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SC Court of Appeals

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

Appeal from Orangeburg County
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2022-CP-38-00525
Appellate Case No. 2025-000296

Beverly Vaughn,
as Personal Representative of the Estate of Loris Paris,

Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer;
Melissa Davis; and Angela Smith Teliha,

Defendants,

Of which Saint Matthews Healthcare, LLC;
Melissa Kizer; and Melissa Davis, are the

Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO. 2022-CP-38-00525
BEVERLY VAUGHN	)	
as Personal Representative of the	)	
Estate of Loris Paris,	)	
	)	
Plaintiff,	)	ORDER CONTINUING MOTIONS
	)	AND ALLOWING LIMITED DISCOVERY
v.	)	
	)	
SAINT MATTHEWS HEALTHCARE, LLC;	)	
MELISSA KIZER; MELISSA DAVIS; and	)	
ANGELA SMITH TELIHA,	)	
	)	
Defendants.	)	

THIS MATTER came before the Court on January 4, 2023, for a hearing on the motion, filed August 9, 2022, of Defendant Saint Matthews Healthcare, LLC (the “Facility”), to compel Plaintiff’s claims against it to arbitration (the “Motion to Compel Arbitration”) and the corresponding motions, both also filed August 9, 2022, of Defendants Melissa Kizer and Melissa Davis to stay this case pending the ultimate outcome of the Motion to Compel Arbitration and any resulting arbitration (the “Motions to Stay”) (collectively, the Motion to Compel Arbitration and the Motions to Stay are the “Subject Motions”). As explained below, the Court has decided to continue the Subject Motions and allow limited discovery to be conducted before the Subject Motions are reset for hearing.

The Facility is a skilled nursing facility. Plaintiff’s claims against it are based on allegedly deficient care/treatment that the decedent, Loris Paris (“Ms. Paris”), received while she was a resident of the Facility. The Motion to Compel Arbitration is based on an Arbitration Agreement

that George Paris, Ms. Paris's son, signed on behalf of Ms. Paris in conjunction with her admission to the Facility.¹

As an alternative to deciding the Motion to Compel Arbitration on the present record, the Facility argues that, if the Court is not inclined to grant the motion at this time, the Court should continue the Subject Motions and allow—without risk to the Facility of waiving any arbitration rights—certain limited discovery (confined to matters relevant to the issues raised by the Motion to Compel Arbitration) to be conducted before the Subject Motions are reset for hearing. After careful consideration, the Court has decided that this is the prudent course.

NOW, THEREFORE, for good cause shown, IT IS HEREBY ORDERED as follows:

- (1) The Subject Motions are continued to allow for the Facility to take the depositions of Beverly Vaughn and George Paris and for Plaintiff to take the deposition(s) of Cindy Reck² and/or a representative of the Facility regarding the process for admitting Ms. Paris;³
- (2) The Facility and Plaintiff shall proceed to take these depositions, at a time(s) mutually convenient for all involved, as soon as is reasonably possible;

¹ The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that the Motion to Compel Arbitration is the lead motion. By their nature, the Motions to Stay, the filing of which was premised on the filing of the Motion to Compel Arbitration and the success of which is dependent on the success of the Motion to Compel Arbitration, are secondary to, and tag along with, the Motion to Compel Arbitration.

² Ms. Reck signed the subject Arbitration Agreement on behalf of the Facility.

³ The Facility represents to the Court that Ms. Reck is no longer an employee of the Facility and that it has already advised Plaintiff's counsel of the same and provided Plaintiff's counsel with the last known contact information it has for Ms. Reck. Provided a deposition of Ms. Reck is possible, Plaintiff may depose Ms. Reck, and whether or not Plaintiff is able to depose Ms. Reck, at Plaintiff's option, on reasonable notice to the Facility of Plaintiff's election to pursue this option, Plaintiff may depose a representative of the Facility (to be designated by the Facility) regarding the process for admitting Ms. Paris.

