruitthealth, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

8. That upon information and belief, Defendant, Neil Pruitt, Jr., is a resident of Georgia and is the licensee responsible for the overall management and operation of the Pruitthealth – Ridgeway facility.

9. That collectively, the Defendants named in numbers 3 through 8, own, control, operate, and manage the Defendants’ business and facilities including Pruitthealth - Ridgeway (hereinafter referred to as “Pruitt”) where some of the allegations contained herein occurred; that these Defendants

controlled the care and treatment services that were provided, and were responsible for the operational outcomes that occurred

10. That upon information and belief, Defendant THI of South Carolina at Columbia, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and doing business as Midlands Health and Rehabilitation Center with its principal place of business in the County of Richland, South Carolina.

11. That upon information and belief, Defendant THI of South Carolina, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

12. That upon information and belief, Defendant, Fundamental Clinical and Operational Services, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

13. That upon information and belief, Defendant, Fundamental Clinical Consulting, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

14. That upon information and belief, Defendant, Fundamental Long Term Care Holdings, Inc., is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

15. That upon information and belief, Defendant, Fundamental Administrative Services, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

16. That upon information and belief, Defendant, Hunt Valley Holdings, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

17. That collectively, the Defendants named in numbers 10 through 16, own, control, operate, and manage the Defendants' business and facilities including Midlands Health and Rehabilitation Center (hereinafter referred to as "Midlands") where some of the allegations contained herein occurred; that these Defendants controlled the care and treatment services that were provided, and were responsible for the operational outcomes that occurred.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS,
THI OF SOUTH CAROLINA AT COLUMBIA, LLC D/B/A MIDLANDS HEALTH AND
REHABILITATION CENTER, THI OF SOUTH CAROLINA, LLC, FUNDAMENTAL
CLINICAL AND OPERATIONAL SERVICES, LLC, FUNDAMENTAL CLINICAL
CONSULTING, LLC, FUNDAMENTAL LONG TERM CARE HOLDINGS, INC.,
FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, AND HUNT VALLEY HOLDINGS,
LLC
(Negligence/Gross Negligence)

18. That Mr. Lemon was admitted into Defendants' facility, Midlands, on or around May 8, 2017; that Mr. Lemon was 47 years old and had a diagnosis of Multiple Sclerosis.

19. That while a resident at the Defendants' facility, Mr. Lemon required skilled nursing care from the staff at the nursing home as well as assistance with daily living activities, including assistance with eating.

20. That Mr. Lemon was at risk for falls, skin breakdown and aspiration.

21. That upon entry into the Defendants' facility, Mr. Lemon was without compromise to his skin or tissue; that during his stay he was supposed to have been cared for by the Defendants, yet Mr. Lemon developed avoidable pressure sores.

22. That between the months of July and September 2017, Mr. Lemon developed two unstageable pressure sores to his right and left heels. These sores eventually healed.

23. That Defendants knew or should have known that Mr. Lemon was high risk for pressure sores.

24. That Defendants knew or should have known that skin assessments for Mr. Lemon were required by the standard of care.

25. That according to the skin assessments contained within the chart, staff of Midlands stopped performing skin assessments on or around July 2020.

26. That on multiple occasions, Mr. Lemon was noted to choke on his food; however, staff of Midlands failed to assess his lungs, failed to update his care plan and failed to alert his physician.

27. That on or around July 31, 2020, Mr. Lemon's temperature was elevated and was given Tylenol by the staff of Midlands.

28. That on or around July 31, 2020, Mr. Lemon was admitted into Providence Hospital in Columbia, located in the County of Richland, South Carolina, presenting hypotension, tachycardia and dehydration.

29. Upon his admittance into the hospital, the staff at Providence Hospital discovered that Mr. Lemon had developed sepsis due to a sacral wound infection.

30. That on or around August 3, 2020, Mr. Lemon was discharged from Providence Hospital and admitted into Pruitthealth – Ridgeway.

31. While in the Defendants' care, custody and control, Mr. Lemon did suffer grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, combining and concurring:

- a. In failing to provide proper and adequate medical attention;
- b. In failing to provide adequate assessments and monitoring of Mr. Lemon's skin condition;

- c. In failing to properly document changes in Mr. Lemon's condition;
- d. In failing to implement appropriate skin prevention measures;
- e. In failing to turn and reposition Mr. Lemon;
- f. In failing to properly monitor Mr. Lemon;
- g. In failing to complete a timely assessment;
- h. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mr. Lemon;
- i. In failing to manage its revenue and income such that appropriate care may be rendered to Mr. Lemon;
- j. In failing to exercise reasonable care for the well-being of Mr. Lemon under the circumstances;
- k. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- l. In such other particulars as the evidence may establish.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS,
PRUITTHEALTH - RIDGEWAY, LLC F/K/A UNIHEALTH POST-ACUTE CARE -
TANGLEWOOD, LLC, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.,
PRUITTHEALTH CONSULTING SERVICES, INC., PRUITTHEALTH THERAPY
SERVICES, INC. F/K/A UNITED REHAB, INC., PRUITTHEALTH, INC., AND NEIL
PRUITT, JR.
(Negligence/Gross Negligence)

32. Upon his admittance to Pruitt, staff treated Mr. Lemon's sacral wound.

33. That on or around September 1, 2020, Mr. Lemon's sacral wound resolved.

34. That Mr. Lemon remained a resident of PruittHealth – Ridgeway; that as a result of repeated neglect, he was transferred to Prisma Health Richland hospital.

35. That on or around July 30, 2021, Mr. Lemon died while a patient at Prisma Health Richland in Columbia, located in the County of Richland, South Carolina.

36. While in the Defendants' care, custody and control, Mr. Lemon did suffer grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, combining and concurring:

- a. In failing to provide proper and adequate medical attention;
- b. In failing to provide adequate assessments and monitoring of Mr. Lemon's skin condition;
- c. In failing to properly document changes in Mr. Lemon's condition;
- d. In failing to implement appropriate skin prevention measures;
- e. In failing to turn and reposition Mr. Lemon;
- f. In failing to properly monitor Mr. Lemon;
- g. In failing to complete a timely assessment;
- h. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mr. Lemon;
- i. In failing to manage its revenue and income such that appropriate care may be rendered to Mr. Lemon;
- j. In failing to exercise reasonable care for the well-being of Mr. Lemon under the circumstances;
- k. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- l. In such other particulars as the evidence may establish.

37. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Mr. Lemon sustained serious and severe injuries; that the above injuries were of such a nature as to require him to spend money for hospitalization, doctor's care and other medical necessities; that Mr. Lemon suffered great pain, humiliation and mental anguish.

38. That by reason for the foregoing, Plaintiff is informed and believes that Mr. Lemon's estate is entitled to judgment against the Defendants for both actual and punitive damages; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

PARKER LAW GROUP, LLP

BY: s/Neil E. Alger
Neil E. Alger, Esquire
Bar # 100530
P.O. Box 2530
Ridgeland, SC 29936

ATTORNEY FOR PLAINTIFF

August 31, 2023
Ridgeland, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS) CASE NO. 2023-CP-20-00268
SPECIAL ADMINISTRATOR FOR THE
ESTATE OF ANTHONY LEMON,

PLAINTIFF,

vs.

PRUITTHEALTH - RIDGEWAY, LLC)
F/K/A UNIHEALTH POST-ACUTE)
CARE - TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY)
SERVICES, INC. F/K/A UNITED)
REHAB, INC., PRUITTHEALTH, INC.,)
NEIL PRUITT, JR., THI OF SOUTH)
CAROLINA AT COLUMBIA, LLC)
D/B/A MIDLANDS HEALTH AND)
REHABILITATION CENTER, THI OF)
SOUTH CAROLINA, LLC,)
FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC, FUNDAMENTAL)
LONG TERM CARE HOLDINGS, INC.,)
FUNDAMENTAL ADMINISTRATIVE)
SERVICES, LLC, AND HUNT VALLEY)
HOLDINGS, LLC,)

DEFENDANTS.



**DEFENDANT THI OF SOUTH
CAROLINA AT COLUMBIA, LLC D/B/A
MIDLANDS HEALTH AND
REHABILITATION CENTER'S ANSWER
TO PLAINTIFF'S COMPLAINT**

TO: NEIL E. ALGER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Defendant THI of South Carolina at Columbia, LLC, d/b/a Midlands Health and
Rehabilitation Center (hereinafter this "Defendant" or "the facility"), *subject to and without*

waiving its right to compel this matter to arbitration, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. The Defendant admits the allegations set forth in Paragraph 1 of the Plaintiff's Complaint, upon information and belief.

3. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are legal conclusions which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, and 9 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

5. Responding to Paragraph 10 of Plaintiff's Complaint, this Defendant admits it is organized pursuant to the laws of the State of Delaware and operates the skilled nursing facility at issue in Plaintiff's Complaint located in Richland County, South Carolina. Any allegations inconsistent with this response is denied and strict proof is demanded thereof.

6. The allegations set forth in Paragraphs 11, 12, 13, 14, 15, and 16 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

7. Responding to the allegations set forth in Paragraph 17 of the Plaintiff's Complaint, this Defendant admits it is the sole licensee and operator of the skilled nursing facility at issue in the Plaintiff's Complaint, where Lemon was a resident. This Defendant would further assert that all care provided to Mr. Lemon was in accordance with the applicable standard of care. Any allegations inconsistent with this response or which assert or imply liability and/or damages as to this Defendant are denied and strict proof is demanded thereof. Further, to the extent the allegations set forth in the above Paragraph call for legal conclusions or are directed at parties other than this Defendant, no response is required.

8. Responding to the allegations set forth in Paragraphs 18, 19, and 20 of Plaintiff's Complaint, this Defendant would crave reference to Mr. Lemon's medical records for their contents. This Defendant denies any and all allegations inconsistent with Mr. Lemon's medical records or which are intended to allege liability or damages against this Defendant. Further responding, this Defendant would affirmatively assert that the care and treatment provided to Mr. Lemon during his residency at the Facility was at all times in compliance with the governing standard of care.

9. This Defendant denies the allegations set forth in Paragraph 21 of Plaintiff's Complaint and would further crave reference to Mr. Lemon's medical records for their contents. Any allegations inconsistent with this response are denied.

10. Responding to the allegations set forth in Paragraph 22 of Plaintiff's Complaint, this Defendant would crave reference to Mr. Lemon's medical records for their contents. This Defendant denies any and all allegations inconsistent with Mr. Lemon's medical records or which are intended to allege liability or damages against this Defendant. Further responding, this

Defendant would affirmatively assert that the care and treatment provided to Mr. Lemon during his residency at the Facility was at all times in compliance with the governing standard of care.

11. Responding to the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, this Defendant would crave reference to Mr. Lemon's chart for its contents and for details concerning Mr. Lemon's risk for pressure sores and staff members' knowledge thereof. This Defendant denies any and all allegations inconsistent with Mr. Lemon's medical records or which are intended to allege liability, wrongdoing, or damages against this Defendant. Further responding, this Defendant would affirmatively assert that the care and treatment provided to Mr. Lemon during his residency at the Facility was at all times in compliance with the governing standard of care. To the extent the allegations in the above Paragraph call for legal conclusions, no response is required.

12. The allegations set forth in Paragraph 24 of the Plaintiff's Complaint contain legal conclusions and therefore no response is required. To the extent a response is required, this Defendant would deny the allegations set forth in the above response to the extent they allege or assert liability and/or damages as to this Defendant.

