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S.C. SUPREME COURT

EXHIBIT 1

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

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

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ROSEN HAGOOD, LLC

/s/ Daniel F. Blanchard, III

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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
November 11, 2021.

DEMAND FOR TRIAL BY JURY

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

EXHIBIT A

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

EXHIBIT 2

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

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

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

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

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

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

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

AND IT IS SO ORDERED!

Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2022.

_____, South Carolina.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT 3

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

This matter came before the Court on March 29, 2022 for a hearing conducted via WebEx involving a Motion to Stay and/or Motion to Dismiss pursuant to S.C. R. CIV. PRO. 12(b)(6) filed on January 20, 2022 by Defendants OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Massey”).

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff Dr. Scott F. Duncan, M.D.; Charles E. Ipock, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D.; and William R. Thomas, Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; HCA Physician Services, Inc.; and HCA Healthcare, Inc.

On November 11, 2021, Plaintiff filed the Summons and Complaint in this action against the

above-named Defendants. On January 20, 2022, Defendants OrthoSC and Massey filed the instant motion arguing that the Court should stay the Plaintiff's causes of action asserted against them until such time as the Plaintiff's claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. have been arbitrated pursuant to an arbitration provision contained in a Physician Employment Agreement dated May 2, 2017. Alternatively, in the event Plaintiff's claims are not stayed, Defendants OrthoSC's and Massey's motion further requests that Plaintiff's claims against them for intentional interference with contract, intentional interference with prospective economic advantage, violation of the South Carolina Unfair Trade Practices Act, S.C. CODE ANN. § 39-5-10 *et seq.*, and civil conspiracy should be dismissed pursuant to Rule 12(b)(6) for failure to state a cause of action.

By Consent Order filed on April 1, 2022, Plaintiff agreed to submit his claims against Defendants Grand Strand Surgical Specialists, LLC; Grand Strand Regional Medical Center, LLC; and HCA Physician Services, Inc. to arbitration pursuant to the arbitration rules and procedures as called for in the Physician Employment Agreement. Defendants OrthoSC and Massey do not assert they are parties to or "privy to" the Physician Employment Agreement or to the arbitration provision contained therein.¹ Defendants OrthoSC and Massey further assert that an award in the arbitration between Plaintiff and the other Defendants in this action "will not be binding as to" them.

Defendants OrthoSC and Massey nevertheless ask the Court to stay Plaintiff's nonarbitrable

¹ Because the Physician Employment Agreement contains a confidentiality provision, Plaintiff's counsel previously submitted a copy of that document to the Court in a sealed envelope for *in camera* review. Counsel for Defendants OrthoSC and Massey advised at the hearing that he has not yet had an opportunity to see or review the document. Counsel for the parties further advised the Court that they would cooperate to try to agree upon a proposed Consent Confidentiality Order that would allow for the document to be produced to the parties' counsel subject to restrictions governing

claims against them until such time as an arbitration award is rendered involving Plaintiff's separate claims against the other Defendants in this case. Defendants OrthoSC and Massey argue that staying the Plaintiff's claims until the arbitration against the other Defendants is held "will provide clarity to the issues, avoid the risk of simultaneous conflicting results, conserve judicial economies, and in the interim, the clarity may be means to a resolution." See Defs' Memo. in Support of Motion p.8.

After carefully considering the pleadings, documents of record, motions, memoranda, and arguments of counsel, the Court denies Defendants OrthoSC's and Massey's motion to the extent it seeks or requests a stay of the Plaintiff's claims against them pending the outcome of the arbitration against the other Defendants. Defendant OrthoSC's and Massey's request for a stay of Plaintiff's claims against them is denied. Plaintiff's claims against Defendants OrthoSC and Massey will proceed in this Court in their normal course.

This Order does not rule on or dispose of that portion(s) of Defendants OrthoSC's and Massey's motion seeking or requesting the dismissal of Plaintiff's claims against them based on the alleged failure to state a cause of action under S.C. R. CIV. PRO. 12(b)(6). That portion(s) of Defendants OrthoSC's and Massey's motion will be rescheduled for another hearing in this Court on a date and time to be noticed in the future and will be taken up by the Court at that time.

In Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983), the United States Supreme Court held that when an arbitration agreement exists between some, but not all parties to a case, litigation between arbitrating parties must be stayed, but proceedings against parties not subject to the agreement may continue. Id. at 20. Where some claims are arbitrable and others are not, "courts generally refuse to stay proceedings of nonarbitrable claims when it is feasible to

its dissemination.

proceed with the litigation.” Saldanha v. Pediatrix Med. Grp. of S.C., P.A., No. CA 6:07-4001-HMH-WMC, 2008 WL 4542872, at *5-6 (D.S.C. Oct. 3, 2008) (citing Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985)). There is a “heavy presumption” that “the arbitration and the lawsuit will each proceed in its normal course.” Id. Courts “note a preference for proceeding with the non-arbitrable claims when feasible.” United Commc'ns Hub, Inc. v. Qwest Commc'ns, Inc., 46 F. App'x 412, 415 (9th Cir. 2002).

The trial court’s discretion to stay entire cases, including nonarbitrable claims, “should not be exercised lightly.” Spartech CMD, LLC v. Int’l Auto. Components Grp. N. Am., Inc., No. 08-13234, 2009 WL 440905, at *12 (E.D. Mich. Feb. 23, 2009). “Crucial to this determination [of whether to stay the nonarbitrable claims while the arbitrable claims are arbitrated] is whether arbitrable claims predominate or whether the outcome of the nonarbitrable claims will depend upon the arbitrator’s decision.” Id. (citing Genesco, Inc. v. T. Kakiuchi & Co., Ltd., 815 F.2d 840 (2nd Cir. 1987) and Klay v. All Defendants, 389 F.3d 1191 (11th Cir. 2004)); see also Simitar Ent., Inc. v. Silva Ent., Inc., 44 F. Supp. 2d 986, 997 (D. Minn. 1999) (“Expanding the stay, so as to encompass all of the nonarbitrable claims in the case, is appropriate where the arbitrable claims predominate, or where the outcome of the nonarbitrable claims will depend upon the arbitrator’s decision.”).

In the present case, Defendants OrthoSC and Massey have not shown that Plaintiff’s arbitrable claims against the other Defendants predominate over Plaintiff’s claims against Defendants OrthoSC and Massey. Indeed, Plaintiff maintains the opposite—that his claims against Defendants OrthoSC and Massey predominate over his claims against the other Defendants. Moreover, Defendants OrthoSC and Massey have not shown that the outcome of Plaintiff’s nonarbitrable claims Defendants OrthoSC and Massey will depend upon the arbitrator’s decision

involving Plaintiff's claims against the other Defendants or that the arbitrators' resolution of Plaintiff's claims against the other Defendants will have any effect on the outcome of Plaintiff's claims against Defendants OrthoSC and Massey in this Court. Defendants OrthoSC and Massey have not shown that the outcome of the arbitration will have a preclusive effect involving Plaintiff's claims against them.

In view of the forgoing, the Court finds it feasible to proceed with Plaintiff's claims against Defendants OrthoSC and Massey in this Court and that it would prejudice the Plaintiff to have to wait until his arbitration with the other Defendants is concluded to litigate his claims against Defendants OrthoSC and Massey. This finding is supported by decisions from other jurisdictions confronting similar circumstances. See Seth v. Rajagopalan, No. 12-CIV-61040, 2013 WL 11927712, at *11 (S.D. Fla. Jan. 25, 2013) ("[T]he Court finds it feasible to proceed with Seth's nonarbitrable claims. The Court is not convinced that arbitration proceedings concerning the cross-claims, arising out of the SSA, would lead to inconsistent or duplicative proceedings regarding Seth's claims, arising out of the Note. The Court thus ... allow[s] Seth's claims to proceed while simultaneously compelling arbitration of the cross-claims."); Neely v. Bechtel Corp., No. 1:07-CV-0907-WKWWO, 2008 WL 2120085, at *5 (M.D. Ala. May 20, 2008) (After concluding that plaintiff's arbitrable claims did not predominate and plaintiff's nonarbitrable claims did not depend upon the outcome of the arbitrable claim, court held that "the interest of resolving the dispute in a timely manner outweighs any concern about parallel proceedings and the motion to stay proceedings is denied."); Klay, 389 F.3d at 1204 (refusing to stay nonarbitrable claims despite compelling arbitration of arbitrable claims when doing so would not result in duplicative proceedings and a decision in either proceeding would not have preclusive effect in the other); Simitar Ent., 44 F. Supp.

2d at 998.

Accordingly,

IT IS ORDERED that Defendants OrthoSC's and Massey's Motion to Stay and/or Motion to Dismiss pursuant to SCRCP 12(b)(6) filed on January 20, 2022 is hereby denied to the extent it seeks or requests a stay of the Plaintiff's claims against those Defendants pending the arbitration of Plaintiff's claims against the other Defendants in this case. Defendant OrthoSC's and Massey's request for a stay of Plaintiff's claims against them is denied. Plaintiff's claims against Defendants OrthoSC and Massey will proceed in this Court in their normal course; and

IT IS FURTHER ORDERED that this Order does not rule on or dispose of that portion(s) of Defendants OrthoSC's and Massey's motion seeking the dismissal of Plaintiff's claims against them based on the alleged failure to state a cause of action under S.C. R. CIV. PRO. 12(b)(6). The portion(s) of Defendants OrthoSC's and Massey's motion seeking the dismissal of Plaintiff's claims based on the alleged failure to state a cause of action under Rule 12(b)(6) will be rescheduled for another hearing in this Court on a date and time to be noticed in the future and will be taken up by the Court at that time;

AND IT IS SO ORDERED!

J. Cordell Maddox, Jr.
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2022.

_____, South Carolina.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT 4

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

This matter came before the Court on February 8, 2023, for a hearing conducted via WebEx involving Defendant HCA Healthcare, Inc.'s ("HCA") Motion to Dismiss Plaintiff Scott F. Duncan, M.D.'s ("Plaintiff") Amended Complaint pursuant to SCRPC 12(b)(2).

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff; Katon E. Dawson, Jr., Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendant HCA; and Jonathan D. Klett, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC, LLC ("OrthoSC") and Dr. Gene M. Massey, M.D. ("Dr. Massey").

HCA's motion asserts lack of personal jurisdiction over it in this state. For the reasons discussed herein, the Court finds that personal jurisdiction exists over HCA in South Carolina. Accordingly, after careful consideration of the motion, pleadings, affidavits, depositions, exhibits, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that HCA's Motion to Dismiss should be DENIED.

LEGAL STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). When a court's personal jurisdiction is challenged, the burden is on the plaintiff to establish that grounds for personal jurisdiction exist. Brown v. Inv. Mgmt. & Research, Inc., 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996). However, “at the pre-trial stage only a *prima facie* showing is required.” Id.; Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 611 S.E.2d 505, 508 (2005). “[W]hen the court addresses the issue of jurisdiction on the basis of pleadings, motion papers, and supporting legal memoranda without an evidentiary hearing, the plaintiff need only establish a *prima facie* case of personal jurisdiction.” Rowe v. AT & T, Inc., No. 6:13-CV-01206-GRA, 2014 WL 172510, at *4 (D.S.C. Jan. 15, 2014).¹

In Graham L. Firm, P.A. v. Makawi, 396 S.C. 290, 721 S.E.2d 430 (2012), the court observed that “a plaintiff is not required to assert he will be ‘meritorious’ on personal jurisdiction; rather, he must demonstrate enough facts to support a *prima facie* showing [of jurisdiction].” Id. at

¹ HCA argues that since Plaintiff was allowed to conduct limited jurisdictional discovery, the court should apply a more stringent “preponderance of evidence standard.” Courts have rejected this argument. “[T]he preponderance standard necessitates a full-blown evidentiary hearing at which the court will adjudicate the jurisdictional issue definitively before the case reaches trial.” Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 146 (1st Cir. 1995). Even when there has been jurisdictional discovery, but no evidentiary hearing has been held, the plaintiff need only make a *prima facie* showing. See Walk Haydel & Assocs., Inc. v. Coastal Power Prod. Co., 517 F.3d 235, 241 (5th Cir. 2008); Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977); Chloe v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163 (2nd Cir. 2010); In re Lyondell Chem. Co., 543 B.R. 127, 137 n.25 (Bankr. S.D.N.Y. 2016). This is because “even if the court receives discovery materials, unless there is a full and fair hearing, it should not act as a fact finder and must construe all disputed facts in the plaintiff's favor and consider them along with the undisputed facts.” Walk Haydel, 517 F.3d at 241. As an evidentiary hearing was not held in this case, it would be improper for the court to resolve factual disputes or to apply a preponderance of the evidence standard. To hold otherwise would create the anomalous result where the court would have to resolve factual disputes, which necessarily involves credibility determinations, based solely on a

299 n.3, 721 S.E.2d at 435 n.3 (citations omitted). ““Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.”” Brown, 323 S.C. at 399, 475 S.E.2d at 754. It is unnecessary for Plaintiff to establish jurisdictional facts in an affidavit. “The plaintiff may allege the necessary facts in the complaint or present them by way of affidavit.” Graham, 396 S.C. at 299, 721 S.E.2d at 435.