- (3) The scope of these depositions shall be limited to matters relevant to the issues raised by the Motion to Compel Arbitration, i.e., the scope of the depositions shall be confined solely to what is relevant to the instant arbitrability dispute;
- (4) By participating in these depositions, the Facility will not be subjecting itself to any claim of waiver of any arbitration rights it may have;
- (5) After these depositions have been taken and counsel for the Facility and Plaintiff have received all transcripts ordered thereof, the Facility's counsel shall advise the Clerk of Court that the Subject Motions are ready to be reset for hearing; and
- (6) The Subject Motions shall then be reset for hearing, and in making their respective arguments relative to the Motion to Compel Arbitration, the Facility and Plaintiff may utilize the transcripts of the depositions taken pursuant to this order as they see fit.

AND IT IS SO ORDERED.

MAITE MURPHY
Circuit Court Judge
First Judicial Circuit
Court of Common Pleas

_____, South Carolina

Dated: _____



Orangeburg Common Pleas

Case Caption: Beverley Vaughn VS Saint Matthews Healthcare, Llc , defendant, et al

Case Number: 2022CP3800525

Type: Order/Continuance

So Ordered

s/ Maite Murphy 2166

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-00525

BEVERLY VAUGHN AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF LORIS PARIS,

Plaintiff,

v.

SAINT MATTHEWS HEALTHCARE,
LLC; MELISSA KIZER; MELISSA
DAVIS; AND ANGELA SMITH
TELIHA

Defendants.

ORDER

This matter is before the Court on Defendants' Motion to Compel Arbitration and Motion to Stay Proceedings. For the following reasons, the Court DENIES the Defendants' Motions.

FACTUAL BACKGROUND

On or about April 12, 2019, Loris Paris was admitted to Defendant's facility for skilled nursing and rehabilitative. Prior to the date of admission, Loris Paris executed a Power of Attorney for naming her daughter, Beverly Vaughn, as her agent. It is undisputed that at no time did Loris Paris or Ms. Vaughn review or sign the arbitration agreement, nor did either one at any time consent to the arbitration agreement or authorize the signing of the agreement.

On April 8, 2022, Plaintiff filed a Summons and Complaint alleging negligent care on the part of the Defendants of behalf of her mother, Loris Paris. In lieu of providing a response to the pleadings, Defendants filed a Motion to Compel Arbitration and a Motion to Stay Litigation and Discovery pending the arbitration.

BURDEN OF PROOF

The Defendant facility seeks to compel arbitration. Defendant carries the burden to prove that a valid and enforceable arbitration agreement exists. The party seeking to establish contractual waiver of jury bears the burden of proof to establish that the waiver was signed in a “knowing, voluntary and intentional” capacity. Of those courts that have decided this question, most have held that it is the proponent of the waiver who bears the burden, reasoning that the jury trial right is fundamental, and should not be waived absent clear evidence.¹ In interpreting a jury trial waiver narrowly, some courts have also emphasized “the basic principle that ambiguities in a contract are construed against the drafting party.”² Whether the parties agreed to arbitrate is a question of substantive state law. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.”). *In Chassereau v. Global Sun Pools, Inc.*, 644 S.E.2d 718 (S.C. 2007), the Supreme Court stated:

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we

¹ See e.g., *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986) (“Where waiver is claimed under a contract executed before litigation is contemplated, we agree with those courts that have held that the party seeking enforcement of the waiver must prove that consent was both voluntary and informed.”); *Nat’l Equip. Rental Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (implying that party defending waiver bears burden of proof); *Luis Acosta, Inc. v. Citibank, N.A.*, 920 F.Supp. 15, 18 (D.P.R. 1996) (rejecting a waiver, after concluding that “the burden of proving the waiver of such a fundamental right properly rests upon the party seeking to enforce such a waiver”); *Phoenix Leasing Inc. v. Sure Broadcasting, Inc.*, 843 F.Supp. 1379, 1384 (D.Nev. 1994) (“An informal survey indicates the majority of courts having considered this question followed the approach in *Leasing Service* [and placed burden of proof on proponent of waiver.]”); *Smyly v. Hyundai Motor Am.*, 762 F.Supp. 428, 429 (D.Mass. 1991) (concluding that “since it is a waiver of a constitutional right,” proponent of waiver bears burden of showing agreement was made knowingly and intentionally).