13. Responding to the allegations set forth in Paragraphs 25, 26, 27, 28, 29, and 30 of Plaintiff's Complaint, this Defendant would crave reference to Mr. Lemon's medical records for their contents. This Defendant denies any and all allegations inconsistent with Mr. Lemon's medical records or which are intended to allege liability, wrongdoing, or damages against this Defendant. Further responding, this Defendant would affirmatively assert that the care and treatment provided to Mr. Lemon during his residency at the Facility was at all times in compliance with the governing standard of care.

14. This Defendant denies the allegations of Paragraph 31 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

15. The allegations set forth in Paragraphs 32, 33, 34, 35, 36, 37, and 38 of the Plaintiff's Complaint appear to be directed at parties other than this Defendant and therefore require no response. To the extent a response is required, those allegations are denied to the extent they allege or assert liability and/or damages as to this Defendant.

16. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief.

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 the parties to this litigation and therefore this matter should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

19. There was no negligence, recklessness, gross negligence or wantonness on the part of the Defendant which proximately caused or contributed to Plaintiff's alleged injuries.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

22. Plaintiff's Recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005, codified at South Carolina 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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

24. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties and/or other parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

25. This Defendant would allege that some of the injuries or damages sustained by the Plaintiff or Plaintiff's decedent, if any, were due to, caused and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

27. The care and treatment provided to Plaintiff's decedent provided by this Defendant was at all times in compliance with the governing standard of care.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

28. Plaintiff's claims in whole or in part are barred by the statute of limitations.

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. Furthermore, this Defendant hereby incorporates all defenses asserted by its Codefendants in this matter.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter

until the validity of the arbitration agreement is judicially resolved, and that 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: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

Gaillard T. Dotterer, III

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*Attorneys for the Defendant THI of South Carolina
at Columbia, LLC d/b/a Midlands Health and
Rehabilitation Center*

Charleston, South Carolina

Dated: October 11, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS) CASE NO. 2023-CP-20-00268
SPECIAL ADMINISTRATOR FOR THE
ESTATE OF ANTHONY LEMON,

PLAINTIFF,

vs.

PRUITTHEALTH - RIDGEWAY, LLC)
F/K/A UNIHEALTH POST-ACUTE)
CARE - TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY)
SERVICES, INC. F/K/A UNITED)
REHAB, INC., PRUITTHEALTH, INC.,)
NEIL PRUITT, JR., THI OF SOUTH)
CAROLINA AT COLUMBIA, LLC)
D/B/A MIDLANDS HEALTH AND)
REHABILITATION CENTER, THI OF)
SOUTH CAROLINA, LLC,)
FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC, FUNDAMENTAL)
LONG TERM CARE HOLDINGS, INC.,)
FUNDAMENTAL ADMINISTRATIVE)
SERVICES, LLC, AND HUNT VALLEY)
HOLDINGS, LLC,)

DEFENDANTS.



**DEFENDANT THI OF SOUTH
CAROLINA, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

TO: NEIL E. ALGER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF :

The Defendant THI of South Carolina, LLC (hereinafter this "Defendant") hereby answers the Plaintiff's Complaint and alleges and states as follows:

1. Any and all allegations set forth in Plaintiff's 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 set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

3. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are legal conclusions which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, and 10 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

5. Responding to the allegations set forth in Paragraph 11 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware but denies the remaining allegations set forth in the above Paragraph.

6. The allegations set forth in Paragraphs 12, 13, 14, 15, and 16 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required.

To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

7. This Defendant denies the allegations set forth in Paragraph 17 of Plaintiff's Complaint as stated.

8. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 18, 19, and 20 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

9. This Defendant denies the allegations set forth in Paragraph 21 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

10. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 22 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the

extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

11. This Defendant denies the allegations set forth in Paragraphs 23 and 24 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

12. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 25, 26, 27, 28, 29, and 30 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

13. This Defendant denies the allegations set forth in Paragraphs 31 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

14. The allegations set forth in Paragraphs 32, 33, 34, 35, 36, 37, and 38 of Plaintiff's 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 denies those allegations to the extent they allege liability or damages against this Defendant.

15. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

17. This matter must be stayed against this Defendant pursuant to a valid arbitration agreement entered into at the time of Plaintiff's decedent's admission to the nursing facility at issue. Pursuant to Section 3 of the Federal Arbitration Act, as codified in 9 U.S.C. § 3, this Defendant hereby gives notice of its intent to file a Motion to Stay.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

18. There was no negligence, recklessness, gross negligence or wantonness on the part of this Defendant which proximately caused or contributed to Plaintiff's alleged injuries.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

21. Plaintiff's Recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005, codified at South Carolina 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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

23. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties and/or other parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

26. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff 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

27. 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.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that 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: D. Jay Davis, Jr
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
Matthew O. Riddle
SC State Bar ID No.: 76650
Gaillard T. Dotterer, III
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Attorneys for the Defendant THI of South Carolina,
LLC

Charleston, South Carolina

Dated: October 11, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS) CASE NO. 2023-CP-20-00268
SPECIAL ADMINISTRATOR FOR THE
ESTATE OF ANTHONY LEMON,

PLAINTIFF,

vs.

PRUITTHEALTH - RIDGEWAY, LLC)
F/K/A UNIHEALTH POST-ACUTE)
CARE - TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY)
SERVICES, INC. F/K/A UNITED)
REHAB, INC., PRUITTHEALTH, INC.,)
NEIL PRUITT, JR., THI OF SOUTH)
CAROLINA AT COLUMBIA, LLC)
D/B/A MIDLANDS HEALTH AND)
REHABILITATION CENTER, THI OF)
SOUTH CAROLINA, LLC,)
FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC, FUNDAMENTAL)
LONG TERM CARE HOLDINGS, INC.,)
FUNDAMENTAL ADMINISTRATIVE)
SERVICES, LLC, AND HUNT VALLEY)
HOLDINGS, LLC,)

DEFENDANTS.

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

TO: NEIL E. ALGER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant Hunt Valley Holdings, LLC (hereinafter this "Defendant"), *subject to and without waiving any defenses, including defenses to personal jurisdiction*, hereby answers the Plaintiff's Complaint and alleges and states as follows:

1. Any and all allegations set forth in Plaintiff's 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 set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

3. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are legal conclusions which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

5. Responding to the allegations set forth in Paragraph 16 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware. The remaining allegations in the above Paragraph are denied.

6. This Defendant denies the allegations set forth in Paragraph 17 of Plaintiff's Complaint and demands strict proof thereof.

7. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 18, 19, and 20 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

8. This Defendant denies the allegations set forth in Paragraph 21 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

9. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 22 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

10. This Defendant denies the allegations set forth in Paragraphs 23 and 24 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or

treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

11. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 25, 26, 27, 28, 29, and 30 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

12. This Defendant denies the allegations set forth in Paragraphs 31 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

13. The allegations set forth in Paragraphs 32, 33, 34, 35, 36, 37, and 38 of Plaintiff's 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 denies those allegations to the extent they allege liability or damages against this Defendant.

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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 and Defendant hereby reserves the right to move to dismiss Plaintiff's Complaint on the stated basis.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

17. This matter must be stayed against this Defendant pursuant to a valid arbitration agreement entered into at the time of Plaintiff's decedent's admission to the nursing facility at issue. Pursuant to Section 3 of the Federal Arbitration Act, as codified in 9 U.S.C. § 3, this Defendant hereby gives notice of its intent to file a Motion to Stay.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

18. There was no negligence, recklessness, gross negligence or wantonness on the part of this Defendant which proximately caused or contributed to Plaintiff's alleged injuries.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

21. Plaintiff's Recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005, codified at South Carolina 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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

23. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties and/or other parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

26. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff 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

27. 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.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that 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: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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mriddle@ycrlaw.com, gdotterer@ycrlaw.com

*Attorneys for the Defendant Hunt Valley Holdings,
LLC*

Charleston, South Carolina

Dated: October 11, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	SIXTH JUDICIAL CIRCUIT
	)	
THOMAS D. KILPATRICK AS	)	CASE NO. 2023-CP-20-00268
SPECIAL ADMINISTRATOR FOR THE	)	
ESTATE OF ANTHONY LEMON,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
PRUITTHEALTH - RIDGEWAY, LLC	)	
F/K/A UNIHEALTH POST-ACUTE	)	
CARE - TANGLEWOOD, LLC, UNITED	)	
HEALTH SERVICES OF SOUTH	)	
CAROLINA, INC., PRUITTHEALTH	)	
CONSULTING SERVICES, INC,	)	
PRUITTHEALTH THERAPY	)	
SERVICES, INC. F/K/A UNITED	)	
REHAB, INC., PRUITTHEALTH, INC.,	)	
NEIL PRUITT, JR., THI OF SOUTH	)	
CAROLINA AT COLUMBIA, LLC	)	
D/B/A MIDLANDS HEALTH AND	)	
REHABILITATION CENTER, THI OF	)	
SOUTH CAROLINA, LLC,	)	
FUNDAMENTAL CLINICAL AND	)	
OPERATIONAL SERVICES, LLC,	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC, FUNDAMENTAL	)	
LONG TERM CARE HOLDINGS, INC.,	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC, AND HUNT VALLEY	)	
HOLDINGS, LLC,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

TO: NEIL E. ALGER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant Fundamental Clinical and Operational Services, LLC (hereinafter this "Defendant") hereby answers the Plaintiff's Complaint and alleges and states as follows:

1. Any and all allegations set forth in Plaintiff's 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 set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

3. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are legal conclusions which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

5. Responding to the allegations set forth in Paragraph 12 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware which provides consulting services to the Facility pursuant to a contract. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

6. The allegations set forth in Paragraphs 13, 14, 15, and 16 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

7. This Defendant denies the allegations set forth in Paragraph 17 of Plaintiff's Complaint and demands strict proof thereof.

8. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 18, 19, and 20 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

9. This Defendant denies the allegations set forth in Paragraph 21 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

10. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 22 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This

Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

11. This Defendant denies the allegations set forth in Paragraphs 23 and 24 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

12. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 25, 26, 27, 28, 29, and 30 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

13. This Defendant denies the allegations set forth in Paragraphs 31 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

14. The allegations set forth in Paragraphs 32, 33, 34, 35, 36, 37, and 38 of Plaintiff's 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 denies those allegations to the extent they allege liability or damages against this Defendant.

15. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

17. This matter must be stayed against this Defendant pursuant to a valid arbitration agreement entered into at the time of Plaintiff's decedent's admission to the nursing facility at issue. Pursuant to Section 3 of the Federal Arbitration Act, as codified in 9 U.S.C. § 3, this Defendant hereby gives notice of its intent to file a Motion to Stay.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

18. There was no negligence, recklessness, gross negligence or wantonness on the part of this Defendant which proximately caused or contributed to Plaintiff's alleged injuries.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

21. Plaintiff's Recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005, codified at South Carolina 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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

23. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties and/or other parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

24. This Defendant would allege that some of the injuries or damages sustained by the Plaintiff, if any, were due to, caused and occasioned by a natural disease process over which

this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete or partial bar to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

26. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff 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

27. 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.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that 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: D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

Gaillard T. Dotterer, III

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P.O. Box 993, Charleston, SC 29402
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mriddle@ycrlaw.com, gdotterer@ycrlaw.com
*Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC*

Charleston, South Carolina

Dated: October 11, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS) CASE NO. 2023-CP-20-00268
SPECIAL ADMINISTRATOR FOR THE
ESTATE OF ANTHONY LEMON,

PLAINTIFF,

vs.