In the present case, Plaintiff did not rely merely upon the allegations in his pleading. Rather, he also conducted jurisdictional discovery from HCA, including interrogatories, requests for production of documents, and the deposition of HCA’s corporate representative (Michael Bray). In Plaintiff’s opposition to HCA’s motion, he submitted Mr. Bray’s deposition transcript, Plaintiff’s own affidavit, and numerous documentary exhibits.² Applying the *prima facie* case standard to HCA’s motion, the Court finds the factual material provided by Plaintiff warrants the exercise of personal jurisdiction over HCA in South Carolina.

FACTUAL BACKGROUND

Plaintiff is a citizen and resident of South Carolina. He lived in Myrtle Beach, South Carolina, when this action was commenced. See Amend. Compl. ¶1. He has since moved to Columbia, South Carolina, during the case. See Duncan Aff. ¶1. Plaintiff is a medical doctor licensed

paper record.

² HCA objected to Plaintiff’s affidavit because it was filed on February 7, 2023, the day before the motion hearing. HCA relies upon the fact that the Clerk of Court’s hearing notice instructed the parties that “[a]ny memos/briefs are to be e-mailed/mailed to the Judge of the week 10 days prior to the hearing.” However, Plaintiff explained that he submitted his affidavit in response to HCA’s arguments made in its reply memorandum filed on February 3, 2023, which was only five days before the hearing. The court does not consider the affidavit to be untimely under the circumstances. Even if so, the court exercises its discretion to allow the affidavit. Smith v. Hastie, 367 S.C. 410, 418 n.10, 626 S.E.2d 13, 17 n.10 (Ct. App. 2005); Black v. Lexington School Dist. No. 2, 327 S.C. 55, 488 S.E. 2d 327 (1997). HCA has not shown any prejudice by allowing the affidavit.

in South Carolina and specializes in orthopedic surgery. See Amend. Compl. ¶1.

Plaintiff alleges in this case that while he was living and working in Boston, Massachusetts, HCA's representatives and agents recruited and enticed him to leave his job in Boston and move to Myrtle Beach, to serve as program director of a new GME orthopedic surgery residency program to be started at the Grand Strand Medical Center ("GSMC"). See Amend. Compl. ¶38-39; Duncan Aff. ¶3-4. Plaintiff alleges that HCA's representatives and agents made promises, assurances, and representations to him that proved to be false and untrue. Id. Plaintiff has asserted causes of action against HCA based on these unfulfilled promises and representations.

HCA is a Delaware corporation with its headquarters in Nashville, Tennessee. See Amend. Compl. ¶14. HCA has a corporate website at www.hcahealthcare.com. See Bray Depo. pp. 59-60. On this website, HCA publicly touts itself as follows:

HCA Healthcare is one of the nation's leading providers of healthcare services with 182 hospitals and approximately 2,300+ sites of care, including surgery centers, freestanding ERs, urgent care centers, home health, and physician clinics located in 20 states and the United Kingdom.

See Exhibit 13. In HCA's Form 10-K filed with the SEC, HCA similarly states:

HCA Healthcare, Inc. is one of the leading health care services companies in the United States. At December 31, 2021, we operated 182 hospitals, comprised of 175 general, acute care hospitals; five psychiatric hospitals; and two rehabilitation hospitals. In addition, we operated 125 freestanding surgery centers and 21 freestanding endoscopy centers. Our facilities are located in 20 states and England.

See Exhibit 14 p.3. The same page of this public filing defines "we" as referring to "HCA Healthcare, Inc. and its affiliates." Id.

HCA further represents in the Form 10-K that it conducts its "operations through our subsidiaries." See Exhibit 14 p.41. The Form 10-K also asserts that HCA has "directly or indirectly

owned and operated” three hospitals in South Carolina with 983 patient beds. See Exhibit 14 p.61. In HCA’s annual report to its shareholders, HCA refers to “our 181 hospitals and more than 2,200 ambulatory sites of care.” See Exhibit 15 p.1; Bray Depo. pp.80-82. This again refers to “HCA Healthcare, Inc. and its affiliates.” Id. Mr. Bray, HCA’s corporate representative, testified that HCA touts itself as being “a nationwide healthcare company” operating through its affiliates and that its locations through its affiliates are “part of a common enterprise.” See Bray Depo pp. 172-73.

HCA is the parent company of numerous subsidiaries that own and operate hospitals and medical facilities in South Carolina. Through its wholly owned subsidiaries, HCA owns all of these subsidiaries, which include Grand Strand Surgical Specialists, LLC (“GSSS”), Grand Strand Regional Medical Center, LLC (“GSRMC”), HCA Physician Services, Inc. (“HCA-PS”), Trident Medical Center, LLC, and Walterboro Community Hospital, Inc. See Exhibit 4 (HCA-Duncan_000070-000074); Bray Depo. pp. 36-38, 178-79; Amend. Compl. ¶¶11, 14, 17, 24. Through its wholly owned subsidiaries, HCA also owns the general partner of Carolina Regional Surgery Center, Ltd., which operates the Grande Dunes Surgery Center in Myrtle Beach. See Exhibit 4 (HCA-Duncan_000069); Bray Depo. pp.63, 95-98. While Mr. Bray could not state the total number of HCA’s subsidiaries or affiliates who operate in South Carolina, he initially said they number “less than 100” and then later changed his estimate to “something below 50.” See Bray Depo. p.32.

It is known that HCA has multiple “locations” in South Carolina, including the GSMC in Myrtle Beach. See Exhibits 12 & 13. HCA’s other “locations” in South Carolina include Trident Medical Center in North Charleston, Colleton Medical Center in Walterboro, Summerville Medical Center in Summerville, Moncks Corner Medical Center in Moncks Corner, HCA South Atlantic on Daniel Island, and Grande Dunes Surgery Center in Myrtle Beach. See Amend. Compl. ¶22; Exhibit

20; Bray Depo. pp.24-27, 32-33, 60-63.

HCA allows these hospitals and facilities to operate under the HCA Healthcare corporate logo. See Bray Depo. p. 67. In HCA's Annual Impact Statement published on its website, HCA describes these locations as being part of "[o]ur integrated network of care." See Exhibit 16 p.5; Bray Depo. pp. 85-86. GSRMC's webpage refers to GSMC as "being a part of HCA Healthcare," uses HCA's corporate logo, and refers to HCA's corporate address in Nashville, Tennessee. See Exhibit 19 p.3; Bray Depo. pp. 90-93. By clicking on GSRMC's website, it links to HCA's corporate website at www.hcahealthcare.com. In an email letter that Samuel Hazen, HCA's Chief Executive Officer (CEO), sent to Plaintiff and others on January 15, 2021, he describes HCA as having "unique enterprise capabilities" and that it is "a national system." See Exhibit 22; Bray Depo. pp. 170-71.

HCA has numerous common or overlapping directors and officers with each of these subsidiaries operating in South Carolina. See Bray Depo. pp. 69-72, 117-18 & Exhibit 2 pp.8-9. For example, Mr. Hazen (HCA's CEO) and William Rutherford (HCA's Executive Vice President and Chief Financial Officer (CFO)) are also officers and directors of HCA's subsidiaries in South Carolina, including GSRMC and GSSS. See Bray Depo. pp. 69. HCA's interrogatory response identifies 22 different individuals who are officers or directors of HCA and who are also officers or directors of HCA's subsidiaries in South Carolina. See Exhibit 2 pp.8-9; Bray Depo. p. 173. Several of HCA's officers and directors have made trips to South Carolina for meetings at HCA's hospitals and facilities in this state. See Exhibit 4 (HCA-Duncan_000075-000082).

HCA also refers to HCA South Atlantic as being its "division." See Bray Depo. pp. 100-05. HCA South Atlantic has operations in South Carolina, Georgia, and Florida. Id. & Exhibit 23; Duncan Aff. ¶6. It has its headquarters and employees on Daniel Island, South Carolina, and operates

13 hospitals across South Carolina, Georgia, and Florida. See Bray Depo. pp.104-07 & Exhibit 23; Duncan Aff. ¶6. Those hospitals “are part of HCA Healthcare, Inc.’s network of hospitals.” See Bray Depo. p. 105-06. HCA South Atlantic is referred to as “being a part of HCA Healthcare.” See Exhibit 23; Bray Depo. p.106.

HCA also operates the HCA Physicians Services Group, which is a group of affiliates that own and operate physician practices and graduate medical education (GME) programs throughout the country, including at the GSMC and other hospitals in South Carolina. See Exhibit 26; Bray Depo. pp.108-112. HCA Physician Services Group is also referred to as “being a part of HCA Healthcare.” See Exhibit 26; Bray Depo. p.112. HCA’s website boasts that HCA is a “proven leader in graduate medical education” and it has GME programs in 16 states, including South Carolina. See Exhibit 17; Duncan Aff. ¶5. HCA’s “GME Fast Facts” that it gave to Plaintiff during his employment identifies various “talking points” about the strengths of its GME programs, including that it locations in “56 hospitals in 15 states.” See Exhibit 37.

HCA prepares consolidated tax returns with its subsidiaries who operate in South Carolina. See Bray Depo. pp. 17, 76-79. These tax returns include the income, profit, and losses of all of HCA’s locations in South Carolina. Id. p.77. The profits and losses of HCA’s subsidiaries in South Carolina are also reported on HCA’s financial statements. Id. p.79. HCA’s subsidiaries do not report their income, profit, and losses separately from HCA.

HCA, either directly or through its subsidiaries, controls and directs various operations and activities of the GSMC, including its GME programs. See Duncan Aff. ¶9. As an example, the Designated Institutional Official (DIO) position has essentially been eliminated from the local hospitals. Id. HCA now has an assistant or associate DIO report to a regional DIO in Savannah,

Georgia. Id. This person then reports directly to and takes directions from HCA's leadership at its headquarters in Nashville. Id. HCA headquarters is in direct control of the GME programs. Id. HCA also has an annual GME leadership conference where all of HCA's hospitals send their GME program directors and other GME staff to review and to become educated on HCA policy and rule changes, which are to be followed at HCA's hospitals. Id. In Plaintiff's role as DIO of GME for the GSMC, he personally attended the 2019 HCA GME leadership conference held in October 2019 on Amelia Island, Florida. Id. & Exhibit 41.

Dr. Bruce Deighton is HCA's Vice President Academic Affairs/Graduate Medical Education. See Duncan Aff. ¶4. Plaintiff had numerous conversations and meetings with Dr. Deighton in South Carolina regarding the GME orthopedic surgery residency program at the GSMC. Id. Plaintiff was told that Dr. Deighton is in control of all of HCA's GME programs across the country and that no hospital or facility can start or operate a GME program without his approval. Id. Dr. Deighton made several of the promises and assurances to Plaintiff that are discussed in the Amended Complaint and which form the basis for Plaintiff's claims against HCA in this case. Id.

HCA also disseminates an extensive panoply of mandatory policies, procedures, and manuals to its hospitals and facilities, including those in South Carolina, by which HCA directs and controls the operations of these hospitals and facilities. See Exhibits 32 & 38. For example, HCA gave Plaintiff a GME Resident Manual it had created for him to give to recruits for the new GME orthopedic surgery residency program that Plaintiff was to direct at the GSMC. See Exhibit 38. The manual's cover shows that HCA has multiple GME programs in South Carolina. Dr. Deighton represents in this manual that "[a]s a resident or fellow, you are now part of the largest graduate medical education (GME) network in the United States" and that "HCA Healthcare, Inc. (HCA) is

currently home to GME programs in more than 50 hospitals from Florida to California.” See Exhibit 38 p.2. The manual states that “by joining the HCA family, you have opened the door not only to an exceptional GME experience, but all to a fulfilling career across our robust network of top-performing hospitals, surgery centers, practices, urgent care centers, and research centers.” Id. The manual contains policies involving a multitude of subjects including salary and benefits, leave, moonlighting, disciplinary and adverse actions, harassment, and non-compete. Id.

HCA’s policies also mandate a comprehensive ethics and compliance program, including a 46-page HCA Code of Conduct. See Exhibit 8 & 40. “The ethics and compliance policies are provided to facility ethics and compliance officers for notice and distribution within each facility, are posted on the HCA intranet and are posted ... on HCA’s public website.” See Exhibit 40 p.11. HCA’s Code of Conduct states that “[t]o provide additional guidance, we have developed a comprehensive set of compliance policies and procedures which may be accessed on the Ethics and Compliance site of our Intranet, as well as our external web site at www.HCAhealthcare.com” and “[t]hose policies expand upon or supplement many of the principles articulated in this Code of Conduct.” See Exhibit 8 p.5. HCA has published and distributed to its hospitals and facilities literally hundreds of policies on a variety of topics, including the Americans with Disabilities Act, behavioral health, capital deployment – construction & equipment, clinical operations group, environmental, graduate medical education, government relations, human resources, information protection, legal, tax, finance, material management, patient experience, payroll, regulatory compliance, reimbursement, and treasury. See Exhibit 32; see also Exhibits 9, 10 & 11.