² *Nat’l Acceptance Co.*, 381 F.Supp. at 271).

hold that these claims are not covered by the arbitration agreement at issue in the instant case.

While there is a presumption in favor of arbitration agreements, this presumption only applies after the court finds there is a valid enforceable arbitration agreement. *EEOC v. Waffle House*, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); *Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581 (2003). Plaintiff does not dispute the mandatory language in the Federal Arbitration Agreement ("FAA"). However, it is important to note that this mandatory language only applies in instances where a valid arbitration agreement has been established. This is evident from the FAA provisions: "The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement...is not in issue." 9 U.S.C. § 4. While it is true that the U.S. Supreme Court has held that the FAA "leaves no place for the exercise of discretion," the Court also cited the FAA's savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2.

However, not all arbitration clauses are enforceable. While federal law preempts state laws that would invalidate arbitration agreements on most public policy grounds, the FAA looks to state law to decide the threshold questions of contract formation. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360, 364 (2001); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'"). Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010); *Simpson*, 373 S.C at 14, 644 S.E.2d at 663

("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability. *See Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d.302, 205 (4th Cir.2001). The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). Pro-arbitration policy does not validate a contract that lacks the building blocks of a binding contract.

LEGAL ANALYSIS

A. Neither Mrs. Paris, nor her power of attorney, signed the arbitration agreement.

On February 6, 2015, Mrs. Loris Paris executed a Power of Attorney giving her daughter, Beverley Vaughn, authority to act on her behalf, being effective “upon, and only during, any period of mental incompetence or incapacity.” On April 11, 2019, as a part of the admissions process, Mrs. Vaughn was presented with and signed numerous other documents including healthcare consent forms, advanced healthcare directives, resident fund account authorizations, Medicare screening questionnaire, and other authorizations, consents, and acknowledgements; however, she was not provided a copy of and did not sign the facility’s arbitration agreement.

On April 12, 2019, Loris Paris was admitted to Defendant’s facility for skilled nursing and rehabilitative care, and her son, George Paris, signed off on the admissions paperwork at his sister’s direction.

On April 15, 2019, Mrs. Paris' son, George Paris, was told by the facility that he needed to come back in to the facility to sign more paperwork. At that time, the Defendant's staff made him sign the facility's arbitration agreement for his mother, however, he did not have any authority to do so because the Power Attorney executed by his mother only granted Beverley Vaughn the power to act on behalf of her mother in times of incapacity. Mrs. Vaughn was never presented with a copy of the arbitration agreement and never directed her brother to sign the agreement on his mother's behalf. Therefore, the arbitration agreement is unenforceable.

i. The Parties dispute whether Plaintiff was unable to make decisions for herself.

As a threshold matter, Plaintiff argues that there is no evidence in the record that Mrs. Paris could not make decisions for herself at the time of her admission to the facility. The power of attorney executed by her gave her daughter (only) the power to make certain business decisions "upon, and only during, any period of mental incompetence or incapacity." During her deposition, Mrs. Vaughn testified that her mother was typically able to sign medical forms when she went to her doctor's office and that if she needed her daughter to sign something she would on her mother's behalf but that no one else would sign things for her mother. Dep. Vaughn 10:15-11:11. When asked about her mother's cognitive ability, Mrs. Vaughn testified that she was unaware of any physician ever deeming her mother unfit to manage her own personal affairs or make decisions for herself. Dep. Vaughn 21:2-7.

Defendant argues that medical records for Mrs. Paris just prior to her admission suggest that she was incapacitated or at least experiencing cognitive issues.

Regardless of the parties' contentions, there is no evidence to suggest that the arbitration agreement was ever actually provided to Mrs. Paris or Mrs. Vaughn, or that either one instructed anyone to sign it on their behalf.

ii. George Paris was only given the authority to admit his mother to the facility.

On April 15, 2019, three days after Mrs. Paris was admitted to the facility, George Paris was presented with the arbitration agreement and told that he needed to sign it. Despite the fact that Defendant knew that his sister was the person with the power of attorney, and who had just signed numerous documents just days prior, she was not provided a copy of the arbitration agreement. Mrs. Vaughn testified that she gave her brother the authority to sign the admission paperwork in order to admit her mother into the facility but that she never gave him the authority to agree to arbitration.