PRUITTHEALTH - RIDGEWAY, LLC)
F/K/A UNIHEALTH POST-ACUTE)
CARE - TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY)
SERVICES, INC. F/K/A UNITED)
REHAB, INC., PRUITTHEALTH, INC.,)
NEIL PRUITT, JR., THI OF SOUTH)
CAROLINA AT COLUMBIA, LLC)
D/B/A MIDLANDS HEALTH AND)
REHABILITATION CENTER, THI OF)
SOUTH CAROLINA, LLC,)
FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC, FUNDAMENTAL)
LONG TERM CARE HOLDINGS, INC.,)
FUNDAMENTAL ADMINISTRATIVE)
SERVICES, LLC, AND HUNT VALLEY)
HOLDINGS, LLC,)

DEFENDANTS.

**DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT**

TO: NEIL E. ALGER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant Fundamental Administrative Services, LLC (hereinafter this "Defendant")
hereby answers the Plaintiff's Complaint and alleges and states as follows:

1. Any and all allegations set forth in Plaintiff's 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 set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

3. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are legal conclusions which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

4. The allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

5. Responding to the allegations set forth in Paragraph 15 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware which provides services to the Facility pursuant to a contract. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

6. The allegations set forth in Paragraph 16 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied to the extent they are directed at this Defendant.

7. This Defendant denies the allegations set forth in Paragraph 17 of Plaintiff's Complaint and demands strict proof thereof.

8. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 18, 19, and 20 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

9. This Defendant denies the allegations set forth in Paragraph 21 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

10. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 22 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the

extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

11. This Defendant denies the allegations set forth in Paragraphs 23 and 24 of the Plaintiff's Complaint to the extent the allegations are directed at this Defendant. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

12. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 25, 26, 27, 28, 29, and 30 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Mr. Lemon. This Defendant further denies any interaction or relationship with Mr. Lemon of any kind. To the extent the allegations set forth in the above Paragraphs are directed at parties other than this Defendant, no response is required.

13. This Defendant denies the allegations set forth in Paragraphs 31 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

14. The allegations set forth in Paragraphs 32, 33, 34, 35, 36, 37, and 38 of Plaintiff's 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 denies those allegations to the extent they allege liability or damages against this Defendant.

15. This Defendant denies the allegations set forth in Plaintiff's Prayer for Relief.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

17. This matter must be stayed against this Defendant pursuant to a valid arbitration agreement entered into at the time of Plaintiff's decedent's admission to the nursing facility at issue. Pursuant to Section 3 of the Federal Arbitration Act, as codified in 9 U.S.C. § 3, this Defendant hereby gives notice of its intent to file a Motion to Stay.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

18. There was no negligence, recklessness, gross negligence or wantonness on the part of this Defendant which proximately caused or contributed to Plaintiff's alleged injuries.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

21. Plaintiff's Recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damages Awards Act of 2005, codified at South Carolina 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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

23. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties and/or other parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

26. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff 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

27. 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.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays the Court issue an order dismissing this case with prejudice, or in the alternative, staying this matter until the validity of the arbitration agreement is judicially resolved, and that 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: D. Jay Davis, Jr.
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
Matthew O. Riddle
SC State Bar ID No.: 76650
Gaillard T. Dotterer, III
SC State Bar ID No.: 103620
P.O. Box 993, Charleston, SC 29402
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mriddle@ycrlaw.com, gdotterer@ycrlaw.com
*Attorneys for the Defendant Fundamental
Administrative Services, LLC*

Charleston, South Carolina

Dated: October 11, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS SPECIAL) CASE NO. 2023-CP-20-00268
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)

PLAINTIFF,)

vs.)

PRUITTHEALTH - RIDGEWAY, LLC)
f/k/a UNIHEALTH POST-ACUTE CARE -)
TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY SERVICES,)
INC. f/k/a UNITED REHAB, INC.,)
PRUITTHEALTH, INC., NEIL PRUITT,)
JR., THI OF SOUTH CAROLINA AT)
COLUMBIA, LLC d/b/a MIDLANDS)
HEALTH AND REHABILITATION)
CENTER, THI OF SOUTH CAROLINA,)
LLC, FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL LONG TERM CARE)
HOLDINGS, INC., FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC,)
AND HUNT VALLEY HOLDINGS, LLC,)

DEFENDANTS.)



**DEFENDANT THI OF SOUTH
CAROLINA AT COLUMBIA, LLC d/b/a
MIDLANDS HEALTH AND
REHABILITATION CENTER'S MOTION
TO STAY OR DISMISS ACTION AND
COMPEL ARBITRATION**

TO: NEIL E. ALGER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Defendant, THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center ("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 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 Anthony Lemon’s admission to the Facility. (See Arbitration Agreement attached as Exhibit A). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff’s claims be submitted to arbitration.

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 Bar ID No.: 12084

Matthew O. Riddle, SC Bar ID No.: 76650

Gaillard T. Dotterer, III, SC Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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

mriddle@ycrlaw.com, gdotterer@ycrlaw.com

*Attorneys for the Defendant THI of South Carolina
at Columbia, LLC d/b/a Midlands Health and
Rehabilitation Center*

Charleston, South Carolina

Dated: January 2, 2024

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Magnolia Manor of Columbia ("Facility"), its agents, employees and servants, and Anthony Lemon ("Resident") or MINNIE GAMBLES ("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.

Minnie Gambles
Resident/Representative Signature Date
[Signature] 1/9/12
Authorized Agent of Facility Date

MINNIE GAMBLES
Printed Name of Resident/Representative
Barry W. Williams Admin. Dir.
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

Exhibit A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS SPECIAL) CASE NO. 2023-CP-20-00268
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)

PLAINTIFF,)

vs.)

PRUITTHEALTH - RIDGEWAY, LLC)
f/k/a UNIHEALTH POST-ACUTE CARE -)
TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY SERVICES,)
INC. f/k/a UNITED REHAB, INC.,)
PRUITTHEALTH, INC., NEIL PRUITT,)
JR., THI OF SOUTH CAROLINA AT)
COLUMBIA, LLC d/b/a MIDLANDS)
HEALTH AND REHABILITATION)
CENTER, THI OF SOUTH CAROLINA,)
LLC, FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL LONG TERM CARE)
HOLDINGS, INC., FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC,)
AND HUNT VALLEY HOLDINGS, LLC,)

DEFENDANTS.)



**DEFENDANT THI OF SOUTH
CAROLINA, LLC'S MOTION TO STAY**

TO: NEIL E. ALGER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant 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 Columbia, LLC d/b/a Midlands Health and Rehabilitation Center (“Facility Defendant”) filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into at the time of Anthony Lemon’s admission to the Facility.

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 Bar ID No.: 12084

Matthew O. Riddle, SC Bar ID No.: 76650

Gaillard T. Dotterer, III, SC Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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*Attorneys for the Defendant THI of South Carolina,
LLC*

Charleston, South Carolina

Dated: January 2, 2024

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS SPECIAL) CASE NO. 2023-CP-20-00268
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)

PLAINTIFF,)

vs.)

PRUITTHEALTH - RIDGEWAY, LLC)
f/k/a UNIHEALTH POST-ACUTE CARE -)
TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY SERVICES,)
INC. f/k/a UNITED REHAB, INC.,)
PRUITTHEALTH, INC., NEIL PRUITT,)
JR., THI OF SOUTH CAROLINA AT)
COLUMBIA, LLC d/b/a MIDLANDS)
HEALTH AND REHABILITATION)
CENTER, THI OF SOUTH CAROLINA,)
LLC, FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL LONG TERM CARE)
HOLDINGS, INC., FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC,)
AND HUNT VALLEY HOLDINGS, LLC,)

**DEFENDANT HUNT VALLEY
HOLDINGS, LLC'S MOTION TO STAY**

DEFENDANTS.)

TO: NEIL E. ALGER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant Hunt Valley Holdings, LLC (hereinafter "this Defendant"), by and through its undersigned counsel, *and subject to and without waiving its right to have this matter dismissed for lack of personal jurisdiction*, 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 Columbia, LLC d/b/a Midlands Health and Rehabilitation Center (“Facility Defendant”) filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into at the time of Anthony Lemon’s admission to the Facility.

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 Bar ID No.: 12084

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*Attorneys for the Defendant Hunt Valley Holdings,
LLC*

Charleston, South Carolina

Dated: January 2, 2024

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS SPECIAL) CASE NO. 2023-CP-20-00268
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)

PLAINTIFF,)

vs.)

PRUITTHEALTH - RIDGEWAY, LLC)
f/k/a UNIHEALTH POST-ACUTE CARE -)
TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
PRUITTHEALTH THERAPY SERVICES,)
INC. f/k/a UNITED REHAB, INC.,)
PRUITTHEALTH, INC., NEIL PRUITT,)
JR., THI OF SOUTH CAROLINA AT)
COLUMBIA, LLC d/b/a MIDLANDS)
HEALTH AND REHABILITATION)
CENTER, THI OF SOUTH CAROLINA,)
LLC, FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL LONG TERM CARE)
HOLDINGS, INC., FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC,)
AND HUNT VALLEY HOLDINGS, LLC,)

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S MOTION TO STAY**

DEFENDANTS.)

TO: NEIL E. ALGER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant Fundamental Clinical and Operational Services, 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 Columbia, LLC d/b/a Midlands Health and Rehabilitation Center (“Facility Defendant”) filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into at the time of Anthony Lemon’s admission to the Facility.

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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CLEMENT RIVERS, LLP

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*Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC*

Charleston, South Carolina

Dated: January 2, 2024

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

THOMAS D. KILPATRICK AS SPECIAL) CASE NO. 2023-CP-20-00268
ADMINISTRATOR FOR THE ESTATE)
OF ANTHONY LEMON,)

PLAINTIFF,)

vs.)

PRUITTHEALTH - RIDGEWAY, LLC)
f/k/a UNIHEALTH POST-ACUTE CARE -)
TANGLEWOOD, LLC, UNITED)
HEALTH SERVICES OF SOUTH)
CAROLINA, INC., PRUITTHEALTH)
CONSULTING SERVICES, INC,)
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COLUMBIA, LLC d/b/a MIDLANDS)
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LLC, FUNDAMENTAL CLINICAL AND)
OPERATIONAL SERVICES, LLC,)
FUNDAMENTAL LONG TERM CARE)
HOLDINGS, INC., FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC,)
AND HUNT VALLEY HOLDINGS, LLC,)

DEFENDANTS.)

**DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC'S
MOTION TO STAY**

TO: NEIL E. ALGER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant Fundamental Administrative Services, 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 Columbia, LLC d/b/a Midlands Health and Rehabilitation Center (“Facility Defendant”) filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into at the time of Anthony Lemon’s admission to the Facility.