It is mandatory that any doctor with privileges at any of HCA’s hospitals, including the GSMC, must abide by HCA’s Code of Conduct. See Exhibit 7 §2.B.1(2) p.14 & Exhibit 8; Bray

Depo. pp. 126-28, 130-31, 153-55. HCA's Code of Conduct further explicitly states: "The standards set forth in the Code apply to *all HCA Healthcare facilities and employees* operating in the United States. *The standards are mandatory and must be followed.*" See Exhibit 8 p.5 (emphasis added). HCA's website confirms that "[t]hough we promote the concept of management autonomy at local facilities in order to meet local needs, *the standards set forth in the Code are mandatory and must be followed.*" See Exhibit 40 p.1.

These mandatory policies also apply to all employees at all of HCA's locations in South Carolina, including the GSMC. See Bray Depo. p. 131; see also Exhibit 8 p.42 ("HCA Healthcare requires all colleagues to acknowledge their review of the Code, confirm they understand it represents mandatory policies of HCA Healthcare and agree to abide by it. New colleagues are required to do so as a condition of employment."); Exhibit 40 p.1 ("The HCA Healthcare Code of Conduct (the "Code") provides guidance to all HCA Healthcare colleagues and helps us carry out our daily activities within appropriate ethical and legal standards. These obligations apply to our relationships with patients, affiliated physicians, third party payers, subcontractors, independent contractors, vendors, consultants and one another."). In fact, Plaintiff's Physician Employment Agreement ("PEA") with GSSS, one of HCA's subsidiaries, specifically requires Plaintiff to adhere to HCA's policies. See Exhibit 5 p.3.

HCA's ethics and compliance program includes an ethics and compliance steering committee "comprised of senior management at the corporate level," including HCA's CEO (Mr. Hazen) and HCA's Executive Vice President/CFO (Mr. Rutherford), that "is responsible for setting the direction of the ethics and compliance program." See Exhibit 40 p.13. HCA also has an ethics and compliance policy committee "comprised of management at the corporate level and three hospital chief executive

officers.” Id. p.14. HCA further has a Chief Ethics and Compliance Officer. Id. p.15; Bray Depo. p. 132. HCA also has “company-affiliated divisions and facilities” with ethics and compliance officers (ECOs) “to oversee and implement the HCA Healthcare ethics and compliance program.” See Exhibit 40 p.15.

HCA requires that each hospital or facility must disseminate HCA’s Code of Conduct to its employees. See Bray Depo. p. 137. HCA also mandates training by employees at each of its facilities involving the Code of Conduct, including an initial one-hour training session and then additional training each year of their employment. Id. pp.137-38; Exhibit 40 p3 (“Each HCA Healthcare colleague is required to receive one hour of orientation training on our Code of Conduct, and acknowledge review of the Code of Conduct within 30 days of employment.... Every year we conduct one hour of annual Code of Conduct ‘refresher’ training for all HCA Healthcare employees.”). Each employee’s completion of this mandatory training must be documented in the employee’s personnel file. See Bray Depo. p.138; see also Exhibit 8 p.42 (“Each HCA Healthcare colleague is also required to participate in annual Code of Conduct training, and records of such training must be retained by each facility.”).

HCA takes extensive actions to enforce its policies and procedures at each of its hospitals and facilities. If an employee fails to comply with HCA’s Code of Conduct, they can be subjected to discipline or termination. See Bray Depo. p.137; Exhibit 8 p.42 (“All violators of the Code will be subject to disciplinary action.... Adherence to and support of HCA Healthcare’s Code of Conduct and participation in related activities and training is considered in decisions regarding hiring, promotion, and compensation for all candidates and colleagues.”).

HCA has also “developed compliance monitoring and auditing programs designed to assess

the effectiveness of the ethics and compliance program.” See Exhibit 40 p.5. In addition to audits, the “program assessment team of [HCA’s] ethics and compliance department conducts on-site Compliance Process Reviews (CPRs).” Id. The CPR comprises “a comprehensive assessment of a facility’s ethics and compliance program through conducting an extensive desktop review followed by an onsite visit.” Id. “The CPR is conducted by reviewers from the HCA Healthcare ethics and compliance department.” Id. p.6. “Before the on-site visit, the reviewer sends the ECO an extensive document request and a compliance process questionnaire (CPO) covering more than 30 compliance topics.” Id. “The on-site portion of the review includes meetings with key personnel involved in the specific compliance areas to provide them with guidance and best practices as well.” Id.

“Upon completion of the visit, the reviewer provides the facility with a comprehensive report of findings outlining the issues identified along with recommendations for appropriate corrective action for each issue.” Id. “The facility has three weeks to complete and submit a corrective action planned to remedy each issue.” Id. pp.6-7. “Once approved, the reviewer follows up with the facility to until all issues are properly resolved.” Id. p.7. The program also includes an ethics telephone line and internet portal through which staff or employees of HCA’s hospitals and facilities can report violations of HCA’s ethics policies to HCA for enforcement, corrective, or remedial actions to be taken. See Exhibit 8 p.22; Bray Depo. pp. 134-35.

In January 2017, operating through its subsidiaries and agents in South Carolina, HCA recruited Plaintiff while he was living and working in Boston and hired him away to serve as program director of a new GME orthopedic surgery residency program to be started at the GSMC. See Amend. Compl. ¶38-39. Plaintiff at that time had been the Chairman of the Orthopedic Surgery Department for Boston University and the Boston Medical Center. Id. HCA’s subsidiaries own,

operate, staff, and/or manage the GSMC. Id. ¶39.

Through its subsidiaries, HCA promised Plaintiff the directorship for the GME program for at least five years, with that term to start in the summer of 2017. See Amend. Compl. ¶40. When HCA's subsidiaries recruited and hired Plaintiff to the directorship position, they agreed they would work together to invite and persuade OrthoSC to provide the doctors who would serve as the faculty for the GME program in return for reasonable compensation. Id. ¶42. Both before and after Plaintiff was hired, HCA's subsidiaries repeatedly promised and assured Plaintiff that if OrthoSC declined or refused to participate in providing the faculty for the GME program, then HCA's subsidiaries would hire their own faculty for the program. Id. ¶43.

On May 1, 2017, in reliance upon these promises and assurances made by HCA's subsidiaries, Plaintiff signed the PEA with GSSS, HCA's subsidiary, and relocated from Boston to Myrtle Beach. See Amend. Compl. ¶45; Exhibit 5. Plaintiff's PEA includes, among other benefits, three main compensation components including base annual salary, call coverage pay, and clinical services pay. It also requires GSSS to provide Plaintiff with professional personnel support and staff to assist him in performing his clinical duties. The PEA acknowledges that GSSS has contracted with its "Affiliates" involving the operation of the GSMC. Section 3.J of the PEA defines "Affiliates" as follows: "Employer's Affiliates (which term as used in this Agreement shall include any person, corporation, partnership, general partner or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Employer)" See Exhibit 5 § 3.J. GSSS, GSRMC, and HCA-PA are all subsidiaries of and are under the common control of HCA. See Amend. Compl. ¶¶11, 14, 17, 24.

Plaintiff started work for GSSS in July 2017 and began the work necessary to start the GME

program. See Amend. Compl. ¶47. He also began seeing patients as a treating physician at the GSMC clinic in August 2017. Id. Plaintiff was granted hospital privileges and began taking call and performing surgeries at the GSMC in October 2017. Id.

After Plaintiff was working to get the GME program up and running, Plaintiff and Mark Sims (GSMC's CEO) had meetings and discussions with several of OrthoSC's doctor members, to explain to them the plan and goal of the GME program and to invite and persuade OrthoSC to provide the doctors needed to serve as the program's faculty. See Amend. Compl. ¶48. Plaintiff alleges that OrthoSC's member doctors, including Dr. Massey, wield and exert tremendous economic leverage, influence, and power over the hospital because of the substantial fees, revenue, income, profits, and other financial benefits they generate for the hospital. Id. ¶61.

As a result of these meetings and discussions with Plaintiff and Mr. Sims, Dr. Massey and OrthoSC and its doctor members were made aware of Plaintiff's contract with GSSS, as well as the GME program's plan and purpose that Plaintiff was to start and direct at the GSMC. Id. ¶49. In 2018, despite efforts to get OrthoSC on board, OrthoSC indicated it may not be receptive to letting its member doctors serve as faculty for the GME program. Id. ¶50. As a result, Plaintiff began conducting interviews and recruiting faculty for the GME program from candidates who were outside of OrthoSC's group or network of member doctors. Id. ¶51.

On November 7, 2018, Mr. Sims sent an e-mail to Dr. Massey expressing Plaintiff's and the hospital's desire for OrthoSC to allow for doctors in its group to serve as faculty for the GME program. See Amend. Compl. ¶52. Mr. Sims' e-mail stated in part as follows: "As I mentioned in our individual discussions we would be very excited for you to serve as faculty for our program. We are however under a tight timeframe: 1) We are actively negotiating with physicians (spine/sports

medicine); 2) our application for the 2019 academic year is due in December. I respectfully ask that you provide your response by 11/14/18.” Id. On November 12, 2018, Dr. Massey responded and stated in part: “As you know, this is a decision that affects our entire group. We need time to discuss this issue with the partners and Executive Board of OrthoSC. It is unlikely that we’ll have a definitive answer for you by 11/14. I would propose a deadline of 11/21, if that is agreeable to you.” See Amend. Compl. ¶53. It was made clear to Dr. Massey and OrthoSC that Plaintiff was on the verge of hiring faculty members for the GME program. Id. ¶54.

Plaintiff alleges that Dr. Massey thereafter sent a threatening, intimidating, and coercive e-mail to Mr. Hugh Tappan (President of HCA’s Southeast Atlantic Division and in charge of the GSMC) stating that OrthoSC’s group of doctors would immediately pull all of their surgical cases from the GSMC and would take those cases to different hospitals that compete with GSMC if it proceeded with the continuation of the GME program and the recruitment of more orthopedic surgeons (faculty for the GME program) to the geographic and market areas serviced by OrthoSC’s member doctors. Id. ¶55. Plaintiff alleges that Dr. Massey advised Mr. Tappan that OrthoSC would economically boycott the GSMC and take its members’ business to the hospital’s competitors if they went forward with the GME program. See Amend. Compl. ¶55.

Plaintiff also alleges that Dr. Massey had a subsequent telephone conversation with Mr. Tappan during which Dr. Massey reiterated the substance of his earlier e-mail and again threatened that OrthoSC’s group, affiliation, and network of doctors would immediately pull all of their surgical cases from the GSMC and would take them to different hospitals that compete with HCA if they proceeded to recruit any more orthopedic surgeons to the geographic and market areas serviced by OrthoSC’s member doctors or if they proceeded with the continuation of the GME program. Id. ¶56.

Plaintiff alleges that the threats and intimidation by Dr. Massey and OrthoSC were successful. Mr. Tappan informed Dr. John Lucas (then-Vice President of GME for HCA's Southeast Atlantic Division) that the orthopedic surgery residency GME program was being canceled due to the threats from OrthoSC and Massey and that all orthopedic surgery faculty recruitment must immediately stop. See Amend. Compl. ¶¶60, 62. Plaintiff alleges that because of and as a direct result of Dr. Massey's e-mail to and his telephone conversation with Mr. Tappan, the GSMC immediately canceled the GME program despite its prior agreement to hire the necessary faculty if OrthoSC declined to participate in providing the faculty. Id. ¶63.

Plaintiff alleges that in April of 2021, due to Dr. Massey's and OrthoSC's threats, GSSS terminated his employment without cause. See Amend. Compl. ¶66. The GSMC has since revoked Plaintiff's hospital privileges without explanation. Id. Plaintiff alleges that GSSS breached his contract by, among other things, failing to pay him all of the compensation that was due him, including all of the base annual salary and clinical services pay that was owed. Id. ¶67. Plaintiff also alleges GSSS breached his contract by failing to provide him with the professional personnel support and practice support agreed upon and required by the contract, which impaired his ability to see as many patients as possible, thus negatively impacting his WRVU and compensation. Id.

Plaintiff filed his Amended Complaint on August 10, 2022. With respect to HCA, it alleges causes of action for (1) Negligent Misrepresentation, (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing, (3) Promissory Estoppel, and (4) Violation of S.C. Payment of Wages Act, S.C. CODE ANN. § 41-10-10 *et al.* Plaintiff asserts that personal jurisdiction is proper over HCA pursuant to the South Carolina Long Arm Statute, S.C. CODE ANN. §§ 36-2-802 and 36-2-803. See Amend. Compl. ¶36. The Amended Complaint alleges that HCA, either directly and/or by the

conduct and actions of its agents, servants, and/or employees, was doing business in South Carolina, transacting business in this state, contracting to supply services or things in this state, committing a tortious act in whole or in part in this state, and/or entering into contracts to be performed in whole or part in this state. See Amend. Compl. ¶34. The Amended Complaint also alleges that Plaintiff's causes of action arise out of, and result from, these acts. Id. ¶35.

LAW AND ANALYSIS

South Carolina's courts can exercise personal jurisdiction over a non-resident defendant through the traditional doctrines of "specific" and "general" jurisdiction. Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 655 S.E.2d 476, 478 (2007). "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum." Id. at 16, 655 S.E.2d at 478. "A court may assert general jurisdiction if the defendant has an 'enduring relationship' with the forum state." Cockrell, 363 S.C. at 495, 611 S.E.2d at 510. An "enduring relationship" exists when the defendant's contacts are "continuous and systematic" or "so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities." Cribb v. Spatholt, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009).

"Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum." Coggeshall, 376 S.C. at 16, 655 S.E.2d at 478. South Carolina's courts traditionally conducted a two-step analysis to determine whether specific jurisdiction is proper by (1) determining if the state long-arm statute applies and (2) determining whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. Power Prods. & Servs. Co. v. Kozma, 379 S.C. 423, 665 S.E.2d 660, 664 (Ct. App.

2008). South Carolina's long-arm statute provides in relevant part as follows:

A court may exercise personal jurisdiction over a person ***who acts directly or by an agent*** as to a cause of action arising from the person's:

- (1) ***transacting any business in this State;***
- (2) ***contracting to supply services or things in the State;***
- (3) ***commission of a tortious act in whole or in part in this State;***
- (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
- (5) having an interest in, using, or possessing real property in this State;
- (6) contracting to insure any person, property, or risk located within this State at the time of contracting;
- (7) ***entry into a contract to be performed in whole or in part by either party in this State;*** or
- (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

S.C. CODE ANN. § 36-2-803(A) (emphasis added).

Because South Carolina treats its long-arm statute as “coextensive with the due process clause,” the analysis under the more modern cases compresses into a due process assessment only. Power Prods., 379 S.C. at 431, 665 S.E.2d at 664; see Moosally v. W.W. Norton & Co., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004). The two inquiries are essentially one and the sole question becomes whether the exercise of personal jurisdiction would violate due process. Cockrell, 363 S.C. at 491, 611 S.E.2d at 508; Meyer v. Paschal, 330 S.C. 175, 498 S.E.2d 635 (1998); Hidria, USA, Inc. v. Delo, 415 S.C. 533, 541, 783 S.E.2d 839, 843 (Ct. App. 2016).

South Carolina courts apply a two-pronged analysis when determining whether due process minimum contacts exist between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Power Prods., 379 S.C. at 432,

665 S.E.2d at 665. “The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the ‘power’ to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair.” Id. To support a finding of due process, both prongs must be satisfied. Id.

To satisfy the “power” prong, the court must find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities. Cribb, 676 S.E.2d at 719; S. Plastics Co. v. S. Com. Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). Finally, under the “fairness” prong, the court must consider the following factors: (1) the duration of the defendant’s activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State’s interest in exercising jurisdiction. Power Prods., 665 S.E.2d at 665.

Under the “power” prong, “[a] single act that causes harm in this State may create sufficient minimum contacts to confer jurisdiction where the harm arises out of or relates to that act.” Power Prods., 665 S.E.2d at 665; see also Springmasters, Inc. v. D & M Mfg., 303 S.C. 528, 402 S.E.2d 192, 194 (Ct. App. 1991); Berkeley PG Corp. v. South Bank Investment Grp., Inc., 291 S.C. 315, 353 S.E.2d 305, 308 (Ct. App. 1987); Orangeburg Pecan Co. v. Farmers Investment Co., 869 F. Supp. 351, 357 (D.S.C. 1994). “[T]here is no requirement that these activities be conducted personally by the non-resident defendant physically in the forum.” Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483, 502 (D. Kan. 1978). It has long been held that “[d]ue process may be satisfied and jurisdiction may be constitutionally exercised over a non-resident who has no physical contacts with a forum.” Energy Reserves Group, 460 F. Supp. at 502 (citing Travelers Health Ass’n. v. Virginia, 339 U.S. 643 (1950)); Sumatra Tobacco, 379 S.C. at 90, 666 S.E.2d at 222

(“While it is true Sumatra is not registered to do business in South Carolina, has no office in South Carolina, and no person representing Sumatra has been in South Carolina, physical presence in the State is not required to establish personal jurisdiction.”). “The dispositive issue is whether [the defendant] possesses minimum contacts with South Carolina.” Sumatra Tobacco, 379 S.C. at 90, 666 S.E.2d at 222.

South Carolina follows the majority rule that the actions of an agent may be attributed or imputed to the principal for purposes of personal jurisdiction. S.C. CODE ANN. § 36-2-803(A) (“A court may exercise personal jurisdiction over a person *who acts directly or by an agent* as to a cause of action arising from the person’s” (emphasis added)); see also Carson v. Vance, 326 S.C. 543, 549, 485 S.E.2d 126, 129 (Ct. App. 1997) (holding that Graham had minimum contacts sufficient to allow the court to assert personal jurisdiction over her based on the court’s conclusion that Vance acted as her agent and his activities in the forum state were attributable to her). Under this rule, “even in the absence of direct activity in the forum state, the actions of one party may be imputed to another if it has acted as an ‘agent’ of the nonresident party.” Schreiner v. Patriarch Partners, LLC, No. 2:14-CV-220-RMG, 2014 WL 11034777, at *3 (D.S.C. Nov. 7, 2014); Rowe, 2014 WL 172510 at *6; Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 55 (1st Cir. 2002); ABN AMRO, Inc. v. Capital Intern. Ltd., 595 F.Supp.2d 805, 821 (N.D. Ill. 2008).

In Hammond v. Honda Motor Co., 128 F.R.D. 638 (D.S.C. 1989), in analyzing whether one corporate subsidiary was the agent of another, the court observed that an agency relationship generally “is determined by evaluating the amount of control and supervision exercised by one entity over another.” Id. at 643 (citing cases). “In making its determination the court may look to both direct and indirect controls.” Id.; see Roorda v. Volkswagenwerk, A. G., 481 F. Supp. 868, 870-71

(D.S.C. 1979) (holding that personal jurisdiction existed in South Carolina over foreign corporation given the “the intimate and complete control” which it exercised over its wholly owned subsidiary that did business in this state, so as to make the subsidiary the parent’s “agent” in South Carolina).

In Schreiner, the Court denied a parent corporation’s motion to dismiss based on lack of personal jurisdiction when the complaint alleged that the parent company owned and controlled a subsidiary corporation that had a facility in Moncks Corner, South Carolina. 2014 WL 11034777 at *1. Despite the fact that the parent company offered testimony showing that it “does not own, manage, or control” the subsidiary; it is merely an investment fund manager that manages loans to its “portfolio companies,” one of which is the subsidiary; it is not registered to do business in South Carolina; it does not solicit business, advertise, file taxes, or maintain a location in South Carolina; it has no agents, subsidiaries, or representatives of any nature in South Carolina; and it “played no role” in the subsidiary’s decisions at issue in the lawsuit, the Court still held “that specific jurisdiction over [the parent corporation] is appropriate due to its control over [the subsidiary], and [the subsidiary’s] resultant status as an agent of [the parent].” Id. at *6.

In this case, Plaintiff has made a *prima facie* showing of both specific and general jurisdiction over HCA in South Carolina. The Amended Complaint and other materials submitted by Plaintiff show not only that GSSS and GSRMC are owned by and subsidiaries of HCA, but that HCA “controls the business operations and activities of” the GSMC and dictates its policies,” that “[a]ll actions undertaken by [the GSMC] were approved and ratified by Defendant HCA,” and GSMC “functions as the agent or mere department of Defendant HCA.” See Amend. Compl. ¶14. The Amended Complaint alleges facts showing that HCA exerts a significant degree of control over the activities of its subsidiaries (GSRMC and GSSS) which it is undisputed transact business in South

Carolina. Plaintiff's affidavit discusses how HCA's Vice President Academic Affairs/GME is in control of all of HCA's GME programs across the country (including those in South Carolina) and that no hospital or facility can start or operate a GME program without his approval.

As discussed above, HCA's public filings state that it "directly or indirectly" owns and operates three hospitals in South Carolina. HCA's corporate representative (Mr. Bray) testified that HCA promotes itself as being "a nationwide healthcare company" operating through its affiliates and that its locations through its affiliates are "part of a common enterprise." See Bray Depo pp. 172-73. HCA's CEO described the company and its affiliates as "a national system." See Exhibit 22. HCA publicly refers to HCA South Atlantic as being its "division." HCA South Atlantic has its headquarters and employees on Daniel Island, South Carolina, and operates hospitals in this state, which are promoted as being "part of HCA Healthcare, Inc.'s network of hospitals" and "part of HCA Healthcare." See Exhibit 23; Bray Depo. p.105-06.

HCA allows hospitals and facilities in South Carolina to operate under the HCA Healthcare corporate logo. HCA's website describes these locations as being part of "[o]ur integrated network of care" and as "being a part of HCA Healthcare." GSMC's website refers to HCA's corporate address in Nashville, Tennessee, and links to HCA's corporate website at www.hcahealthcare.com. Numerous of HCA's directors and officers (including its CEO and CFO) are also officers and directors of HCA's subsidiaries in South Carolina. Several of these HCA officers and directors have made trips to South Carolina for meetings at HCA's hospitals and facilities in this state. HCA filed consolidated tax returns with its subsidiaries, which include the income, profit, and losses of all of HCA's locations in South Carolina.

Plaintiff's affidavit discusses how HCA controls and directs various operations and activities

of the GSMC, including its GME programs. HCA has promulgated an extensive panoply of mandatory policies, procedures, and manuals for its hospitals and facilities to follow, including those in South Carolinas. HCA exerts control over the operations of GSSS and GSRMC by requiring those subsidiaries to comply with HCA's mandatory policies. HCA's policies also include a comprehensive ethics and compliance program, including an HCA Code of Conduct. It is mandatory that any doctor with privileges at any of HCA's hospitals, including the GSMC, must abide by HCA's Code of Conduct. These mandatory policies also apply to all employees at all of HCA's locations in South Carolina, including the GSMC.

In addition to the forgoing, the Amended Complaint alleges the following facts to show the amount of control and supervision exercised by HCA over the GSMC:

15. [HCA] has elected, chosen, or appointed the officers, directors, or executives of [the GSMC] and those entities have had common or overlapping directors, officers, or executive personnel. Further upon information and belief, [HCA] has participated in or directed the recruitment, hiring, and firing of executive personnel of [the GSMC]; has reviewed, approved, or ratified the business operations or operational activities of [the GSMC]; handles the record-keeping, billing, credit-reporting, and debt collections for [the GSMC]; purchases or provides insurance policies or insurance coverage for [the GSMC]; and finances the operations of [the GSMC] or makes loans or advances to that subsidiary for purposes of its business operations and activities in South Carolina.

16. [HCA's] human resources division and/or office of general counsel in Nashville, Tennessee, routinely handle certain personnel matters for [the GSMC], including but not limited to the negotiation, drafting, and execution of employment contracts and severance agreements and administration of employee benefits involving employees located in South Carolina. Employees and former employees of [the GSMC] located in South Carolina are directed to use and utilize the online employee portal platform known as HCArewards.com operated or provided by [HCA].

17. [HCA] is involved in, controls, directs, and/or finances the marketing, promotional, or advertising operations or activities of [the GSMC]; prepares, reviews, determines, approves, and/or oversees the budget(s), financial statements, accounting records, audit records, or tax returns of [the GSMC]; and reviews, directs,

manages, or controls the financial accounts, bank accounts, or payroll accounts for [the GSMC].

18. The Grand Strand Medical Center website is operated, controlled, and funded by [HCA] and is linked to [HCA's] website. Patients of [the GSMC] located in South Carolina are directed to use and utilize the online healthcare patient portal platform known as MyHealthONE operated or provided by [HCA].

19. [HCA] dictates, directs, or creates policies, procedures, practices, training materials, and standards for [the GSMC] and directs, requires, or recommends that [the GSMC] adopt, adhere to, or follow the policies, procedures, practices, training materials, and standards approved, promulgated, or disseminated by [HCA]. These policies cover a comprehensive range of subjects or topics such as, but not limited to, graduate medical education, human resources, background investigations, performance evaluations, professional services agreements, physician recruiting agreements, physician employment, loans and loan guaranties, physician referral services, marketing physicians, copyright, and trademark. Further upon information and belief, [HCA] takes actions to ensure that [the GSMC] complies with [HCA's] policies, procedures, practices, training materials, or standards through review, audit, and reporting procedures.

20. [HCA's] policies or standards include a comprehensive ethics and compliance program, including a Code of Conduct. As part of this program, [HCA] provides orientation and annual refresher ethics and compliance training to the staff and employees of [the GSMC] and requires that the staff and employees adhere to [HCA's] ethics policies and standards. [HCA's] website at www.hcahealthcare.com states that "[t]hough we promote the concept of management autonomy at local facilities in order to meet local needs, the standards set forth in the Code are mandatory and must be followed." [HCA] provides these policies and standards to [the GSMC] for notice and distribution within the Grand Strand Medical Center. The program also includes an ethics and compliance officer and an ethics telephone line and internet portal operated by [HCA] through which staff or employees of [the GSMC] can report violations of [HCA's] ethics policies to [HCA] for enforcement, corrective, or remedial actions to be taken. [HCA] publicly promotes on its website that its ethics and compliance program "helps ensure everyone associated with an HCA Healthcare facility reflects the mission and values statements, our commitment to stakeholders and other standards found in our Code of Conduct."