2 Q. Okay. So just George?

3 A. Yes. I gave him permission to have her
4 admitted.

5 Q. Okay. So you gave her -- you gave him
6 the authority to act for you because you weren't
7 there?

8 MR. CANTWELL: Object to the form.

9 THE WITNESS: I gave him the authority
10 to have her -- have him sign her in. I gave the --
11 the convalescent home okay for him to sign her --
12 admit her because she was already there. She had
13 already arrived at the convalescent home before the
14 paperwork was signed.

15 BY MR. DOTTERER:

16 Q. Okay. So you were relying on him to
17 execute all the paperwork in connection with
18 admission to the nursing facility; is that right?

19 MR. CANTWELL: Object to the form.

20 THE WITNESS: With admission to the
21 nursing facility only.

Vaughn Dep. 18:2-21 (emphasis added).

B. The Arbitration Agreement is Unconscionable

“In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so

oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

i. Lack of Meaningful Choice

In determining whether a party lacks meaningful choice, courts look to (1) the injuries the party suffered; (2) whether the party is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause.

In this case, Mr. Paris was not provided with any information to allow him to make a meaningful choice concerning the arbitration agreement. He did not have any experience with arbitration. He was provided with the boilerplate arbitration agreement without any information about its contents and the ramifications of what would happen if he agreed to it. He testified in his deposition that he was not provided with any explanation of what the arbitration agreement was, only that it was something he needed to sign with all the other paperwork for his mother's admission. He had no bargaining power over any terms or conditions of the agreement.

15 Q. Let me ask that again. So no one at
16 the Calhoun Convalescent Center talked with you
17 about the issue of arbitration; is that correct?

18 A. No, sir.

19 Q. And they didn't explain to you what an
20 arbitration agreement was?

21 A. I never even knew what an arbitration
22 agreement was until you guys brought it up today.

Dep. George Paris 39:15-22. When Defendant's admissions director, Cindy Reck, was asked about the arbitration process during her deposition, she testified that it was her understanding that in the event of a dispute, the Defendant would pick an arbitrator from the facility to handle any resident grievances to work between the parties to come to an agreement.

3 Q So what did you tell him about the

4 arbitration agreement?

5 A The arbitration agreement is an
6 agreement between the facility and the person
7 signing it that they waive their right to a jury
8 trial; and if they have any grievances, that we
9 can assign an arbitrator from the facility to work
10 between the two parties to come to an agreement.

11 If that cannot be done, the
12 Court will assign an arbitrator to work with the two
13 parties to come to an agreement.

14 Q Okay. So it's your understanding that the
15 facility will assign an arbitrator, and if the
16 parties don't agree, then a Court will pick an
17 arbitrator?

18 A Yes.

19 Q And –

20 A No, the corporate has the arbitrator.
21 If that's not agreed upon, the courts assign an
22 arbitrator.

23 Q Okay. But it's your understanding the
24 corporate -- are you talking about Calhoun
25 Convalescent Center?

1 A Yes.

2 Q They pick the arbitrator, and that's your
3 understanding, right?

4 A Yes, that's what's in the document.

5 Q And then if the parties don't agree, then
6 a Court will pick the arbitrator?

7 A Yes.

Depo. Reck 23:3-24:7. Her description of the process seems to conflate the mediation and arbitration process, which could confuse a family member trying to find a nursing facility for a loved one. Additionally, during her deposition, she could not provide any details about the costs, payment terms, location, or what panel of arbitrators would potentially decide any dispute. Her testimony showed that she had no experience with arbitration.

25Q All right. Do you know how the arbitrator
is paid?

2 A No, I don't.

3 Q Did Mr. Paris ask about if it would cost
4 anything to arbitrate the matter?

5 A No, he did not.

6 Q Okay. Do you know whether the arbitration
7 would take place in South Carolina?

8 A I can't answer that.

9 Q As the admissions director for the
10 facility, have you ever been involved in any
11 arbitrations?

12 A No.

13 Q Have you ever been involved in an
14 arbitration outside of the context of a nursing
15 home?

16 A No.

17 Q It says in this document, the parties
18 shall select an arbitrator from a panel having
19 experience and knowledge of the health care
20 industry. What panel is that?