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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*Attorneys for the Defendant Fundamental
Administrative Services, LLC*

Charleston, South Carolina

Dated: January 2, 2024

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STATE OF SOUTH CAROLINA: COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT: FAIRFIELD COUNTY

Thomas D. Kilpatrick as	)
Special Administrator for the	) Docket No.
Estate of Anthony Lemon	) 2023-CP-20-00268
	)
Plaintiff,	)
V.	)
	)
Pruitthealth-Ridgeway, LLC,	) Motion to Compel
et al.	)
	)
Defendant.	)

February 29, 2024
Fairfield, South Carolina

B-E-F-O-R-E:

THE HONORABLE PATRICK C. FANT, II

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

Neil E. Alger, ESQ.
Attorney for the Plaintiff

Russell G. Hines, ESQ.
Attorney's for the Defendant's



Maria DiScioscia, RPR
Official Court Reporter

1 THE COURT: I guess we're here, this is a
2 Motion to Compel.

3 MR. HINES: Thank you, your Honor. May it
4 please the Court.

5 Russ Hines for all the moving parties.

6 And this Motion to Compel is a Motion to
7 Compel Arbitration, so it's not a Discovery Motion. I
8 realized that on your roster, you don't have -- you
9 don't have but so much information.

10 If I could just, as a housekeeping --

11 THE COURT: -- I do have this.

12 MR. HINES: Very good. Just as a housekeeping
13 matter, I wanted to make sure I've got to identify --
14 because there are, I think, five total motions. But
15 really, it's one motion and four motions that are all
16 identical that tag along with the lead dog, so to speak.

17 THE COURT: Okay.

18 MR. HINES: The Motion to Compel is made by
19 the defendant called THI of South Carolina Columbia,
20 LLC, d/b/a Midlands Health and Rehabilitation Center.
21 Then we have four motions that are identical in
22 substance. They're all Motions to Stay. And defendant
23 who've made those are THI of South Carolina, LLC;
24 Fundamental Clinical Operations Services, LLC;
25 Fundamental Administrative Services, LLC; and Hunt

1 Valley Holdings, LLC.

2 And if I could, just to get that out of the
3 way, to say that those motions, the Motion to Stay that
4 is. What they do is, they recognized that this THI,
5 I'll call them, is just a facility. Because what it is,
6 is a skilled nursing facility.

7 I guess I should probably give your Honor a
8 little bit of a background on the facts. It's a medical
9 malpractice case -- it's a malpractice case in the
10 context of a skilled nursing facility. So the parties
11 moving to Compel Arbitration is the facility itself.
12 These others are the defendants. And what the other
13 defendant's Motion to Stay say:

14 Is that, we're asking for the case against us
15 to be stayed pending the outcome of the Motion to Compel
16 Arbitration and any arbitration that is, in fact,
17 compelled. So the case should be stayed as to these
18 other parties. And the basis for that stay is the same
19 in every case. And it comes from Section 3 of the
20 Federal Arbitration Act. And the FAA definitely applies
21 here, your Honor, because we're talking about a
22 situation where the -- it has to do with the transaction
23 involving interstate commerce. And we can get into some
24 of the specifics in our briefing.

25 But to explain, the FAA always applies when

1 talking about a transaction or regarding a transaction,
2 an agreement regarding a transaction involving
3 interstate commerce.

4 And in particular, there's a case called *Dean*
5 *versus Heritage Health Care* and has other parties, we've
6 cited it in our brief. Where our supreme court
7 recognized in the context of skilled nursing care,
8 you're dealing with interstate commerce. So an
9 Arbitration Agreement in that context would attribute
10 FAA.

11 My point of that is to say, that under Section
12 3 of the FAA, it provides that -- if the Court will
13 indulge a little bit of reading.

14 "If any suit or proceeding be brought in any
15 of the Court's of the United States upon any issue
16 referable to arbitration under an agreement in writing
17 for such arbitration, the Court in which, such suit is
18 pending, upon being satisfied with the issue involved in
19 such suit or proceeding is referable to arbitration
20 under such agreement, shall on application of one of the
21 parties stay the trial of the action until such
22 arbitration has been had."

23 We've cited another case called *Stokes versus*
24 *Metro Life*. The cite on that is 351 S.C. 606, a Court
25 of Appeals case from 2002.

1 "The FAA clearly requires the Court to stay
2 any suit or proceeding pending the arbitration of any
3 issue referable to arbitration under agreement in
4 writing for such arbitration."

5 I realize that's a mouthful. And the reason I
6 wanted to say that at the outset, your Honor, is simply
7 to say:

8 As goes the motion -- or arbitration, go the
9 Motions to Stay, as the argument. Our argument is, if
10 the Court will agree with the facility, that arbitration
11 should be compelled, the FAA requires the stay as to the
12 rest of the case. And that's what these other
13 defendant's have moved for a stay have asked for. It's
14 a stay against them.

15 If the Court doesn't agree with us, doesn't
16 agree with the facility, that arbitration should be
17 compelled, then their motions for a stay are effectively
18 mooted, because there would be no reason for the stay
19 absent arbitration being brought.

20 So with that, I'll move to the Motion to
21 Compel Arbitration, your Honor. And as I mentioned, it
22 is a motion -- the context of the case is a skilled
23 nursing care facility. And I will admit at the outset
24 that -- well, my argument, just to give a little bit of
25 a roadmap here, it's a little bit cumbersome to make it

1 candidally. And that's one of the reasons why our memo
2 in support is a bit long, because there's some steps
3 that need to be explained. But the basic idea that I'm
4 arguing to you your Honor, is not about -- I should also
5 say that we filed a rather extensive memo. And I
6 realize that our time here is limited, so I do rely on
7 that.

8 THE COURT: I'm here to listen to you.

9 MR. HINES: Thank you, your Honor. But I'm
10 gonna try and hit the high points and certainly answer
11 any questions that your Honor my have. And if your
12 Honor will allow me to respond to opposing counsel's
13 argument at the appropriate time, I'll do that. But I
14 do want to say that that memo is there in the background
15 and we do rely on it.

16 But the -- it's sort of a one-two punch you
17 might say, as far as my argument. There is -- the
18 Arbitration Agreement that we are seeking the Court to
19 enforce was not signed by the resident in this case.
20 The resident who was admitted to the facility, Anthony
21 Lemon, was admitted with the help of a family member
22 named Minnie Gamble. And it was Ms. Gamble who signed
23 an Admission Agreement and Arbitration Agreement on
24 behalf of the resident, Mr. Lemon, back when he was
25 admitted to the facility. And I wanted to say that at

1 the outset. I'm not able to make an argument to your
2 Honor today based upon Ms. Gamble having power of
3 attorney to act for Mr. Lemon or an argument based on
4 the agency.

5 The argument that I'm making, comes a concept
6 of merger, coupled with equitable estoppel.

7 In the case of merger, what we're talking
8 about and there's a case called *Coleman versus Mariner*
9 *Health Care* that we've cited in our brief. And it
10 recognizes and it recognizes specifically in the context
11 of an admission to a nursing facility.

12 "An Arbitration Agreement signed at the time
13 of admission along with an Admission Agreement, where
14 you have multiple instruments signed at the same time,
15 by the same parties, for the same purpose, and of
16 course, the same transaction, the law will deem those
17 instruments to be merged and that they should be treated
18 together as a single instrument and construed in that
19 fashion."

20 The point here, is my argument starts with
21 that proposition of merger. Merger with the Arbitration
22 Agreement and Admission Agreement. If the Court will go
23 along with me to that point, there's another concept
24 that comes into play, which is equitable estoppel. And
25 in particular, a concept of direct benefits estoppel.

1 And that concept is recognized in a case called *Wilson*
2 *versus Willis* cited in our brief. That's a supreme
3 court case I think in 2019, South Carolina Supreme
4 Court, that is. And the idea of *Wilson versus Willis*,
5 was a direct benefits estoppel that it recognizes is
6 that essentially, you can't have your cake and eat it
7 too. And you cannot directly benefit from the provision
8 of a contract that contains Arbitration Agreement and
9 then accept those benefits under the provisions of that
10 contract and then deny the enforceability of an
11 Arbitration Agreement in the same contract. You can't
12 pick and choose the parts of the contracts you like if
13 you directly benefited from certain provisions of that.
14 And that's why I call it a one-two punch. The reason
15 for the first part is the merger is, if you will agree
16 your Honor, that Admission Agreement and Arbitration
17 Agreement should be merged so they're altogether as one
18 contract. On the benefit side of that, there's no
19 question that Mr. Lemon was admitted pursuant to the
20 Admission Agreement and received various services during
21 his stay at the facility, various treatments, care...
22 There's no question that he received benefits based upon
23 that Admission Agreement. With which, I'm arguing under
24 the merger side of this, that we wished an Arbitration
25 Agreement should be construed as being part of.

1 That's the rough outline of this. Merger of
2 the Admission Agreement, Arbitration Agreement. And
3 then equitable estoppel based upon the direct benefits
4 Mr. Lemon received under that merge and agreement.

5 And to put a little more meat on those bones,
6 your Honor. I also need to bring to the Court's
7 attention. We've cited this and we've distinguished
8 this, a case called *Solesbee*. *Solesbee versus*
9 *Fundamental*. That's a case that the Court of Appeals
10 decided back in 2023. And we were counsel in that case
11 as well, and the Court decided against us.

12 In that case, the Court decided against us on
13 the basis of, it's rejection of our merger argument.
14 And I do have to acknowledge that the Admission
15 Agreement in this case and the Arbitration Agreement in
16 this case, are the same four documents that were at
17 issue in the *Solesbee* case. The reason why I believe
18 it's appropriate nonetheless for us to argue to your
19 Honor today, the merger of Admission Agreement and
20 Arbitration Agreement, notwithstanding *Solesbee*, and
21 again, we've dedicated a number of pages to this, is
22 because the *Solesbee* Court, although, it rejected our
23 arguments for merger in that case, it did not do so in a
24 way that actually refuted or recognized all of those
25 arguments. And it also, like in that case and the

1 Arbitration Agreement and the Admissions Agreement to
2 some other authorities, namely a case called the *Coleman*
3 case that I mentioned and another case called *Hodge*.
4 And those cases were very different and their
5 differences between the facts of the case that we have
6 here and it was also the facts in *Solesbee* in terms of
7 what these documents said and those other cases, *Coleman*
8 and *Hodge* and what they said. And again, I realize it's
9 a lot of ground to cover here. But if your Honor will
10 remember, I mentioned that in the *Coleman* case, the
11 Court said, "the same parties, time, purpose,
12 transaction." If you've got all those boxes checked
13 with multiple instruments the doctrine of merger says,
14 "they should be deemed to be construed together, unless,
15 there is evidence of a contrary intention." Meaning,
16 intention to have them not merged. So *Coleman* actually
17 gives us the backbone -- the bedrock upon which to build
18 this argument by recognizing, "yes, in the context of
19 Admission Agreement and Arbitration Agreement, upon
20 entry into a nursing facility, if you check all these
21 boxes, parties, purpose, time, and transaction, they're
22 all the same and merger does apply." *Coleman* flat out
23 says, "yes, the proponents of arbitration in that case,
24 they're right," every one of those is present here. So
25 *Coleman* not only recognizes the validity that

1 propositioned, but it also recognizes our ability to
2 merge Admission Agreements, Arbitration Agreements. It
3 recognized that everyone of those boxes were checked.
4 What it ended up finding was, we find there actually is
5 evidence of an intention to contrary to merger. And the
6 reason it found that was because it looked at the
7 Admission Agreement and it had an entire agreement
8 clause in it, a merger clause in it and that merger
9 clause made a reference to the Arbitration Agreement.

10 And it said: Well, this a textual basis here
11 where these documents are treating these things as
12 separate. It used the word "separatedness" the *Coleman*
13 Court said. It also said, we looked at the Arbitration
14 Agreement. There is a provision in it that says, "this
15 can be disclaimed within 30 days." And it's essentially
16 treated as if it never existed.