21. [HCA] owns the internet domain or website at www.hcahealthcare.com. On one page of this website, [HCA] describes itself as "one of the nation's leading providers of healthcare services with 182 hospitals and approximately 2,200 ambulatory sites of care, including surgery centers, freestanding ERs, urgent care centers and physician clinics, in 20 states and the United Kingdom." On another page of the same website,

[HCA] states as follows: “HCA Healthcare, Inc. owns and operates 182 hospitals and approximately 2,200 ambulatory sites of care, including surgery centers, free standing emergency rooms, urgent care centers and physician clinics in 21 states and the United Kingdom.” On its website, [HCA] publicly promotes, markets, and publishes that it has “locations” in twenty or twenty-one different states around the United States, including at least five or more locations in South Carolina.... [HCA] publicly markets and touts itself as being a “nationwide” healthcare company with “locations” in twenty or more states all under a common “HCA Healthcare” trademark.

22. [HCA’s] “locations” in South Carolina include Grand Strand Medical Center in Myrtle Beach, South Carolina; the Colleton Medical Center in Walterboro, South Carolina; the Moncks Corner Medical Center in Moncks Corner, South Carolina; the Summerville Medical Center, in Summerville, South Carolina; and the Trident Medical Center in North Charleston, South Carolina. Additionally, upon information and belief, [HCA] is a majority shareholder or owner in the Grande Dunes Surgery Center, which operates, conducts business, and employs personnel at a surgery center in Myrtle Beach, South Carolina. [HCA] stands behind all of these locations in South Carolina, they have a unity of interest, and their business is referred to collectively. [HCA] has placed its “HCA” or “HCA Healthcare” corporate name, logo, tradename, or brand on the buildings, facilities, or webpages operated by those locations as well as on other paraphernalia used by these locations.

23. [HCA] has publicly referred to these “locations” as being “part of” or departments or divisions of [HCA]. [HCA] and its “locations” are described as a common enterprise that are managed or operated collectively. On its website, [HCA] describes these locations (including the Grand Strand Medical Center in Myrtle Beach, South Carolina) as “[o]ur integrated network of care.” The services of [HCA’s] subsidiaries, such as [the GSMC], are essential to [HCA’s] unitary enterprise of providing healthcare services. In its 2021 Annual Report to Shareholders, [HCA] refers to “our 182 hospitals and more than 2,200 ambulatory sites of care.”... Additionally, [HCA] has publicly referred to the Grand Strand Medical Center as “a 345-bed acute-care HCA Healthcare facility located in Myrtle Beach, South Carolina.” The Grand Strand Medical Center website also affirmatively promotes that “Grand Strand Medical Center is part of the HCA Healthcare Family.”

24. On its Form 10-K filed with the Securities and Exchange Commission for the fiscal year ended December 31, 2021, [HCA] represented that it “directly or indirectly owned and operated” three hospitals located in South Carolina with 983 patient beds. In its Form 10-K, [HCA] represents that it conducts its operations through its subsidiaries. The list of [HCA’s] subsidiaries attached to the Form 10-K include numerous subsidiaries that operate in South Carolina, including [GSSS, GSRMC, and HCA-PS].

25. [HCA] prepares consolidated financial statements and files a consolidated tax return, which include the income and profits of all of these “locations” in South Carolina. All profits of [GSSS, GSRMC, and HCA-PS] flow to [HCA].

26. Upon information and belief, the directors, officers, or agents of [HCA] have participated or taken part in telephone conversations, meetings, or conferences with the Plaintiff and others at the Grand Strand Medical Center in Myrtle Beach, South Carolina, involving the graduate medical education (GME) orthopedic surgery residency program directed by Plaintiff at the Grand Strand Medical Center, which program is described further herein-below. The directors, officers, or agents of [HCA] controlled whether the GME orthopedic surgery residency program was commenced at the Grand Strand Medical Center in Myrtle Beach, South Carolina. Plaintiff was advised that significant decisions of the GME orthopedic surgery residency program would have to be approved by the agents of [HCA].

27. The directors, officers, or agents of [HCA] have been in control of all of the GME programs at [HCA’s] locations throughout the United States, including the GME programs at the Grand Strand Medical Center in Myrtle Beach, South Carolina.... [T]he HCA Graduate Medical Education information page that [HCA] publishes on its website ... shows it operates graduate education programs in sixteen states around the country, including in South Carolina. In its 2021 Annual Report, [HCA] states that “HCA Healthcare recently announced that we offered 1,982 positions for our July 2021 graduate medical education (GME) programs – our largest incoming class to date and the largest among teaching hospitals in the United States” and “[a]s a result, HCA Healthcare has become a significant provider of clinical and medical education and is the largest sponsor of GME programs in the United States., with 299 Accreditation Council of Graduate Medical Education (ACGME) accredited programs, more than 4,800 residents and fellows, and 59 teaching hospitals across 16 states.” In September 2019, the sponsorship for the GME orthopedic surgery residency program directed by Plaintiff at the Grand Strand Medical Center in Myrtle Beach, South Carolina, was renamed to “HCA Healthcare Grand Strand Regional Medical Center.” The email address for the GME orthopedic surgery residency program at the Grand Strand Medical Center was GSMC.OrthoSRes@hcahealthcare.com.

28. [HCA] dictates the policies for these graduate education programs, controls the major decisions for these programs, and [HCA’s] approval was required for the programs to be implemented or operated at these locations throughout the United States, including at the Grand Strand Medical Center in Myrtle Beach, South Carolina. Upon information and belief, Plaintiff’s Physician Employment Agreement discussed herein-below was reviewed and approved by [HCA’s] executive personnel and general counsel. The Physician Employment Agreement expressly provides that all notices required to be given under the contract shall be sent to Defendant Grand

Strand Surgical Specialists, LLC with a copy sent to [HCA's] general counsel in Nashville, Tennessee.

29. Upon information and belief, the GME programs conducted at [HCA's] locations in South Carolina (including at the Grand Strand Medical Center in Myrtle Beach, South Carolina) were approved and ratified by [HCA]. Further upon information and belief, [HCA] ha[s] entered academic partnership agreements with medical schools in South Carolina for them to provide faculty support and research opportunities for the GME programs conducted at [HCA's] locations.

See Amend. Compl. ¶¶15-29.

Plaintiff also submitted numerous exhibits, such as HCA's Form 10-K, Healthcare Fact Sheet, and HCA's website pages. These documents tout the GSMC as being an HCA Healthcare facility and assert that HCA operates GME programs at this facility. HCA's GME Resident Manual represents that "[a]s a resident or fellow, you are now part of the largest graduate medical education (GME) network in the United States" and that "HCA Healthcare, Inc. (HCA) is currently home to GME programs in more than 50 hospitals from Florida to California," including hospitals in South Carolina. See Exhibit 38 p.2. These documents show that HCA's subsidiaries and agents have continuous and repeated contacts with South Carolina. The actions of these subsidiaries and agents in South Carolina are thus imputed to HCA.

"[A]t the pre-trial stage only a *prima facie* showing is required" to establish that grounds for personal jurisdiction exist over a defendant. Brown, 323 S.C. at 399, 475 S.E.2d at 756. Plaintiff's Amended Complaint and other materials submitted in opposition to HCA's motion establish a *prima facie* case for personal jurisdiction over HCA in South Carolina.

1. Specific Jurisdiction.

The allegations in the Amended Complaint and evidence submitted by Plaintiff are sufficient to establish specific jurisdiction over HCA in South Carolina. The factual allegations and evidence

show that HCA (through its subsidiaries and agents) engaged in contacts with South Carolina that gave rise to the claims asserted by Plaintiff in this case. The Amended Complaint alleges that HCA, through its subsidiaries, entered a contract with Plaintiff in this state that was to be performed in this state and then breached that contract. See Amend. Compl. ¶¶116-19. This case includes claims based on an employment contract between HCA's subsidiary and Plaintiff, a South Carolina resident, who performed his obligations under the contract in South Carolina. HCA's actions (through its agents and subsidiaries) with respect to the contract occurred in South Carolina and were specifically directed towards Plaintiff, a resident of this state.³

The Amended Complaint and Plaintiff's affidavit further allege that HCA (through its subsidiaries and agents) engaged in tortious conduct in this state by making false representations to Plaintiff regarding its ability to secure or obtain OrthoSC's agreement to provide doctors to serve as faculty for the GME program, its commitment to the GME program and to have Plaintiff in charge of the program, and its willingness or ability to hire its own faculty for the GME program if OrthoSC declined or refused to participate in providing the faculty for the program for any reason. See Amend. Compl. ¶¶102-14; Duncan Aff. ¶¶3-4. Plaintiff alleges that HCA, through its subsidiaries and agents, made false promises and assurances to Plaintiff that led him to detrimentally change his

³ The fact that HCA operates in South Carolina through its agents is evidenced by Mr. Bray's deposition testimony. Mr. Bray testified he is not employed by HCA, is not an officer or director of HCA, and has never been paid any compensation by HCA. See Bray Depo. p.14. He said he is employed by one of HCA's corporate affiliates (HCA Management Services, LP). Id. However, Mr. Bray also testified that he is HCA's "authorized representative," that he gave his affidavit in this case "on behalf of HCA Healthcare, Inc.," and that he has "authority to speak on behalf of HCA Healthcare, Inc." in this lawsuit. Id. pp.14-15, 19. He further testified that he has given "probably 50" different Rule 30(b)(6) depositions on HCA's behalf, where he was testifying as HCA's corporate representative and gave testimony binding on the company. Id. p.19. He also testified that HCA's lawyer in this case is his lawyer. Id. p.18.

position. See Amend. Compl. ¶¶121-28. Plaintiff further alleges that some of these promises and assurances were made to him during meetings he had with HCA's representatives or agents while in South Carolina. See Duncan Aff. ¶4. Finally, the Amended Complaint alleges that HCA, through its subsidiaries and agents, failed to pay wages, salary, and compensation due to Plaintiff (an employee in South Carolina) in violation of the South Carolina Payment of Wages Act, S.C. CODE ANN. § 41-10-10 *et al.* See Amend. Compl. ¶¶130-36.

HCA, through its subsidiaries and agents, met with Plaintiff in South Carolina, had telephone conversations and meetings with Plaintiff while he was in South Carolina, sent e-mails and other communications to Plaintiff while he was in South Carolina involving the GME program and his employment, and executed a contract with Plaintiff in South Carolina. HCA, through its subsidiaries and agents, made representations and promises to Plaintiff in South Carolina. These actions form the primary basis for Plaintiff's claims against HCA in this action. Plaintiff has shown that HCA purposefully directed its activities with respect to Plaintiff and his employment contract in South Carolina, which supports the exercise of specific jurisdiction over HCA in this state.

Under the "fairness" prong, Plaintiff resides in South Carolina. He has never resided in Tennessee and has no connection with that state. HCA was aware that Plaintiff would be working at the GSMC in Myrtle Beach and that he would perform his employment contract in South Carolina. Plaintiff's PEA shows his address is in South Carolina. See Exhibit 5 p.13. By contracting with Plaintiff through its subsidiaries that own, operate, manage, and staff the GSMC, HCA had good reason to anticipate being haled into court in this state if litigation arose involving Plaintiff's employment contract or its performance.

As to the convenience of the parties, HCA does not dispute that the majority of the witnesses

will reside in South Carolina. Because of the distance between South Carolina and Tennessee, it would be inconvenient, burdensome, and financially expensive to require Plaintiff to litigate this dispute in Tennessee. Conversely, requiring HCA to litigate in South Carolina would not be unfair to it because it knew Plaintiff was a South Carolina resident when the employment contract was made. The employment contract stipulates that it “shall be governed by, and construed and enforced in accordance with, the laws of the state in which the Practice is located,” which is South Carolina. See Exhibit 5 ¶13.E. Thus, the Court will have to apply South Carolina law to resolve the claims in this case. Our supreme court has held that “[a]lthough not controlling, a choice of law provision is relevant in deciding whether to exercise personal jurisdiction.” Coggeshall, 655 S.E.2d at 480.

Finally, South Carolina has a substantial interest in exercising jurisdiction over this matter given that Plaintiff is a South Carolina citizen. See Campbell v. Johnson & Towers, Inc., 123 F. Supp. 2d 329, 337 (D.S.C. 1999) (“South Carolina has an adjudicative interest in this dispute because it affects South Carolina residents and their personal property.”); Rossman v. State Farm Mut. Auto. Ins. Co., 832 F.2d 282, 287 (4th Cir. 1987) (state has a substantial interest in providing relief for its citizens).

HCA relies upon Yarborough & Co. v. Schoolfield Furniture Indus., 275 S.C. 151, 268 S.E.2d 424 (1980) and Builder Mart of Am., Inc. v. First Union Corp., 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002), overruled by Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003), but those cases are not controlling in this case. In Yarborough, the Court held that “[t]he mere acquisition and control of a domestic subsidiary’s capital stock does not subject the foreign parent to the jurisdiction of that State’s courts.” 275 S.C. at 153, 268 S.E.2d at 44. In Builder Mart, the Court likewise noted cases in which courts “declined to extend jurisdiction to the parent based

solely on the activities of a subsidiary where those activities [were] *unrelated to the cause of action* and [did] not bear a substantial connection to the case at hand.” Builder Mart, 349 S.C. at 511, 563 S.E.2d at 358 (“The presence of the subsidiary alone does not establish the parent’s presence in the state.” (citing Jazini v. Nissan Motor Co., 148 F.3d 181, 184 (2nd Cir.1998))).

