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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly-situated,

Plaintiffs,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; and Professional Account Services, Inc.,

Defendants.

C.A. No. 2017-CP-42-00219

ORDER DENYING DEFENDANTS' MOTION TO ALTER OR AMEND

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BACKGROUND

This matter came before the Court on Defendants' Motion to Alter or Amend, which Defendants filed on September 14, 2020. Plaintiffs filed a Response in Opposition to Defendants' Motion to Alter or Amend on October 9, 2020, and Defendants filed a Reply to Plaintiffs' Response in Opposition on October 19, 2020. Defendants moved, pursuant to Rule 59(e), SCRCP, for the Court to reconsider and alter or amend its prior order denying Defendants' Motions to Dismiss Pursuant to Rule 12(b)(6) or, in the Alternative, to Stay the Case and Compel Arbitration (hereinafter, "Defendants' Motions to Dismiss or Compel Arbitration"). The Court issued an order denying Defendants' Motions to Dismiss or Compel Arbitration on September 4, 2020.

Defendants' Motion to Alter or Amend asks the Court to modify its September 4 Order and: (1) compel Plaintiff Owens to arbitrate his claims against Defendants; (2) dismiss Plaintiff Owens's claims based on the statute of limitations; (3) reconsider its analysis of the voluntary payment doctrine; (4) dismiss Plaintiff Blackwell's unjust enrichment claim; (5) find that Plaintiff Blackwell is barred from enforcing the MedCost Agreement between Defendant Mary Black and

her health insurer as a third-party beneficiary; and (6) conclude that Plaintiffs have improperly engaged in "collective pleading." The Court has fully considered all of Defendants' arguments in their Motion, Plaintiffs' arguments in opposition, and Defendants' arguments in their reply brief, as well as the parties' prior submissions in connection with Defendants' Motions to Dismiss or Compel Arbitration (including the documents filed under seal by Defendants). Consistent with Rule 59(f), the Court has determined, in its discretion, that Defendants' motion may "be determined on briefs filed by the parties without oral argument." Rule 59(f), SCRCP. For the following reasons, Defendants' Motion to Alter or Amend is **DENIED**.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Pye v. Estate of Fox*, 369 S.C. 555, 565–566, 633 S.E.2d 505, 510 (2006) (quoting *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments. A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–779 (2004). Additionally, where a movant fails to identify any issue raised, but not ruled upon in a prior motion, a motion for reconsideration is properly denied. *See Collins Music Co. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

ANALYSIS

1. Plaintiff Owens should not be compelled to arbitrate his claims against Defendants.

The Court previously rejected Defendants' assertion that this case should be stayed and Plaintiff Owens should be compelled to arbitrate his claims against Defendants due to an agreement between CIGNA and Defendant Mary Black. Defendants' Motion to Alter or Amend

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has not convinced the Court that it should change its prior conclusion. In asking the Court to reconsider its decision on the arbitration issue, Defendants have argued the issues of equitable estoppel, whether the elective nature of the arbitration provision in the CIGNA agreement affects the analysis, and whether a disclaimer of third parties and class arbitration in that agreement renders the arbitration provision unenforceable against Plaintiff Owens.

The Court finds it significant that Plaintiff Owens is not a party to the CIGNA agreement. Under the facts and circumstances of this case, the Court concludes that the decisions of the Court of Appeals in *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), and of the South Carolina Supreme Court in *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), are applicable and controlling. Indeed, the facts of the present case are even more compelling than those in *Weaver* or in *Wilson*. Neither direct benefits estoppel nor equitable estoppel apply to this case, and Defendants' remaining arguments for compelling arbitration are rejected.

2. Plaintiffs' Amended Complaint sufficiently pled facts against Defendants.

The Court also rejects Defendants' argument that Plaintiffs have improperly pled their claims against them because some of those claims were pled collectively. The Court agrees with Plaintiffs' arguments that Defendants misconstrue either the effect of Plaintiffs' allegations or applicable South Carolina pleading standards, and concludes that, under the standards of Rule 8 and Rule 12(b)(6), SCRCP, the allegations of Plaintiffs' Amended Complaint are sufficient.

Although Defendants suggest Plaintiffs' pleadings improperly attempt to attach liability to each defendant, Plaintiffs have not alleged any defendant is vicariously liable for the actions of another, nor have Plaintiffs attempted to pierce the corporate veil of any defendant. Plaintiffs'

Amended Complaint instead alleges that these Defendants acted in concert and that each Defendant is liable for its own conduct. For these reasons, the Court concludes that Defendants' authorities are inapposite.

The Court also finds Defendants' alternative suggestion that collective pleading is prohibited or improper in South Carolina is incorrect. The Court is unaware of any case law, statute, or rule in the South Carolina Rules of Civil Procedure that prohibits "collective pleading" or somehow requires Plaintiffs to repeat allegations against individual defendants when those defendants allegedly acted in concert. Again, the Court finds that the cases Defendants cite on this point are not dispositive, and in fact, *Pro Slab, Inc. v. Argos USA Corp.*, C.A. No. 2:17-3185-BHH, 2018 WL 6985008 (D.S.C. June 28, 2018), supports Plaintiffs' position.

In *Pro Slab*, the district court cited *Connor v. Honeywell Int'l Inc.*, C.A. No. 2:12-1421-CWH, 2012 WL 6135193 (D.S.C. Nov. 13, 2012), which found collective Pleading to be proper:

> In *Connor*, affiliated corporate defendants sought dismissal of the plaintiff's claims . . . by claiming that it was not clear which defendant or defendants were alleged to have committed which wrong. The court stated that it was "initially inclined to allow the plaintiff an opportunity to amend the complaint to clarify which conduct was attributable to which defendant." *Id.* at *1. However, after the plaintiff represented that it was his view that the defendants were acting in concert . . . , the court found the complaint adequate. . . . Thus, the factual allegations in the plaintiffs' complaint in *Connor* supported the assertion that the defendants acted together. In contrast, here, Plaintiffs' amended complaint merely alleges the legal conclusion that the affiliated corporate entities were agents and/or alter egos and operated as one company, but the amended complaint contains *no factual allegations* to support that legal conclusion.

Pro Slab, Inc., 2018 WL 6985008, at *5. Additionally, the Court has considered Defendants' other cited authority and concludes it offers no support for their position. *See Scurmont LLC v. Firehouse Rest. Grp., Inc.*, C.A. No. 4:09-CV-00618-RBH, 2010 WL 11433199, at *15 (D.S.C. May 19, 2010) (finding a lack of specific personal jurisdiction over an individual defendant because the plaintiff failed to plead facts demonstrating the defendant committed wrongful acts within South

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Carolina). Accordingly, the Court did not err by finding Plaintiffs sufficiently pled the allegations in their Amended Complaint.

3. Other provisions of the Court's September 4 Order do not require alteration.

Defendants' remaining arguments regarding the statute of limitations, the voluntary payment doctrine, unjust enrichment, and the Med-Cost Agreement's alleged disclaimer are also rejected. The Court has fully considered those arguments and found Plaintiffs' responses to be persuasive and appropriate.

CONCLUSION

For all the foregoing reasons, Defendants have not convinced the Court that it should alter or amend its order denying Defendants' Motions to Dismiss or Compel Arbitration. Defendants' Motion to Alter or Amend is accordingly **DENIED**.

IT IS SO ORDERED.

Judge's electronic signature page follows.

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Spartanburg Common Pleas

Case Caption:	Jo Ann Blackwell , plaintiff, et al VS Mary Black Health System, Llc , defendant, et al
Case Number:	2017CP4200219
Type:	Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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