17 Well, so -- and the Court looks at that and
18 says: That's an indication of intention contrary to
19 merger, because the document itself can essentially
20 vanish and not even be apart of this thing, in which
21 it's supposed to have been merged. We don't have that
22 here. And the *Solesbee Court*, respectfully, never
23 addressed that even though it ruled against us. It did
24 not at all look at these differences between the cases.
25 And in again, in *Solesbee* there's currently a cert

1 pending. We remain with some hope that the supreme
2 court will take a look at it. But whether or not the
3 supreme court does, I believe there's daylight between
4 the Court's actual decision in *Solesbee* and the
5 arguments that I'm making now. Which are, that the
6 *Solesbee Court* didn't address the arguments I'm making
7 now. I feel like if the *Solesbee Court* had addressed
8 the arguments I'm making now, and flat out -- and shot
9 them down, that would be a different situation. The
10 *Solesbee Court* didn't do that. And I would also add
11 that the *Solesbee Courts* arguments, for the ones it did
12 address, it's reasoning is mistaken respectfully. And I
13 do believe it's appropriate to continue to argue that
14 point.

15 As I've mentioned, we don't have a revocation
16 provision in this Arbitration Argument, that doesn't
17 even exist. Moreover, what we do have is the Admission
18 Agreement. There is an entire agreement provision.
19 Unlike what happened in the case in *Coleman*, the entire
20 agreement provision specifically references other
21 admissions materials being incorporated by reference
22 therein. So unlike in *Coleman*, we you have this notion
23 with a "separatedness" there was evidence there. Ours
24 is explicitly contemplating something that's not
25 separated. It negates referencing other admissions

1 materials. We cite in our brief a case called, *Stock*
2 *versus White Oak Manner* and another case, the *Hodge*
3 case. Where the court of appeals, just in setting forth
4 the background in those cases, recognized the Admission
5 Agreements and Arbitration Agreements as being documents
6 that were signed in conjunction with admission.

7 I should be clear, that issue wasn't put to
8 those court's, they didn't hold that. My point is, when
9 you're talking about the construction of the plain
10 language of the document it says:

11 "Other Admission materials are included."

12 And the *Stock Court* and the *Hodge Court*,
13 they're both explaining the background of the facts for
14 those two cases. They say things -- paraphrasing like,
15 "relative of the resident signed arbitration agreement,
16 other admissions documentation upon admission." Then
17 they go on to analyze the case. It underscores the
18 point that just in the plain ordinary meaning of
19 "admissions documents" those are the documents you sign
20 at the time of the admissions. Which, in this case, was
21 obviously the Arbitration Agreement. That's a basis for
22 distinguishing obviously this case from *Coleman*. Also,
23 it get's back to the, respectfully, the error of the
24 *Solesbee Courts* ways in ruling against us and the client
25 we represented in that case.

1 And I can make that point a little bit further
2 if I look, for instance, directly at *Solesbee*. If I'll
3 go over that with your Honor, I'll do that briefly.

4 The *Solesbee Court* made a few points citing --
5 well, the *Hodge case* in particular, and I guess in
6 *Coleman* as well. But it said:

7 "Here the Admission Agreement provides it's
8 governed by South Carolina law and the Arbitration
9 Agreement provides it's governed by federal law."

10 So the Court's thinking was that that means
11 there's some indication there of separatedness between
12 the two, because you have two different bodies of law to
13 govern. Well, there's two reasons why that's incorrect
14 and doesn't actually address the arguments that we've
15 made.

16 One, it's incorrect factually. This is what
17 the -- it's not the case that the Admission Agreement
18 says is governed by South Carolina Law and the
19 Arbitration Agreement says it's governed by the FAA,
20 federal law. What the Admission Agreement actually says
21 is: "This agreement will be governed by and construed
22 in accordance with the applicable federal regulations
23 and those of the State in which the facility is
24 located."

25 What the Arbitration Agreement says: "The

1 parties acknowledge that interstate commerce is involved
2 and this is governed by the FAA."

3 Well, I mentioned "factually" the idea that
4 these agreements express the idea that they're governed
5 by different bodies of law is simply correct. I just
6 read the Admissions Agreement. It actually says it's
7 gonna be construed in accordance with state law too.

8 Essentially, what it says is it's gonna be
9 incorporated in accordance with state law except for
10 where it's displaced by federal regulations that would
11 preempt state law. That's exactly the same thing as
12 saying, the FAA applies to the Arbitration Agreement.
13 The FAA preempts South Carolina law. One of the things
14 it does, in fact historically, the reason it was passed
15 was because it was to -- because congress wanted to stop
16 state courts, and this all goes back the maybe the 40s,
17 that were sort of antagonistic to the idea of
18 arbitration agreements and were not enforcing them. And
19 said: We're gonna pass the FAA. But all the FAA really
20 does is, it prevents state's from applying state
21 specific law that treats Arbitration Agreements
22 different than other contracts.

23 Arbitration Agreements ^ Check court says:
24 "You have to place Arbitration Agreements on equal
25 footing with all the contracts under state law." The

1 point of that here is to say, sort of the irony of
2 *Solesbee Court* thinking that two different bodies of law
3 applies. The FAA just holds South Carolina to applying
4 South Carolina Law evenhandedly. If you're determining
5 whether or not an Arbitration Agreement is to be
6 enforced even under the FAA, you apply South Carolina
7 contract principals, you just apply them in a way that
8 it doesn't single out Arbitration Agreements with this
9 favor of treatment.

10 In fact, the FAA is really providing it's
11 South Carolina substantive law will apply. That's all
12 off-base, that reasoning in *Solesbee*, and the *Solesbee*
13 *Court* never explained or addressed that and we made
14 these arguments to it.

15 Furthermore, under something called *Prima*
16 *Paint Doctrine*, arbitration clauses are always supposed
17 to be looked at in a way in terms of their contract, the
18 validity and clause. They are looked at in a way, at
19 least a certain sense, as being separate from the
20 agreements that they're in, the contracts that they're
21 in. And that applies whether -- so my point is, the FAA
22 would apply -- let's imagine you had a situation that
23 this Admission Agreement just had an arbitration clause
24 in it. One document, without questions. No question of
25 merger. The FAA would always apply to that Arbitration

1 Agreement. It doesn't have to be separate, because it
2 involves interstate commerce. In the *Dean* case that I
3 mentioned, it holds that that's the case and it wouldn't
4 take *Dean* to do it. It's obvious that it does, because
5 of the way the services are provided in the context of
6 these skilled nursing facilities.

7 My whole point is, your Honor, that no
8 intention contrary to merger there. There are formal
9 basis that *Solesbee* got into and we do address each one
10 of them in some detail. And your Honor's been very
11 indulgent of the time, other wise this has been one heck
12 of a monolog. And I have some sympathy for your Honor
13 and everyone else in the Court to hear it.

14 But if you have any questions, I'd be
15 delighted to do my best to answer them. Other wise,
16 I'll wait for opposing counsel to rebut this and I'd ask
17 for time to reply.

18 THE COURT: Okay. Thank you.

19 Yes, sir?

20 MR. ALGER: Your Honor, Neil Alger here for
21 the plaintiff's.

22 Thanks Russ.

23 Anybody need a break?

24 THE COURT: (Court laughs.)

25 MR. ALGER: Where do we dive-in.

1 I should say: Russ, myself, and many of us
2 who practice in the realm of nursing home, I think we
3 have all argued these motions and issues until we're
4 almost blue in the face.

5 Russ and his partners have been up through the
6 appellate courts numerous times, as myself, and my
7 partners. And we're we are at here today, sitting here
8 today is, with a lot of precedent guiding the way. We
9 also have some other issues that I want to discuss before
10 we even get into the precedential aspect of the law in
11 this. Is the context of this particular case, which we
12 didn't hear anything about.

13 Mr. Lemon was admitted to this facility in
14 2012 due to symptoms related to a diagnoses of MS and he
15 was physically deteriorating. But he still had his
16 mental faculties. In fact, we attached the medical
17 records to our brief in order to provide the Court with
18 some evidence. But he had his mental capacity. They
19 found he was alert, oriented, place, time, self. And
20 there were numerous instances in the record -- in fact,
21 all the way up from 2012 until 2019, where he would have
22 had the requisite capacity to do any contracting he
23 needed to do on his own.

24 Now, as you did hear, this agreement, as well
25 as, Admission Agreement were not signed by Mr. Lemon.

1 We know from the basic tenets of contract law, that
2 that's an exception to the normal course of business
3 under contract, right. And that there are only a few
4 instances where somebody can enforce a contract where
5 you have not actually signed it yourself. And in the
6 context of this case, and the arguments presented by
7 opposing counsel, the only way in which that could
8 derive would be through a power of attorney. A legal
9 enforceable power of attorney, which we don't have or
10 through apparent authority. And in order for the
11 apparent authority argument to have been successful, the
12 defense would have to come forward, the burden of proof
13 is on them. And without even getting into the law here,
14 I'll say, I've read through their brief. I looked at
15 their exhibits. I looked for affidavits and I see no
16 evidence that's been submitted to this Court in order to
17 establish an kind of apparent authority, there's none.

18 So unequivocally, this Court can say that they
19 have failed to meet the evidentiary burden, proof of
20 burden for them to establish that aspect of their
21 arguments. There's other portions of their brief where
22 similar burdens of proof can be applied and can, quite
23 frankly, negate their arguments because they have failed
24 to meet that part. And I will say, the Court, between
25 them and my own brief, I think you have about 100 pages

1 of reading material for you to review and that's
2 exclusive of all exhibits. So rather than me going
3 through and sort of checking off the sections, I'll just
4 simply say: Keep that in mind as you review the
5 arguments for the requisite burdens of proof to be met,
6 because it hasn't been. It just hasn't. The only
7 burden of proof that has been met is if they want to
8 actually argue the terms of the contract itself, which
9 false back on the arguments you didn't hear regarding
10 merger and equitable estoppel.

11 In this case the precedent is out there. It
12 is established through *Coleman*, through *Thompson*,
13 through *Hodge*. And then, most recently, in the last six
14 months those precedents -- *Solesbee* -- those precedents
15 have all been reaffirmed through unpublished opinions.
16 So I'm not arguing the precedential value of those
17 opinions, but I did attach them to my brief. Because,
18 your Honor, can simply say: I can rely in comfort on
19 those precedents knowing that the appellant courts
20 themselves have withheld them, turned them down, and
21 sent them home.

22 There are, I believe, I attached 10
23 unpublished opinions that all came out within the last
24 four months that have firmly rejected the arguments that
25 have been presented here by opposing counsel.

1 So it seems to me, that while the defense is
2 attempting to essentially thread the needle here with
3 their equitable estoppel argument, as well as, the
4 discussions of theory and construing of the *Wilson case*
5 in order to make it align itself and counter to
6 *Solesbee*. Our court's have consider this. And while
7 they haven't maybe touched on the exact arguments of
8 counsel, they have said that precedent establishes that:

9 One, these agreements do not merger. And
10 these agreements have been reviewed by our court's in
11 the appellant process. And no court has yet found that
12 these agreement merge.

13 And two, that in order for the equitable
14 estoppel argument to be successful, you must find that
15 the agreements come together and they don't.

16 My understanding is that the *Solesbee case* was
17 a published opinion from the court of appeals. So there
18 is precedential value there. The rehearing was denied
19 and I believe it's currently pending up at our supreme
20 court. That doesn't negate the precedential value that
21 it has from our court of appeals.