Although “[g]enerally, the mere fact that a subsidiary has minimum contacts with a forum is not enough to confer personal jurisdiction over the parent company,” courts also recognize that “certain relationships between parents and subsidiaries can ‘justify an exception to this general rule.’” Afa Polytek (N. Am.) Inc. v. Clorox Co., No. 2:13-CV-01633-RMG, 2014 WL 12608562, at *5 (D.S.C. Jan. 17, 2014). As one such exception, “when the parent entity exerts a significant degree of control over the activities of the subsidiary, personal jurisdiction may extend to the parent corporation, regardless of corporate formalities.” PCS Phosphate Co. v. Norfolk S. Corp., 520 F. Supp. 2d 705, 712-13 (E.D.N.C. 2007), aff’d, 559 F.3d 212 (4th Cir. 2009); Rowe, 2014 WL 172510 at *6. Similarly, personal jurisdiction may be established as to a defendant based on contacts in the forum state made by the defendant’s authorized agents. Consulting Engineers Corp. v. Geometric Ltd., 561 F.3d 273, 278 (4th Cir. 2009); Daynard, 290 F.3d at 55-60.

As amplified above, Plaintiff does not assert in this case that jurisdiction exists over HCA *merely or solely because* it owns or controls the stock of its subsidiaries in this state. Instead, the Amended Complaint and evidence offered by Plaintiff show not only that GSSS and GSRMC are subsidiaries of HCA, but that HCA (as parent company) exerts a significant degree of control and supervision over the activities of these subsidiaries, thus making them its agents. See Roorda, 481 F. Supp. at 870-71 (personal jurisdiction existed over foreign corporation given the “the intimate and complete control” which it exercised over its wholly owned subsidiary that did business in this state,

so as to make the subsidiary the parent's "agent" in South Carolina); Schreiner, 2014 WL 11034777 at *6 (holding that specific jurisdiction over parent corporation was appropriate due to its control over the subsidiary, and the subsidiary's resultant status as an agent of the parent).

In Rowe, in holding that a subsidiary was the parent corporation's agent for purposes of establishing personal jurisdiction over parent in South Carolina, the court cited to documents promoting the parent "as one solidified business," that the parent and subsidiaries filed consolidated tax returns and issued consolidated financial statements, that the parent's filings with the SEC referred to "the Company" as meaning the parent together with its subsidiaries and affiliates, and the parent's annual reports showed it considered itself and its subsidiaries to be an integrated, national conglomerate. 2014 WL 172510 at *6. As discussed above, the same facts are present in this case. HCA prepares consolidated tax returns with its subsidiaries who operate in South Carolina, which include the income, profit, and losses of all of HCA's locations in South Carolina. The profits and losses of HCA's subsidiaries in South Carolina are also reported on HCA's financial statements.

In Accent Delight Int'l Ltd. v. Sotheby's, No. 18-CV-9011 (JMF), 2023 WL 2307179 (S.D.N.Y. Mar. 1, 2023), in holding that a material factual issue existed as to whether Sotheby's exercised a level of control over its subsidiaries that went beyond the standard concomitants of a parent-subsidiary relationship, the court noted that while it was "true that the Sotheby's subsidiaries had their own boards of directors and exercised control over their own assets," it was also true that "Sotheby's, the parent corporation, reported income, expenses, assets, employment figures, and other financials for all its subsidiaries together, without distinguishing among them, in filings with the Securities and Exchange Commission." Id. at *17. The court further pointed out that "Sotheby's also had a code of business conduct it applied worldwide to all employees, boards of directors,

consultants, and other third parties representing Sotheby's" and that "Sotheby's had worldwide compliance policies." Id.

As discussed above, HCA has promulgated an extensive panoply of mandatory policies, procedures, and manuals for its hospitals and facilities to follow, including those in South Carolinas. HCA requires its subsidiaries in South Carolina to comply with HCA's mandatory policies. HCA's policies also include a comprehensive ethics and compliance program, including a 46-page HCA Code of Conduct. It is mandatory that any doctor with privileges at any of HCA's hospitals, including the GSMC, and all employees at all of HCA's locations in South Carolina, including the GSMC, must abide by HCA's Code of Conduct.

In Adkins v. CSX Transportation, Inc., No. CV 3:18-0321, 2019 WL 3432537 (S.D.W. Va. July 30, 2019), in holding the plaintiff made a *prime facie* case for personal jurisdiction against CSX based on the activities of its subsidiary (CSXT) in the forum state, the court observed that "exploring CSX's 2017 Annual Report is particularly illustrative." Id. at *3. The Annual Report revealed that CSX and CSXT present themselves as a single, cohesive unit. Though CSX attempted to explain that any reference to the collective as a single company was "simply easier," the court held that "the pervasive representation that CSX and CSXT are one in the same suggests something more" and that "[t]his factual dispute is appropriately resolved in favor of Plaintiff." Id. as determined by a showing of support for a majority of the above-listed factors.").

Similarly, in this case, HCA's annual report to its shareholders refers to "our 181 hospitals and more than 2,200 ambulatory sites of care." See Exhibit 15 p.1. HCA's public filings with the SEC also refer to itself and its subsidiaries collectively. When Mr. Bray was asked why HCA does that, he testified that it was "[s]ometimes just for simplicity; to make it easier to describe things, as

on this page you wouldn't want to actually name every legal entity that owns" the hospitals and other sites of care. See Bray Depo pp. 67-68. However, HCA's public representations that it and its subsidiaries are one in the same suggests something more. This factual dispute is appropriately resolved in favor of Plaintiff.

Plaintiff asserts that jurisdiction exists over HCA in South Carolina because of the actions of its agents (its South Carolina subsidiaries and affiliates) in transacting business in this state, entering into a contract to be performed in this state, and committing tortious conduct in this state. Personal jurisdiction may be established as to a defendant based on contacts in the forum state made by the defendant's authorized agents. Consulting Engineers, 561 F.3d at 278; Daynard, 290 F.3d at 55-60; Carson, 326 S.C. at 549, 485 S.E.2d at 129. Our state's long-arm statute explicitly provides that the actions of an agent may be attributed or imputed to the principal for purposes of personal jurisdiction. S.C. CODE ANN. § 36-2-803(A); see Rowe., 2014 WL 172510 *6; ABN AMRO, Inc., 595 F.Supp.2d at 821. Finally, unlike the situation in Builder Mart, the activities of HCA's subsidiaries in this case *are related to* Plaintiff's causes of action and bear a substantial connection to the case at hand.

These allegations and evidence suffice to make a *prima facie* showing of specific personal jurisdiction over HCA. See Afa Polytek, 2014 WL 12608562 at *5 (In denying parent corporation's motion to dismiss based on the activities of its subsidiary in this state, Court said "Plaintiff has established some facts suggesting a level of control and agency between the two corporations.").⁴

⁴ HCA emphasizes Spencer v. Greenwald, No. 4:20-CV-00440-BRW, 2021 WL 1976080 (D. Idaho Jan. 4, 2021), which is an unpublished federal district court decision holding that personal jurisdiction did not exist over HCA in Idaho even though HCA owns a subsidiary in that state. Unlike the present case, the Spencer plaintiff did not allege facts showing that HCA exerted a

2. *General Jurisdiction.*

“General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum.” Coggeshall, 655 S.E.2d at 478. “A court may assert general jurisdiction if the defendant has an ‘enduring relationship’ with the forum state.” Cockrell, 611 S.E.2d at 510. An “enduring relationship” exists when the defendant’s contacts are “continuous and systematic” or “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” Cribb, 676 S.E.2d at 710.

The allegations in the Amended Complaint and the other materials submitted by Plaintiff show that HCA, through its subsidiaries and agents, has maintained a substantial, continuous, and systematic relationship with South Carolina. Through its subsidiaries and agents, HCA operates at least five hospitals or medical facilities in South Carolina, including the GSMC in Myrtle Beach, Trident Medical Center in North Charleston, Colleton Medical Center in Walterboro, Summerville Medical Center in Summerville, and Moncks Corner Medical Center in Moncks Corner. HCA entered into a contract with Plaintiff (a South Carolina resident) involving acts of performance that took place in South Carolina for nearly four years, including at the GSMC in Myrtle Beach. The Amended Complaint alleges that HCA “completely controls the business operations and activities of [the GSMC] and dictates its policies” and that “[a]ll actions undertaken by [the GSMC] were approved and ratified by [HCA].” See Amend. Compl. ¶14.

The Amended Complaint further alleges that HCA, either directly or by the conduct and

significant degree of control over the activities of the subsidiary in Idaho, so as to make the subsidiary HCA’s agent. In contrast, Plaintiff has alleged such facts in the present case. In any event,

actions of its agents, was doing business in South Carolina, transacted business in South Carolina, contracted to supply services or things in South Carolina, committed a tortious act in whole or in part in South Carolina, and/or entered into contracts to be performed in whole or part in South Carolina and that the causes of action alleged in the Complaint arise out of, and result from, those acts. See Amend. Compl. ¶35. HCA authorized individuals or entities doing business in South Carolina to act as its agents in South Carolina involving the subject matters of this litigation. Id. ¶¶14, 122. Through its subsidiaries and agents, HCA participated in communications with Plaintiff and other individuals located in South Carolina regarding the subject matters at issue in this litigation.

Viewed in their entirety, the actions of HCA in or directed to South Carolina cannot be deemed random, fortuitous, or attenuated contacts with this state. Instead, HCA has contacts with South Carolina that are “continuous and systematic” and “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” Cribb, 676 S.E.2d at 718. Thus, general jurisdiction is present in this case. Accordingly,

IT IS ORDERED that Defendant HCA Healthcare, Inc. Motion to Dismiss Amended Complaint filed on August 30, 2022 is hereby DENIED; and

AND IT IS SO ORDERED!

Daniel Coble
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2023.
_____, South Carolina.

Spencer is not binding on this Court.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774

EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
DR. SCOTT F. DUNCAN, M.D.,	)	CASE NO.: 2021-CP-2607488
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION TO ALTER
	)	OR AMEND
OrthoSC, LLC, a South Carolina	)	
limited liability company; Dr. Gene M.	)	
Massey, M.D.; and HCA Healthcare,	)	
Inc., a Delaware corporation,	)	
	)	
Defendants.	)	

This matter is before the Court upon Defendant HCA Healthcare Inc.’s Motion To Alter or Amend, pursuant to Rule 59(e), SCRCF (“the Motion”), which was timely filed on April 10th, 2023. The Motion asks this Court to alter, amend, or reconsider its Order Denying Motion to Dismiss of HCA Healthcare, Inc., entered March 31st, 2023.

After reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court’s reasoning or conclusions. As such, Plaintiff’s Motion for Reconsideration is hereby **DENIED**, and the Court, pursuant to the discretion afforded by Rule 59 and *Pollard v. County of Florence*, concludes that a hearing is not necessary to rule on the Motion to Alter or Amend. See Rule 59(f), SCRCF (stating a Rule 59(e) motion “may in the discretion of the court be determined on the briefs filed by the parties without oral argument”); see also *Pollard*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994) (holding there was “no merit in Pollard’s assertion that the circuit court committed reversible error

in denying her motion to alter or amend the judgment under Rule 59(e) SCRCP, without first conducting a hearing or allowing [the parties] ‘to fully brief’ the issues raised in [the] motion”).

AND IT IS SO ORDERED.

The Honorable Daniel Coble
Presiding Judge

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-26-07488

**CONSENT ORDER COMPELLING
ARBITRATION OF CERTAIN CLAIMS AND
STAYING CERTAIN CLAIMS PENDING
ARBITRATION**

Plaintiff Dr. Scott F. Duncan, M.D. ("Plaintiff") previously filed an Amended Complaint in this action asserting claims against Defendant HCA Healthcare, Inc. ("HCA Healthcare"). Plaintiff and HCA Healthcare have now agreed to arbitrate the Plaintiff's claims and disputes asserted in the Amended Complaint, as well as HCA Healthcare's defenses thereto, in South Carolina in the existing arbitration proceeding pending before the American Health Law Association ("AHLA") (AHLA Claim No. 7029) involving Plaintiff's claims against Grand Strand Surgical Specialists, LLC ("GSSS"); Grand Strand Regional Medical Center, LLC ("GSRMC"); Tennessee Healthcare Management, Inc. ("THM"); and HCA Management Services, LP ("HMS"). Henry L. Parr, Jr. is the arbitrator appointed for AHLA Claim No. 7029, and shall be the arbitrator of the disputes, claims and defenses between Plaintiff and HCA Healthcare.

Plaintiff and HCA Healthcare consent to the claims Plaintiff's disputes and claims as set forth in the Amended Complaint, as well as HCA Healthcare's defenses thereto, being joined in the existing arbitration before the AHLA. Plaintiff and HCA Healthcare also consent and agree: (1) to an order staying Plaintiff's claims against HCA Healthcare in the Amended Complaint in this Court until the arbitration is concluded; and (2) to this Court being the appropriate forum for

applications by either party pursuant to S.C. Code Ann. §§ 15-48-100, 15-48-120, 15-48-130, and 15-48-140 or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law, as well as further proceedings thereunder or under S.C. Code Ann. §§ 15-48-80, 15-48-150 and 15-48-160.