22 Just as in *Thompson* and just as in *Hodge*, I
23 wouldn't be surprised if our supreme court were to deny
24 cert and simply leave the precedential value that it has
25 in court of appeals right now.

1 Both of those cases were attempted to be
2 elevated up to our supreme court and both the certs were
3 denied. So those precedents remain in place.

4 But I will say the *Thompson* case is clear.
5 It's unequivocal. That when there are standalone
6 agreements such as this, where you have an Admission
7 Agreement and you have an Arbitration Agreement and
8 they're separately paginated. They're two completely
9 separate documents. In fact, the Arbitration Agreement
10 itself notes it's exclusivity in it's own terms.

11 And I don't have it in front of me because I
12 didn't want to waste the paper and print off the
13 voluminous exhibits we have. But it says right in the
14 last paragraph of the agreement that: "It is a
15 standalone agreement." That it is, "exclusive of all
16 other contracts." So based on that, based on the basic
17 obvious difference that the two separate agreements, the
18 Court found that merger is not applicable.

19 There was some mention in opposing counsel's
20 arguments about the *Prima Paint Doctrine* in *Dean*. I'll
21 simply say that as an initial inquiry, this Court can
22 take the concepts that were articulated by defense
23 counsel about presumption and the favor arbitrability
24 and set them aside. Because *Dean* in it's footnote *Prima*
25 *Paint* -- pretty much every case that has come out in the

1 last 10 to 15 years has recognized that a threshold
2 matter for this court in conjunction with Section 2 of
3 the FAA: "That the Court sitting in law and equity must
4 first determine that there is in fact a contract." And
5 that, is for the Court to decide based on state law
6 principals, on a basic fundamental contract terms.

7 And going full circle, your Honor. In this
8 instance, we don't have a contract. There is no way
9 that Mr. Hines or the facts of this case can honestly
10 stand in front of you and say that, Ms. Gamble, Ms.
11 Minnie Gamble, had some kind of authority to bind
12 Mr. Lemon, because Mr. Lemon had capacity. He could
13 have signed the agreement on his own. Ms. Gamble had no
14 legal authority over what she could have signed on his
15 behalf.

16 With that, I'll take a break and hear if
17 Mr. Hines has anything in rebut.

18 THE COURT: Thank you.

19 Yes, sir?

20 MR. HINES: Your Honor, I'll move through this
21 as briefly as possible.

22 In fact, I'll be very brief. And this is a
23 bit unusual for me to start by asking this. It's just
24 occurred to me when Mr. Alger mentioned a brief. I
25 realized it wasn't because it filed something way in

1 advance. I thank you. I hadn't had a chance to see
2 their brief. I just wanted to flip through it.

3 I would imagine we would at least, in our
4 counter points to what's in here. But in particular,
5 because this is a wrongful death case, I thought that --
6 and it occurred to me to look and see if they're making
7 the argument that specifically, you can't have an
8 arbitration of a wrongful death, even if you have --
9 it's argued sometimes, your Honor, that when it comes to
10 wrongful death, to enforce arbitration or compel a claim
11 under that arbitration, you have to have an arbitration
12 agreement that's enforceable against all of the wrongful
13 death beneficiaries. And that's a different argument
14 then what I've addressed so far and I'll address it in
15 just one moment. But to be clear, the logic of that
16 argument is, even if there's no question that -- in
17 fact, the logic of that argument is even if Mr. Lemon
18 with full contractual capacity signed that Arbitration
19 Agreement, that you still couldn't compel the wrongful
20 death claim in arbitration. That's the logic of it.
21 The logic of it is, that's it's own independent in
22 pattern talk Judge.

23 I will argue against that by saying the *Dean*
24 case does not go, so far as, to hold specifically that
25 -- it doesn't specifically refute their argument, but it

1 does give us a pretty good way of starting to do it.
2 Which is saying that, it recognizes that it would be
3 contrary to the FAA to exclude a certain type of claim
4 from arbituability. Because the FAA requires,
5 obviously, the Arbitration Agreement to be placed on
6 equal footing with all the contracts. And you can't
7 come up with a state law rule that says, you can't
8 arbitrate wrongful death claims. That much is for sure.
9 The FAA says, you can't do that.

10 Now, *Dean* doesn't go further in talking about
11 the logical implications of that. The logical
12 implications of that, as a practical matter, are that if
13 the rule is, all of the wrongful death beneficiaries in
14 the case have to agree on arbitration, you're going to
15 throw a whole bunch of cold water on the idea of
16 arbitrating wrongful death claims based upon any sort of
17 agreement to arbitrate like this one. Where you're
18 talking about the people entering into a relationship
19 and they have agreements that address that relationship
20 and the claims that might arise out of it. I'm not
21 saying that you couldn't conceivably get wrongful
22 beneficiaries to all agree after the claim has risen,
23 but I find it to be highly unlikely.

24 If that is the case, I do think *Dean* certainly
25 suggest that you would have a problem with the FAA to do

1 that. But more than that, it's a nonstarter argument to
2 begin with under our law, because any agreement or any
3 sort of contractual provision that would be enforceable
4 against the wrongful death, the decedent, would also be
5 effective to defeat the wrongful death beneficiaries
6 claim. Keep in mind, it is not in fact their claim.
7 They're simply the beneficiary of the claim that has to
8 be brought by the personal representative of the
9 decedents estate. That claim does derive from the
10 claim. It has -- for the claim to even exist the
11 decedent themselves, statutorily would have to have had
12 a claim against whoever the tort feisor is, it's being
13 sued for wrongful death. The decedent would have to
14 have a claim. In as much as you can enforce the
15 arbitration against the decedent, you can enforce it
16 against the wrongful death beneficiaries.

17 Similarly, let's imagine that you have a
18 situation where somebody was hurt in an accident and
19 they're not yet deceased, they're in a hospital. And
20 somehow, they start settlement negotiations with that
21 decedent when they're in the hospital. And they come up
22 with some agreement to resolve any and all claims
23 arising out of the accident that put them there to
24 include any and all claims, obviously and they sign a
25 release and the decedent passes away after that.

1 Obviously, the wrongful death claim based upon that
2 accident wouldn't even accrue until the decedent passed
3 away. Nonetheless, the release the decedent signed
4 waiving any and all claims would bar a wrongful death
5 suit.

6 Again, I'm talking about -- we're not
7 hairsplitting the language of the release. But image
8 that the release does indeed cover any and all ground,
9 known, unknown, now and future, anything arising out of
10 that accident. In the same way that such a release
11 would be enforceable against a wrongful death
12 beneficiary, against the claim to defeat the claim, the
13 wrongful death. So does an arbitration operate, not to
14 defeat it, but to require it to be arbitrated. So I
15 just want to make sure I wasn't silent on that point,
16 your Honor.

17 Back to what Mr. Alger did argue. He
18 mentioned that I'm trying to thread the needle. Well,
19 he's right about that. I'll certainly give him that. I
20 just would say that we are indeed threading it. There's
21 room in there to get the thread, that's my point. Not
22 that this might be an attempt. But surely, that's
23 exactly what we're doing. We recognized that there are
24 eventually head-wins, but we're nonetheless, trying to
25 chart that course past them. And he did mention a

1 number of -- I don't even blame him. I can understand
2 the point. But no precedential value means no
3 precedential value. You can stack to the roof opinions
4 with -- that have no precedential value. And say to the
5 Court: I'm not asking you to rely on them. Well,
6 again, I get --

7 THE COURT: -- he does have a published
8 opinion.

9 MR. HINES: He has one, that's right. And
10 that's what I believe all you need in terms -- if we
11 were on all fours. I'm not trying to tarnish the one
12 he's got. But I am trying to distinguish to the Court,
13 that it's really not addressed all facts. And the fact
14 that he even seemed to give me a little bit of a nod
15 when he says: "Even the Court had to address exactly
16 what they're arguing." That's my point, the Court has
17 not knocked out from underneath us what we're arguing.

18 And the whole point about having to say:
19 There's no power of attorney, no agency they
20 commissioned.

21 My equitable estoppel argument, merger, and
22 estoppel argument, doesn't align with either of those
23 principals. It's completely independent of that.

24 In fact, the way estoppel works is, I'm not
25 having to prove we had a valid agreement per se. I'm

1 just establishing that the plaintiff is estopped to try
2 to argue it's not enforceable. I have more than one way
3 to skin this cat. In fact, *Wilson versus Willis*
4 recognizes that there are recognized theory under South
5 Carolina Law in which you can enforce an Arbitration
6 Agreement against a non-signatory, among them estoppel.

7 So the legal framework, your Honor, is there
8 and I suggest to the Court that the factual building on
9 that framework is there in this case, with all due
10 respect to the *Solesbee Court*, which I have to
11 acknowledge is there. And have to acknowledge, it did
12 deal with these same four documents. It just did not
13 deal and refute with these same arguments.

14 Thank you, your Honor.

15 THE COURT: Thank you.

16 MR. ALGER: Your Honor, and I will be brief
17 'cause I know there's other individuals waiting now.

18 Back to the equitable estoppel argument. In
19 order for that to be successful, the defendant would
20 have had to come forward and show that the party to be
21 estopped, which in this instance is the estate of
22 Mr. Lemon.

23 That he acted in a way of having to a false
24 representation.

25 That he intended that such conduct be acted on

1 by the other party.

2 That he had actual constructive knowledge of
3 the real facts.

4 It's almost -- it is a kin to saying he acted
5 fraudulently. With that notion, back to the basic
6 burden of proof in this instance, nothing has been
7 presented to this Court showing that Mr. Lemon acted in
8 any of those ways. You don't have any testimony here,
9 unfortunately, Mr. Lemon is deceased. His family
10 members can't attest to this. There is no medical
11 record, or doctor, or nurse, no admission assistant.
12 Nobody can come forward and establish those facts and
13 they haven't been presented to this Court.

14 So simply, based on the burden of proof, the
15 Court can't find equitable estoppel as even a viable
16 reason to compel this in arbitration, because those
17 requisite elements haven't been met.

18 Lastly, not to open another avenue. As a
19 fundamental issue as well, the Arbitration Agreement
20 itself is flawed, in that, it lacks consideration. Our
21 courts as you have heard over and over again, they find
22 that these two agreements do not merge. And however the
23 defendant wants to put it, there is that element lacking
24 in a contract. You've got to have neutrality of
25 promises. You've got to have the contract itself and

1 you have to have consideration. And there is no
2 consideration in this instance, no real consideration in
3 this instance. And the reason is, because the promise
4 that is exchanged is that neither party will bring suit
5 against them and if they do, it will be by arbitration.
6 But that, what we know from our simple tort law is:

7 What does it mean to bring suit, right?

8 In order to have suit, you have to have a
9 duty.

10 I have to be responsible to you for acting in
11 some way. And in this instance, there is no duty of
12 Mr. Lemon back to the nursing home. He can't make a
13 promise that is an impossibility. The nursing home has
14 a duty to provide care and treatment for him. They have
15 a duty to make sure that he is not neglected, that he's
16 feed, that he's taken care of. The list goes on and on
17 of the duties that the nursing home has to Mr. Lemon.
18 Mr. Lemon, the only duty he has back to the nursing home
19 is to pay his bill and be present, but that's under the
20 Admission Agreement. They don't merge. So what
21 consideration is there that's left for Mr. Lemon back to
22 the nursing home? There is none. He has no other duty.
23 And so there can't be that neutrality of promises in
24 order to establish the consideration of the contract.
25 And with that, I'm done.

1 THE COURT: Thank you.

2 MR. HINES: If you will, your Honor, like 30
3 seconds.

4 THE COURT: Sure.

5 MR. HINES: That argument, the last argument,
6 about the lack of consideration is:

7 One, it's beside the point. And because as
8 I've just mentioned, one, it goes by counsel's own
9 argument that it was premised on the idea that he was
10 isolating the Arbitration Agreement as not merged. So
11 obviously, my point is, it is merged. And I'll
12 acknowledge to the Court that my argument flows from the
13 proposition that we're talking merger of admission and
14 arbitration and so really it does not under-mind my
15 merger, estoppel argument at all.

16 It also doesn't under-mind it because, I'm
17 again, not arguing for a contract to be enforceable per
18 se. I'm arguing on the basis of estoppel, which is a
19 different way of getting there.

20 The other point is, you mentioned the idea of
21 not -- and I would also say, there is consideration to
22 the extent it could matter for the Admission Agreement
23 mutual promise to arbitrate. I understood counsel to
24 say: There was no duty to flow from Mr. Lemon back
25 toward the facility, but the duty to pay them. Well,

1 that's a duty. We've got mutual promise to arbitrate
2 any claims that arise including the claim that he might
3 -- the facility might have against him for nonpayment or
4 any other conceivable claim that could arise from that
5 relationship. And it's beyond me, in a moment to think
6 about all the different things that could possibly
7 arise. But anyway, it's really not -- it really doesn't
8 matter, because again, it's not material to my argument,
9 which goes through merger.

10 And the final point, maybe the most important
11 one, your Honor. Opposing counsel talked about the
12 burden of proof about representations that were made by
13 Mr. Lemon and so forth. Essentially, something
14 analogized as fraudulent conduct. That's just the wrong
15 test, your Honor, for equitable estoppel. The *Wilson*
16 *versus Willis* case is about direct benefits estoppel,
17 not -- *Wilson versus Wilson* even makes a footnote of
18 this. Is that because of the traditional six part test
19 for estoppel. It looks about like three parts about the
20 party to be estopped. And three parts about the party
21 asserting estoppel and that's just not the right test.

22 So I can will conceded that's I've not passed
23 that test. It's just that it's not a test that I have
24 to take to make my argument. My argument is based on
25 direct benefits. Thank you, your Honor.

1 THE COURT: Okay. Thank you. I will take this
2 under advisement and be back with you.

3 (Whereupon, the above-captioned motion
4 was concluded.)
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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Fairfield, South Carolina, on the 29th day of February, 2024.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.


Maria DiScioscia
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD
THOMAS D. KILPATRICK AS SPECIAL
ADMINISTRATOR FOR THE ESTATE
OF ANTHONY LEMON,

Plaintiff,

v.

PRUITTHEALTH - RIDGEWAY, LLC
F/K/A UNIHEALTH POST-ACUTE
CARE - TANGLEWOOD, LLC, UNITED
HEALTH SERVICES OF SOUTH
CAROLINA, INC., PRUITTHEALTH
CONSULTING SERVICES, INC.,
PRUITTHEALTH THERAPY
SERVICES, INC. F/K/A UNITED
REHAB, INC., PRUITTHEALTH, INC.,
NEIL PRUITT, JR., THI OF SOUTH
CAROLINA AT COLUMBIA, LLC
D/B/A MIDLANDS HEALTH AND
REHABILITATION CENTER, THI OF
SOUTH CAROLINA, LLC,
FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,
FUNDAMENTAL CLINICAL
CONSULTING, LLC, FUNDAMENTAL
LONG TERM CARE HOLDINGS, INC.,
FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC, AND HUNT VALLEY
HOLDINGS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-20-00268

**ORDER DENYING
MOTION TO COMPEL ARBITRATION
& MOTIONS TO STAY**

EXHIBIT

9

This matter came before the Court on February 29, 2024, on a Motion to Compel Arbitration filed by Defendant THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center ("Midlands") pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA") and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and related motions to stay this litigation pending the outcome of the arbitration that Midlands seeks to compel by Defendants THI of South Carolin, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental

Administrative Services, LLC, and Hunt Valley Holdings, LLC (collectively, the “Motions to Stay”).¹ Present at the hearing and arguing on behalf of the moving parties was Russell G. Hines. Appearing and arguing on behalf of Plaintiff was Neil E. Alger. After reviewing the submissions of the parties, the pleadings, and hearing the arguments of counsel, the Court denies Midlands’ Motion to Compel Arbitration for the reasons set forth herein² and, in turn, denies the Motions to Stay.

The Court notes that in oral argument, there was no mentionable dispute as to the facts presented by either Plaintiff or Midlands; even to the extent that Plaintiff presented facts that Midlands had not, Midlands did not present competent evidence to dispute Plaintiff’s evidence. The Court adopts the following undisputed facts for its ruling. The Plaintiff in this wrongful death and survival action is Thomas D. Kilpatrick, an attorney appointed by Probate who is an unrelated and uninvolved person in the underlying dispute. Mr. Kilpatrick commenced this action by filing a Notice of Intent on April 3, 2023, followed by a Summons and Complaint on August 31, 2023, alleging wrongful death and survival claims as a result of the care and treatment provided to Mr. Lemon while he was a resident at Midlands’ assisted living facility. Specifically, Mr. Lemon developed serious pressure injuries and bedsores between June and July of 2020 after being assessed as a high-risk for pressure injuries by Midlands. Mr. Lemon passed away on July 30, 2021. On January 2, 2024, Midlands filed a Motion to

¹ Midlands’ Motion to Compel Arbitration and the Motions to Stay were all filed on January 2, 2024, and heard together on February 29, 2024. The Motions to Stay are based on Section 3 of the FAA. 9 U.S.C. § 3 (“If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.”); *see also 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.”). Accordingly, the success of the Motions to Stay is tied to the success of Midlands’ Motion to Compel Arbitration, and the denial of Midlands’ Motion to Compel Arbitration requires the denial of the Motions to Stay.

² Plaintiff submitted with his Memorandum in Opposition twelve unpublished opinions of the Court of Appeals. The arguments presented to the Court by Midlands’ motion are in large part analogous to those presented in the unpublished opinions. The unpublished opinions denied arbitration based on well-established precedent from other published opinions of the S.C. appellate courts which are referenced herein.

Compel Arbitration, relying on an Arbitration Agreement that was signed individually by the mother of Mr. Lemon, Ms. Minnie Gamble dated January 9, 2012. As noted above, Ms. Gamble held no power of attorney for Mr. Lemon and is not a party to the present action.

The basis of Midlands' Motion is that a valid and enforceable arbitration agreement exists between the parties. The Arbitration Agreement relied upon by Midlands was signed by the decedent's mother, Minnie Gamble, at the time of his admission to Midlands' facility, and it appears that no valid power of attorney was relied on by Midlands. No power of attorney of any sort has been presented in this matter. Evidence presented by Plaintiff indicates that the decedent was suffering from multiple sclerosis which impacted him physically, but the records indicated that he had the mental capacity to sign the facility's Admission Agreement or Arbitration Agreement at the time he was admitted. While the Court recognizes the arguments offered by Midlands for presumptions in favor of arbitration, this Court's analysis begins and ends by answering the threshold inquiry that there is not a legally enforceable arbitration agreement.

At the outset, Ms. Gamble did not have any authority to enter the Admission Agreement and Arbitration Agreements on the decedent's behalf under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 *et seq* because it is indicated that Decedent had his cognitive ability. Under the Act, an individual is only authorized to make health care decisions on behalf of an *incapacitated* adult. S.C. Code Ann. § 44-66-30. Therefore, based on the evidence before the Court, it appears that Ms. Gamble did not even have authority to make health care decisions on behalf of the decedent at the time of admission, much less the authority to waive his estate's right to a jury trial.

Even if Ms. Gamble had authority under the Act to enter the Admission Agreement in furtherance of the decedent's health care needs, it does not necessarily follow that she had authority to enter a separate Arbitration Agreement under the Act. Therefore, the Court must determine (1) if the

Arbitration Agreement merged with and was a part of the Admission Agreement such that Plaintiff in her capacity as personal representative would be equitably estopped from denying the Arbitration Agreement's validity, and (2) if Ms. Gamble had actual or apparent authority to enter the Arbitration Agreement on behalf of the decedent. The Court finds the answer to both inquiries is "no".

While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement for the simple reason that the decedent's mother, Ms. Gamble, did not have any authority to execute the Arbitration Agreement at the time it was entered by the parties. When an individual is incapacitated, a family member may be authorized to make decisions concerning **health care** under the Adult Health Care Consent Act. S.C. Code Ann. § 44-66-30(A). In contrast, arbitration is a means of resolving a legal dispute outside of the typical civil litigation process – a definition unrelated to physical or mental condition. *See* Black's Law Dictionary, 125 (10th ed. 2014).

Therefore, even if the Act was applied, it only would have given Ms. Gamble authority to consent on behalf of the decedent to the provision of medical care, including placement in Midlands' facility, as well as authority to make certain financial decisions on behalf of the decedent which he would be obligated to pay. This authority "extends primarily to traditional health care decisions, and only secondarily to the financial decisions necessitated by those decisions." *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). Most jurisdictions, including South Carolina, have ruled execution of an arbitration agreement is not a health care decision. *See Johnson v. Kindred Healthcare, Inc.*, 466 Mass. 779, 789-90, 2 N.E.3d 849, 857-58 (Mass. 2014).

Midlands' Arbitration Agreement is admittedly optional, and separate from its Admission Agreement, and contains no provision for medical, nursing, or health care services to be provided to residents, nor does it require any financial commitment to pay for such services. The agreement is separately titled "Facility – Resident/Representative Arbitration Agreement", is paginated as "Page 1

of 1", and contains its own signature lines. The agreement is signed by Ms. Gamble as "Resident/Representative." Further, the Arbitration Agreement by its very language distinguishes between itself and the Admission Agreement, stating that the Arbitration Agreement will survive any "breach of this Agreement or the Admission Agreement." While the Admission Agreement purports to incorporate admissions materials into itself "by reference herein", when viewed alongside the other details of the agreements, it creates at best an ambiguity as to merger when taken in context of the totality of the circumstances, and "the law is clear that any ambiguity in such a clause is construed against the drafter", i.e., Midlands. *See Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

In sum, the Act provides statutory authority for family members to make an incapacitated loved one's health care decisions. Thus, the only authority to enter into agreements to arbitrate is reserved for powers of attorney or other legal instruments outlined in the probate code which are not present in this case. As previously stated, the Act is not applicable because it is apparent that Decedent maintained his cognitive ability, but even if it is determined that the Act was applicable, then it is doubtful in this case that there ever was a valid conferral of authority under the Act for executing this Arbitration Agreement. Aside from the Act, Ms. Gamble in her individual capacity had no legal authority to sign the Arbitration Agreement in a representative capacity for the Decedent as she apparently did not possess or present Midlands with documentation demonstrating power of attorney or guardianship. This lack of documentation is clearly indicative that Midlands knew or should have known that Ms. Gamble lacked authority, and there is no evidence in the record that indicates that Midlands made any effort to verify or validate the authority that Midlands is now asserting Ms. Gamble possessed. Since Ms. Gamble lacked legal authority, the Arbitration Agreement is void and unenforceable.