IT IS ORDERED that Plaintiff and HCA Healthcare shall pursue arbitration of the claims, defenses, and disputes between them in South Carolina in the same arbitration proceeding pending before the AHLA (AHLA Claim No. 7029) involving Plaintiff's claims against GSRMC, GSSS, THM, and HMS. Plaintiff will file with the AHLA no later than thirty (30) days after entry of this Order a copy of his Amended Complaint in this action (or a written demand for arbitration attaching a copy of his Amended Complaint) and the claims therein will be administered by the AHLA pursuant to the rules and procedures established by the AHLA's Alternative Dispute Resolution Service; and

IT IS FURTHER ORDERED, that Plaintiff's claims under his Amended Complaint in the captioned action against HCA Healthcare are hereby stayed pending the arbitration of claims, disputes, and defenses between Plaintiff and HCA Healthcare; and

IT IS FURTHER ORDERED that this Court is the appropriate forum for applications by either party pursuant to S.C. Code Ann. §§ 15-48-100, 15-48-120, 15-48-130, and 15-48-140 or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law, as well as further proceedings thereunder or under S.C. Code Ann. §§ 15-48-80, 15-48-150 and 15-48-160.

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

AND IT IS SO ORDERED!

Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

This ____ day of _____, 2023.

WE CONSENT:

ROSEN HAGOOD, LLC

s/ Daniel F. Blanchard, III

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ATTORNEYS FOR PLAINTIFF

WE SO CONSENT:

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ATTORNEYS FOR DEFENDANT
HCA HEALTHCARE, INC.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Consent Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT 7

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

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

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

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

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

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

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

AND IT IS SO ORDERED!

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

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

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

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

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

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

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

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

S.C. CODE ANN. § 15-48-80(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Petitioner respectfully moves this Court:

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

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

2. to award Petitioner his costs and attorneys' fees incurred in enforcing the subpoenas and in preparing and prosecuting this motion in an amount to be determined by the Court, and
3. for such other and further relief as the Court may deem just and proper.

ROSEN HAGOOD, LLC

/s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III, SC Bar 65342
dblanchard@rosenhagood.com
James A. Bruorton, IV, SC Bar 71300
cbruorton@rosenhagood.com
Mary Harriet Moore, SC Bar 105312
mhmoore@rosenhagood.com
40 Calhoun Street, Suite 450
P. O. Box 893 (29402)
Charleston, SC 29401
(843) 577-6726 telephone
(843) 724-8036 facsimile
ATTORNEYS FOR PETITIONER

Charleston, South Carolina

September 7, 2022.

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

EXHIBIT A

STATE OF SOUTH CAROLINA

ISSUED BY THE ARBITRATOR

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

v.

SUBPOENA

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

ALHA Arbitration Case No. 7029

Circuit Case Number: 2021-CP-26-07488

Pending in Horry County before the Arbitrator

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

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

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

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

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

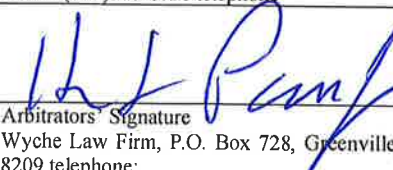
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE ATTACHMENT A

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

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

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

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

PROOF OF SERVICE

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

DECLARATION OF SERVER

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

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

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

(c) Protection of Persons Subject to Subpoenas.

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

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

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

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

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

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

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

(iv) subjects a person to undue burden.

(B) If a subpoena:

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

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

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

(d) Duties in Responding to Subpoena.

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

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

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

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

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

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

ATTACHMENT A
(Document Subpoena – OrthoSC, LLC)

DEFINITIONS

The following definitions apply to this subpoena:

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

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

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

DOCUMENTS REQUESTED

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

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

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

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

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

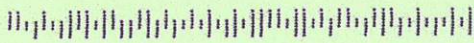
USPS TRACKING#	
	
9590 9402 6990 1225 3366 33	
United States Postal Service	• Sender: Please print your name, address, and ZIP+4® in this box• Rosen Hagood 40 Calhoun St, Suite 450 Chas, SC 29401
	First-Class Mail Postage & Fees Paid USPS Permit No. G-10
 DFB 10114.000	

EXHIBIT B

STATE OF SOUTH CAROLINA

ISSUED BY THE ARBITRATOR

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

v.

SUBPOENA

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

ALHA Arbitration Case No. 7029

Circuit Case Number: 2021-CP-26-07488

Pending in Horry County before the Arbitrator

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

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

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

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

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

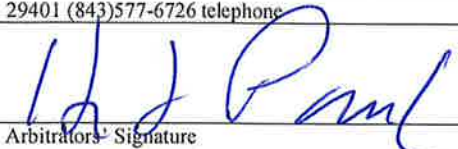
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE ATTACHMENT A

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

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

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

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

PROOF OF SERVICE

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

DECLARATION OF SERVER

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

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

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

(c) Protection of Persons Subject to Subpoenas.

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

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

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

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

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

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

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

(iv) subjects a person to undue burden.

(B) If a subpoena:

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

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

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

(d) Duties in Responding to Subpoena.

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

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

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

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

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

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

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

DEFINITIONS

The following definitions apply to this subpoena:

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

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

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

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

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

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

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

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

(ix) "Sims" refers to Mark Sims.

(x) "Tappan" refers to Hugh Tappan.

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

(xii) "Deighton" refers to Bruce Deighton.

(xiii) "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, government agencies, or any other kind of entity.

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

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

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

DOCUMENTS REQUESTED

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

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

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

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

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Chas, SC 29401



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EXHIBIT C

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

Frank:

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



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

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

From: Frank Blanchard <dblanchard@rosenhagood.com>
Sent: Wednesday, August 10, 2022 3:44 PM
To: Ipock, Charlie <cipock@hsblawfirm.com>
Cc: Thomas, William R. <willthomas@parkerpoe.com>; Johnson, Ashley W. <ashleyjohnson@parkerpoe.com>; Summer, Jr., David B. <davidsummer@parkerpoe.com>; Chip Bruorton <cbruorton@rosenhagood.com>; Mary Harriet Moore <mhmoore@rosenhagood.com>; Meredith Matthews <mmatthews@rosenhagood.com>; Werner, James L. <jimwerner@parkerpoe.com>; Dawson, Jr., Katon E. <katondawson@parkerpoe.com>; Klett, Jonathan <jklett@hsblawfirm.com>
Subject: Duncan v. Grand Strand Surgical Specialists, LLC et al./AHLA Claim No. 7029

Charlie,

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

With best regards,



Frank Blanchard

[Attorney at Law]

[40 Calhoun Street, Suite 450](#)
 Charleston, SC 29401

Office: [\(843\) 577-6726](tel:(843)577-6726) | Fax: [\(843\) 724-8036](tel:(843)724-8036)
 Direct Phone: [\(843\) 266-8123](tel:(843)266-8123) | Direct Fax: [\(843\) 266-2232](tel:(843)266-2232)

dblanchard@rosenhagood.com
www.rosenhagood.com



We've Moved as of June 30th!

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

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

CONFIDENTIALITY NOTICE

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EXHIBIT 8

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

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

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

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

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

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

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

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

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

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

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

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

3. Plaintiff's Motion to Compel Discovery Responses:

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED!

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

This ____ day of _____, 2023.

_____, South Carolina.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

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

EXHIBIT 9

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

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

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

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

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

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

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

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

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

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

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

S.C. CODE ANN. § 15-48-80(a).

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

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

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

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

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

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

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

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

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

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

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

ROSEN HAGOOD, LLC

/s/ Daniel F. Blanchard, III

Daniel F. Blanchard, III, SC Bar 65342

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James A. Bruorton, IV, SC Bar 71300

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(843) 577-6726 telephone

(843) 724-8036 facsimile

ATTORNEYS FOR PETITIONER

Charleston, South Carolina

March 6, 2023.

EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

3. Plaintiff's Motion to Compel Discovery Responses:

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED!

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

This ____ day of _____, 2023.

_____, South Carolina.



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

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

EXHIBIT B

EXHIBIT 10

ROSEN | HAGOOD

Daniel F. Blanchard, III
dblanchard@rosenhagood.com
843-266-8123

July 20, 2023

The Honorable Kristi Fisher Curtis
Circuit Court Judge
215 N. Harvin Street
Sumter, SC 29150

Re: Dr. Scott F. Duncan v. OrthoSC, LLC, a South Carolina limited liability company, Dr. Gene M. Massey, M.D.; and HCA Healthcare, Inc., a Delaware corporation
Case No. 2021-CP-26-07488

Dear Judge Curtis:

As you may recall, we represent the Plaintiff Dr. Scott F. Duncan in the above case. We received your email to the parties' counsel from this past Tuesday conveying your preliminarily ruling that you will be denying our client's Motion to Alter or Amend, which seeks an order of the Circuit Court enforcing two subpoenas *duces tecum* the Arbitrator issued to OrthoSC, LLC and Dr. Gene Massey in the separate arbitration proceeding.

Your email explains that you are persuaded by the rationale of those federal courts applying the Federal Arbitration Act (FAA) § 7 which have held that arbitrators do not have authority to compel a nonparty to produce documents *pre-hearing*. Your email cites to Hay Grp., Inc. v. EBS Acquisition Corp., 360 F.3d 404 (3rd Cir. 2004) and Life Receivables Trust v. Syndicate 102, 549 F.3d 210 (2nd Cir. 2008). We understand Mr. Ipock will be preparing and offering a proposed order based on the instructions in your email.

While we are reticent to contact Your Honor about this matter once again as we do not wish for you to think we are trying to argue with your ruling once a ruling has been made, we nevertheless felt it necessary and proper to contact you in this particular instance because of the unusual circumstances. As Your Honor is aware, counsel for OrthoSC and Dr. Massey never raised any argument that FAA § 7 is applicable or even pertinent to the resolution of our client's motion. It appears the Court raised this argument *sua sponte* for the first time while deliberating on the pending motion after the hearing was held. Consequently, we did not address this new argument in our prior filings or during our arguments to you at the hearing and we did not previously have an opportunity to respond to this new argument.

For these reasons, we respectfully request that Your Honor consider this letter as a supplementation of our prior submissions in support of the pending motion before Your Honor makes a final ruling thereon. Of course, until a written order is entered, a binding ruling has not been issued. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999).

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For the reasons discussed below, we respectfully submit it would be erroneous as a matter of law to rely upon federal case law applying FAA § 7 to decide the present motion. Section 7 of the FAA provides in pertinent part as follows:

The arbitrators ... may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case.... Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition to the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner as provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

9 U.S.C. § 7 (emphasis added).

As Your Honor's email indicates, relying upon the "plain meaning" rule in construing the text of this statute, the federal courts in Hay Grp. and Life Receivables held that under FAA § 7 a nonparty witness may be compelled to bring documents with them to an arbitration hearing but may not simply be subpoenaed to produce or deliver documents pre-hearing. Hay Grp., 360 F.3d at 407 ("The only power conferred on arbitrators with respect to the production of documents by a non-party is the power to summon a non-party 'to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case.' The power to require a non-party 'to bring' items 'with him' clearly applies only to situations in which the non-party accompanies the items to the arbitration proceeding, not to situations in which the items are simply sent or brought by a courier."); Life Receivables, 549 F.3d at 216-17 ("[W]e join the Third Circuit [in Hay Grp.] in holding that section 7 of the FAA does not authorize arbitrators to compel pre-hearing document discovery from entities not party to the arbitration proceedings.").

Notably, there is a substantial split among the federal courts on this question. Other federal courts have rejected the rationale of Hay Grp. These courts eschewed a constrictive reading of FAA § 7 and held that arbitrators can issue subpoenas to nonparties for the pre-hearing production of documents and information. See, e.g., Stanton v. Pain Webber Jackson & Curtis, Inc., 685 F. Supp. 1241 (S.D. Fla. 1988) (holding that FAA § 7 permits the arbitrators to compel pre-hearing discovery); In re Sec. Life Ins. Co. of Am., 228 F.3d 865, 870-71 (8th Cir. 2000) (holding "that implicit in an arbitration panel's power [under FAA § 7] to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to the hearing"); Am. Fed'n of Television & Radio Artists v. WJBK-TV, 164 F.3d

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1004, 1009 (6th Cir. 1999) (stating that “the FAA’s provision authorizing an arbitrator to compel the production of documents from third parties for purposes of an arbitration hearing has been held to implicitly include the authority to compel the production of documents for inspection by a party prior to the hearing”); Int’l Seaway Trading Corp. v. Target Corp., No. 020MC00086NEBKMM, 2021 WL 672990, at *4 (D. Minn. Feb. 22, 2021) (holding arbitrator had the power under FAA § 7 to issue a subpoena for a nonparty’s pre-hearing deposition).