Further, Plaintiff cannot be equitably estopped from denying enforcement of the Arbitration Agreement. "Equitable estoppel is a contract defense and the party asserting this defense bears the

burden of proving all of its elements.” *Kelly v. Logan, Jolley & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Without any further analysis, Midlands has not carried its burden by presenting this Court with any evidence aside from the Arbitration Agreement and Admission Agreement. Midlands has not submitted any affidavits or competent evidence that carries its burden of proof to factually satisfy this argument asserting equitable estoppel. As a legal matter, Midlands has not and cannot meet its burden to establish these elements, primarily because Midlands cannot prove it lacked the means of knowledge of the truth of the facts in question. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

In this case, Midlands had the ability to determine whether Ms. Gamble had authority to sign an arbitration agreement on Decedent’s behalf. In fact, Midlands is a residential care facility that regularly engages in the admission and contract process. First, under the Adult Healthcare Consent Act, Midlands had a duty to undertake and document its efforts to ascertain whether Ms. Gamble or someone else had priority and authority under the Act to make Decedent’s health care decisions, and it failed to do so. Second, Decedent had his mental capacity and according to the evidence in the record, he was capable of providing his own acquiescence to these agreements which he did not and Midlands circumvented his own authority by having Ms. Gamble act as a signatory. Midlands is a sophisticated business entity frequently interacting with residents and their families during the rehabilitation center admission process. Midlands is or should be familiar with the legal concepts of guardianship and powers-of-attorney. Midlands had the ability to ask Ms. Gamble whether she was Decedent’s attorney-

in-fact, to determine if Decedent had his mental capacity, to determine if some other legal authority existed, and it had the ability to request supporting documentation proving authority. No evidence is in the record that Midlands appropriately complied with these inquiries. Since Midlands has not cited or provided evidence on this element of equitable estoppel, Plaintiff is not equitably estopped from denying the Arbitration Agreement. Further, the Admission Agreement and Arbitration Agreement are separate contracts that do not merge. *See Hodge v. UniHealth Post-Acute Care of Bamberg LLC*, 422 S.C. 544, 561-63, 813 S.E.2d 292, 308 (Ct. App. 2018); *Thompson v. Pruitt Corp*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016); *Coleman*, 407 S.C. at 352, 755 S.E.2d at 450.

Midlands' assertion that Plaintiff is equitably estopped from denying the validity of the Arbitration Agreement seems to hinge on a direct benefits theory of estoppel, i.e., that since Decedent benefited from the terms of the Admission Agreement, the personal representative of his estate should be estopped from denying the validity of the Arbitration Agreement. *See Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). Virtually all of the Circuit Court orders filed by Midlands in support of its Motion rely in some form or another on this theory. However, as the Supreme Court explained in *Wilson*, to successfully assert direct benefits estoppel, the arbitration agreement must be a clause within the larger admissions agreement, and the plaintiff must be seeking to assert causes of action that arise from and are created by the contract. Here, as explained above and below, the Admission Agreement and optional Arbitration Agreement are separate documents that did not merge. Second, Plaintiff does not assert breach of contract, or a violation of contractual duties, and instead has brought her lawsuit under a negligence theory arising from common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176. Incidentally, Plaintiff's claims are indirectly related to the Arbitration Agreement, as it was optional, ancillary to, and separate from the Admission Agreement. *See id.*

(stating that under direct benefits estoppel a non-signatory's claim must be directly, not just indirectly, based on the contract containing the arbitration agreement).

Additionally, Plaintiff did not have any authority to enter the Arbitration Agreement. The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. *Charleston Registry v. Young Clement*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). South Carolina law requires that to prove apparent authority, the defendant must show that the purported principal consciously or impliedly represented another to be his agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Once again, Midlands has not provided this Court with any competent evidence that is persuasive for establishing common law agency. The simple fact that Ms. Gamble signed the agreements so that her son could be admitted to Midlands' facility and receive health care in no way indicates a manifestation of authority by Decedent to waive his right to a jury trial or agree to arbitration. Neither the Admission Agreement, nor the Arbitration Agreement, offer any probative evidence indicating Decedent's intention. Midlands has not come forward with any evidence that Decedent ever manifested any form of assent establishing Ms. Gamble as his agent and accordingly, Midlands has failed to meet its burden of proof.

Midlands' assertion that Plaintiff held "inherent agency powers" to act on behalf of the decedent is unsupported by South Carolina law. South Carolina law is clear that an individual does not have inherent agency powers concerning health care, financial, and other affairs of their spouse, much less a mother or extended family member. *Hinson v. Roof*, 128 S.C. 470, 475, 122 S.E. 488, 490 (1924) ("The marriage relation of the parties . . . is not necessarily enough to establish the fact that the one is the agent of the other. There must be other proof."); S.C. Jur. *Agency* § 6 (1994) ("No presumption arises from the fact of the marital relationship, without more, that [a spouse] is the agent of [the other spouse].") (footnote omitted).

Based on the tenants of contract law, this Court is not convinced that this agreement is enforceable. The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. Of S.C.*, 354 S.C. 397, 406 (2003). Consideration is a promise to do something that a party has no legal obligation to do or to forbear from doing something it has a legal right to do. This Arbitration Agreement has no direct mention of consideration. Midlands has argued that the arbitration agreement is a bilateral contract and consideration is provided through the exchanging of promises to enter into arbitration. The S.C. Supreme Court held long ago:

A promise may constitute the consideration for another promise. But a promise is not a good consideration for a promise unless there is absolutely *mutuality of the engagement*, so that each party has the right to hold the other to a positive agreement. *In case the promise of one of the parties impose no legal duty upon the party making it, such promise furnishes no consideration for a promise.*

Int'l Shoe Co. v. Herndon, 135 S.E. 202, 205 (1926) (emphasis added) (*citing* Elliott on Contracts, vol. 1, § 231). Although Midlands has argued that both parties are forfeiting their right to trial by jury for binding arbitration, the reality is that the obligation and detriment falls almost exclusively on the resident. *Id.* The reality is that no duty is owed by the resident to the nursing home facility other than to pay one's bills which happens to be exclusively related to the admission agreement, not the arbitration agreement; the two agreements do not merge. Midlands is unable to articulate or provide this court with any evidence of consideration for the Arbitration Agreement, and therefore, the arbitration agreement fails as a matter of law.

Lastly, it is doubtful that the scope of the Arbitration Agreement, even if it was valid, would cover wrongful death claims asserted on behalf of a decedent's statutory beneficiaries. That is because the wrongful death claim belongs solely to the wrongful death beneficiaries, and is brought only on

their behalf by the personal representative of the estate. S.C. Code Ann. §§ 15-51-10 and -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). The statutory beneficiaries are non-signatories to the Arbitration and Admission Agreements, regardless of whether the Arbitration Agreement purports to include “any alleged tort, personal injury, negligence, or other claim” “arising out of or relating to Facility’s Admission Agreement.” Therefore, if the Arbitration Agreement were valid, which it is not, the wrongful death beneficiaries would only be bound to its terms as third-party beneficiaries.

A third-party beneficiary may only be bound by an arbitration agreement if it is attempting to enforce the contract containing the arbitration agreement. *Thompson*, 426 S.C. at 57, 784 S.E.2d at 687. Here, the Arbitration Agreement is a standalone document not contained within the Admission Agreement, and the wrongful death beneficiaries are not attempting to enforce the Admission Agreement or Arbitration Agreement. Instead, they are seeking to recover under the wrongful death scheme for Midlands’ breach of common law duties arising from its care for Decedent. Thus, even if the Arbitration Agreement is valid and enforceable, it would only reach the survival claim of the estate, and not any wrongful death claims brought on behalf of the statutory beneficiaries. This conclusion comports with the law of other state jurisdictions. See *FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 n. 1 (Pa. 2016) (citing *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013)); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014); *Daniels v. Sunrise Sr. Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr. 3d 273 (2013); *Carter v. SSC Odin Operating Co, LLC*, 976 N.E.2d 344, 355-58 (Ill. 2012); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581 (Ky. 2012); *Woodall v. Avalon Care Center-Federal Way, LLC*, 231 P.3d 1252 (Wash. App. 2010); *Lawrence v.*

Beverly Manor, 273 S.W.3d 525 (Mo. 2009); *Bybee v. Abdulla*, 189 P.3d 40 (Utah 2008); *Peters v. Columbus Steel Castings Co.*, 873 N.E.2d 1258, 1262 (Ohio 2007); *Chapman v. Cardiac Pacemakers, Inc.*, 673 P.2d 385 (Idaho 1983); *see also Strickholm v. Evangelical Lutheran Good Samaritan Soc'y*, Case No. 4:11-CV-00059-BLW, 2011 WL 2532395 (D. Idaho June 24, 2011). However, since it is not valid, this Court will not compel arbitration of the wrongful death or survival claims in this action.

Based on the foregoing authorities and findings, the Court denies Midlands' Motion to Compel Arbitration. This Court's denial of Midlands' motion is based entirely on South Carolina law and the failure of Midlands to meet its burden of persuasion for the enforceability of the contract that has been presented to this Court. In recognition of its contractual origins and limitations, Section 2 of the FAA dictates that arbitration agreements "shall be 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. (emphasis added). This Court's ruling in no way relies on or contravenes any presumption or the auspices of the FAA, but rather, as the FAA directs on the basis of law and equity, the Court finds that this Arbitration Agreement is not valid or enforceable.

And having thus determined that Midlands' Motion to Compel Arbitration should be denied, the Motions to Stay must be denied, too.

THEREFORE, IT IS ORDERED that the Midlands' Motion to Compel Arbitration and the Motions to Stay are DENIED.

IT IS SO ORDERED.


3/14/24
The Honorable Patrick C. Fant, III
Presiding Court Judge



Fairfield Common Pleas

Case Caption: Thomas D Kilpatrick , plaintiff, et al VS Pruitthealth Ridgeway L L C
, defendant, et al
Case Number: 2023CP2000268
Type: Order/Other

So Ordered

Patrick C. Fant, III

Dec 13 2024

SC Court of Appeals

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

Appeal from Fairfield County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-20-00268
Appellate Case No. 2024-000596

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon,

Respondent,

v.

Pruitthealth-Ridgeway, LLC f/k/a Unihealth Post-Acute Care-Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,

Defendants,

Of which THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, are the

Appellants.

PROOF OF SERVICE

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that the **APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL AND FOR SANCTIONS** was served on Respondent (and the other Defendants besides Appellants) on December 12, 2024, by emailing (see attached email) a copy of the same to counsel of record:

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Respectfully submitted,

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December 12, 2024

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Subject: Thomas D. Kilpatrick v. Pruitthealth - Ridgeway, LLC, 2024-000596
Date: Thursday, December 12, 2024 11:55:25 PM
Attachments: [image001.png](#)
[Kilpatrick v. THI \(2024-000596\) -- Return to Motion to Dismiss.pdf](#)
[Ex. 1 -- Admission Agreement.pdf](#)
[Ex. 2 -- Arbitration Agreement.pdf](#)
[Ex. 3 -- Summons & Compl.pdf](#)
[Ex. 4 -- Facility's Answer.pdf](#)
[Ex. 5 -- Other Appellants' Answers.pdf](#)
[Ex. 6 -- Motion to Compel Arbitration.pdf](#)
[Ex. 7 -- Motions to Stay.pdf](#)
[Ex. 8 -- Hearing Transcript.pdf](#)
[Ex. 9 -- Order Denying Underlying Motions.pdf](#)

Attached for service please find **Appellants' Return to Respondent's Motion to Dismiss Appeal and for Sanctions.**

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