More importantly for purposes of the present motion, even those federal courts adhering to the constrictive construction applied in Hay Grp. have explicitly acknowledged that a contrary result will obtain when applying state statutes based on the Uniform Arbitration Act (UAA) § 7. In fact, in the Hay Grp. case itself, then-Circuit Judge Alito remarked in a footnote as follows:

Some states have recently adopted versions of the Uniform Arbitration Act, which differs from the Federal Arbitration Act. Some of these state statutes explicitly grant arbitrators the power to issue pre-hearing document production subpoenas on third parties. See, e.g., 10 Del. Code § 5708(a) (2003) (“The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths.”); 42 Pa. C.S.A. § 7309 (“The arbitrators may issue subpoenas in the form prescribed by general rules for the attendance of witnesses and for the production of books, records, documents and other evidence.”). The language of these state statutes clearly shows how a law can give authority to an arbitrator to issue pre-hearing document-production orders on third parties.

Hay Grp., 360 F.3d at 407 n.1 (emphasis added).

It is precisely because of this important difference in statutory language that state courts applying versions of UAA § 7 have ruled that arbitrators *can* issue pre-hearing subpoenas *duces tecum* to nonparties and that circuit courts may enforce those subpoenas in the event of noncompliance. An especially illuminating case is Loc. 447 of Int’l Union of Painters & Allied Trades v. Feaker Painting, Inc., 788 N.W.2d 398 (Iowa Ct. App. 2010), where the Court responded to an argument premised on Hay Grp. in applying a state statute modeled on UAA § 7. In that case, the primary issue on appeal was whether an arbitrator had authority to issue a pre-hearing subpoena *duces tecum* to a nonparty under Iowa’s version of UAA § 7. The Iowa statute provided as follows:

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

IOWA CODE ANN. § 679A.7(1) (West 2023).

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The arbitrator in Loc. 447 had issued a subpoena *duces tecum* to Feaker Painting, a nonparty, for the pre-hearing production of certain documents. When Feaker Painting failed to produce the documents, the claimant in the arbitration then filed an application in the circuit court to enforce the arbitrator's subpoena. On appeal from a circuit court order enforcing the subpoena against the nonparty, Feaker Painting cited to the federal court's holding in Hay Grp. and argued the arbitrator lacked the authority to issue a pre-hearing subpoena *duces tecum* to a nonparty.

The Iowa Court of Appeals rejected the nonparty's argument. The Court held that "based on a plain reading of the statute, we are convinced the arbitrator had the authority to issue a subpoena to Feaker Painting." Id. at *3. The Court pointed out that Judge Alito's footnote 1 in Hay Grp. had listed several state statutes that "explicitly grant arbitrators the power to issue pre-hearing document production subpoenas on third parties." Id. The Court further observed that while Judge Alito "did not list" Iowa's statute in his footnote, "a comparison of section 679A.7(1) with the language of the state statutes cited by [Judge Alito] reveals that Iowa's language is virtually identical." Id. at *3 n.2. Consequently, based on the language of IOWA CODE ANN. § 679A.7(1), which is fundamentally different from the language of FAA § 7, the Court in Loc. 447 "conclude[d] the arbitrator had authority to compel a nonparty to the arbitration proceeding ... to produce documents for use in the arbitration proceedings." Id. at *4.

As we've consistently pointed out, South Carolina's version of UAA § 7 is taken verbatim from the uniform statute. It provides:

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

S.C. CODE ANN. § 15-48-80(a). Our state statute is indistinguishable from the Iowa statute the Court applied in Loc. 447 as well as the Delaware and Pennsylvania statutes which Judge Alito highlighted in his footnote in Hay Grp. Those other state statutes were specifically held out as exemplars of laws giving authority to an arbitrator to issue a pre-hearing subpoena *duces tecum* to a nonparty.

Unlike Section 7 of the FAA, § 15-48-80(a) *does* authorize an arbitrator to compel a nonparty to produce documents pre-hearing. It would be erroneous for this Court to rely upon federal case law applying FAA § 7 in deciding the present motion. As cited in our client's prior filings, numerous state courts applying versions of UAA § 7, which is the model on § 15-48-80(a), have held that arbitrators are authorized to issue pre-hearing subpoenas to nonparties and the courts have authority to enforce them. See, e.g., Loc. 447, 788 N.W.2d at 398; City of Philadelphia v. Fraternal Ord. of Police Lodge No. 5, 932 A.2d 274 (Pa. Commw. Ct. 2007); May Const. Co. v. Thompson, 20 S.W.3d 345, 352 (Ark. 2000); Drivers, Chauffeurs & Helpers Loc. Union No. 639

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v. Seagram Sales Corp., 531 F. Supp. 364, 366 (D.D.C. 1981); Matahen v. Sehwal, No. PAS-L-895-19, 2019 WL 11729634, at *1 (N.J. Super. Ct. Apr. 17, 2019); Cotter v. Shearson Lehman Hutton, 546 N.Y.S.2d 319, 321 (N.Y. Sup. Ct. 1989); Superadio Ltd. P'ship v. Winstar Radio Prods., LLC, 844 N.E.2d 246, 254 (Mass. 2006) (Spina, J., concurrence).

We respectfully reiterate our position that the Arbitrator had proper authority to issue the subpoenas to OrthoSC and Massey in this case and those subpoenas should be enforced by the Court in accordance with § 15-48-80(a).

As a final point, even if Your Honor should still find that federal cases such as Hay Grp. and Life Receivables applying FAA § 7 should control, we would respectfully urge you to order OrthoSC and Massey to appear at a preliminary (or pre-merits) hearing before the Arbitrator to produce the documents which have been subpoenaed. In All. Healthcare Servs., Inc. v. Argonaut Priv. Equity, LLC, 804 F. Supp. 2d 808 (N.D. Ill. 2011), the federal judge embraced a “workaround” solution that will permit production of documents prior to a *final* arbitration hearing while remaining faithful to the holding of Hay Grp. that FAA § 7 does not authorize arbitrators to issue subpoenas to nonparties for the *pre-hearing production* of documents. In that case, the federal judge noted that FAA § 7 clearly authorizes an arbitrator to summon nonparty witnesses to produce documents before an arbitration panel. The judge followed the reasoning of other federal cases which held that “[n]othing in the language of the FAA limits the point in time in the arbitration process when [the subpoena] power can be invoked or says that the arbitrators may only invoke this power under Section 7 at the time of the final hearing.” Id. at 811 (citing Stolt-Nielsen SA v. Celanese AG, 430 F.3d 567, 578 (2nd Cir. 2005)). Instead, the court held that FAA § 7’s reference to hearings “‘before [the arbitrators] or any of them’ suggests that the provision authorizes the use of subpoenas at preliminary proceedings even in front of a single arbitrator, before the full panel hears the more central issues.” Id. The critical holding of Hay Grp. and Life Receivables is that the arbitrator’s subpoena must involve the nonparty’s appearance at a hearing before the arbitrator, but it is unnecessary that such a hearing be a *final* arbitration hearing.

In this case, even assuming Hay Grp. is controlling, nothing in FAA § 7 would preclude an order requiring OrthoSC and Massey to appear before the Arbitrator and to bring their documents with them to a preliminary hearing conducted for such purpose. The Arbitrator has already issued an Order stating he “intends for the subpoenas to be enforced in the manner provided by law” See Plf’s Motion to Alter or Amend Exh. B. If the problem in the Court’s view is that the Arbitrator’s subpoenas would involve *pre-hearing production* rather than production *at a hearing*, this problem can easily be rectified by ordering OrthoSC and Massey to appear before the Arbitrator at a preliminary arbitration hearing and to bring their documents with them to such a hearing. It is unnecessary to wait until the Arbitrator conducts a final hearing for the Plaintiff to obtain OrthoSC’s and Massey’s documents.

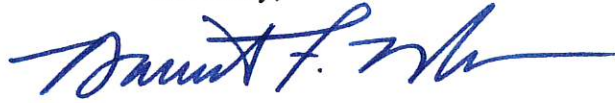
We thank you in advance for your consideration of this matter. Of course, please do not hesitate to contact us if we can provide any other information or assistance.

July 20, 2023

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With best regards,

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel F. Blanchard, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel F. Blanchard, III

DFB

Cc: Charles E. Ipock, Esquire
Stafford John McQuillin, III, Esquire
Jonathan D. Klett, Esquire
William R. Thomas, Esquire
Katon Dawson, Esquire
Adrian Dukes, Esquire
James Werner, Esquire

EXHIBIT 11

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-26-07488

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

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

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

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

[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

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

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

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

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

AND IT IS SO ORDERED!

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

_____, 2023

_____, South Carolina



Horry Common Pleas

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

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

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

EXHIBIT 12

The South Carolina Court of Appeals

Dr. Scott F. Duncan, M.D., Appellant,

v.

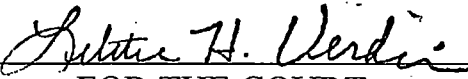
OrthoSC, LLC, a South Carolina limited liability company; Dr. Gene M. Massey, M.D.; and HCA Healthcare, Inc., a Delaware corporation, Defendants,

Of which OrthoSC, LLC, a South Carolina limited liability company, and Dr. Gene M. Massey, M.D. are the Respondents.

Appellate Case No. 2023-001587

ORDER

After careful consideration of the parties' memoranda on appealability, this appeal is dismissed. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (providing the denial of a motion to dismiss under Rule 12(b)(6) is not immediately appealable); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) ("[A]n order directing a non-party to submit to discovery is not immediately appealable."). The remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

FILED
Jan 02 2024

cc:

Daniel Francis Blanchard, III, Esquire

James Atkinson Bruorton, IV, Esquire

Mary Harriet Moore, Esquire

Charles Epps Ipock, Esquire

Jonathan David Klett, Esquire

Stafford J McQuillin, III, Esquire

Sarah P. Spruill, Esquire

EXHIBIT 13

The South Carolina Court of Appeals

Dr. Scott F. Duncan, M.D., Appellant,

v.

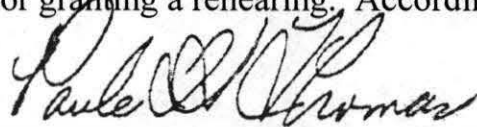
OrthoSC, LLC, a South Carolina limited liability company; Dr. Gene M. Massey, M.D.; and HCA Healthcare, Inc., a Delaware corporation, Defendants,

Of which OrthoSC, LLC, a South Carolina limited liability company, and Dr. Gene M. Massey, M.D. are the Respondents.

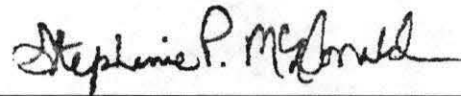
Appellate Case No. 2023-001587

ORDER

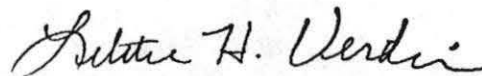
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED
Apr 30 2024

cc:

Daniel Francis Blanchard, III, Esquire

James Atkinson Bruorton, IV, Esquire

Mary Harriet Moore, Esquire

Charles Epps Ipock, Esquire

Jonathan David Klett, Esquire

Stafford J McQuillin, III, Esquire

Sarah P. Spruill, Esquire

EXHIBIT 14

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

Pursuant to South Carolina Rule of Civil Procedure 41(a)(1)(B), Plaintiff Dr. Scott F. Duncan, M.D. ("Plaintiff") and Defendant HCA Healthcare, Inc. ("HCA Healthcare") hereby stipulate to the dismissal of HCA Healthcare from this action, with prejudice, with each party bearing their own costs and expenses, including attorneys' fees. This stipulation is effective as a dismissal, with prejudice, of all claims or causes of action asserted by or against HCA Healthcare in this action. Notwithstanding the forgoing, this stipulation shall not be construed or deemed as discharging, dismissing, or otherwise affecting Plaintiff's claims or causes of action against any other defendants above-named in the case caption, which are hereby preserved and are not discharged, dismissed, or otherwise affected by this stipulation. The Court shall not assess or tax costs, expenses, or attorney's fees against any party.

-Signature Page Follows-

WE SO STIPULATE:

ROSEN HAGOOD, LLC

s/ Daniel F. Blanchard, III

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HCA HEALTHCARE, INC.

From: efiledonotreply@sccourts.org
To: [Frank Blanchard](#)
Cc: [Meredith Matthews](#)
Subject: Courtesy NEF RE: 2021CP2607488
Date: Wednesday, October 16, 2024 3:21:08 PM

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP2607488

Official File Stamp: 10-16-2024 03:20:17 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Scott F Duncan MD VS OrthoSC LLC , defendant, et al
Document(s) Submitted: Stipulation/Stipulation of
Filed by or on behalf of: Daniel Francis Blanchard, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

James Lynn Werner for HCA Healthcare Inc
Stafford J McQuillin, III for OrthoSC LLC, Gene M Massey
Katon Edwards Dawson, Jr. for HCA Healthcare Inc
Jonathan David Klett for OrthoSC LLC, Gene M Massey
James Atkinson Bruorton, IV for Scott F Duncan MD
Charles Epps Ipock for OrthoSC LLC, Gene M Massey
Daniel Francis Blanchard, III for Scott F Duncan MD
William R. Thomas for HCA Healthcare Inc
Mary Harriet Moore for Scott F Duncan MD

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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