21 A I can't answer that.

Depo. Reck 24:25-25:21. Plaintiff was not given a copy of the South Carolina Alternate Dispute Resolution Rules with the agreement. As such, the evidence in this case shows that Plaintiff did not have a meaningful choice in agreeing to arbitrate, and George Paris only signed the documents because he was told it was required as a part of the admission process.

ii. Unconscionable Terms

The Arbitration Agreement also contains unconscionable terms. First, the arbitration agreement states it is irrevocable and “shall survive any termination or breach of this Agreement or the Admissions Agreement.” In some cases, arbitration agreements can include a process for revoking such an agreement to arbitrate or timeframe in regards to the same. Here, the agreement is irrevocable from the point of admission, with no exceptions.

The agreement is also excessively broad by including language to address any and all disputes amongst the parties, including violations of any rights granted under State law or any federal or state statutory or regulatory claim. Effectively, it potentially attempts to encompass complaints to administrative agencies such as SC DHEC and other regulatory bodies.

Further, the agreement makes the arbitration binding with no appeal process and fails to set forth any guidance or terms with respect to the “panel” of which arbitrator is to be chosen, the location or jurisdiction of the proceeding, the costs of the party, the availability of discovery.

The agreement purports that its enforcement is not subject to the South Carolina Uniform Arbitration Act, yet the decision of the arbitrator may be enforced by a court of competent jurisdiction. Plaintiff was stripped of her right to a jury trial without receiving any benefit.

C. No Agency Relationship Exists

There is no evidence that George Paris was granted the authority to sign off on the arbitration agreement. Defendant did not inquire with Mrs. Paris whether her son could sign on her behalf. Defendant knew that Beverly Vaughn was her mother’s power of attorney, as they had received all of the medical authorizations from her the day before her admission. “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Frasier v. Palmetto Homes*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996). In the present case, the testimony suggests that George Paris was there only to help admit his mother and not to make any medical or business decisions regarding her care or legal rights concerning the same. By Defendant’s own admissions, Plaintiff had already been admitted to the facility and its admissions director called Mr. Paris back out to the facility because additional paperwork needed to be sign.

In order to bind a principal to a legal contract, the agent who signs on the principal’s behalf must be an agent of the principal. *See generally Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) reh’g denied (May 2, 2018), cert. denied (Aug. 21, 2018). A person may become the agent of a principal by express appointment or implied from the words and conduct of the parties and the circumstances of the particular case. *Bruce v. Leatherwood, Walker, Todd and Mann*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984)

(citations omitted). An express appointment of agency may be conferred by power of attorney. “[A] power of attorney should be evidenced by an instrument in writing.” *Matter of Celsor*, 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998).

The South Carolina Supreme Court has held that a signatory without proper legal authority cannot bind a person to arbitration.

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

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

The Court of Appeals addressed these issues in the *Hodge* case, where the Resident was admitted to a nursing facility while competent and without any Power of Attorney. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018). In *Hodge*, the decedent's husband signed all paperwork on her behalf, including an Arbitration Agreement. *Id.* at 550, 813 S.E.2d at 296. The Court of Appeals affirmed the Circuit Court's finding that "Husband's signing of the Arbitration Agreement, Admission Agreement, and other forms does not make him [wife]'s agent. [Wife] did not have a health care power of attorney. Additionally, the Facility knew she was competent at the time of admission as indicated by the doctor's examination and allowed her to sign other forms. The record contains no evidence from the Facility that [Wife], as the principal, represented Husband was her agent." *Hodge* at 573-74, 813 S.E.2d at 308.

In the present case, there is no evidence that Mrs. Paris lacked the capacity to review and sign the arbitration agreement at the precise time of her admission or that she allowed or directed George Paris to sign on her behalf. Additionally, there is no evidence that supports the Defendant's argument that Beverley Vaughn gave George Paris any authority to sign off on the arbitration agreement pursuant to the power of attorney.

D. The Arbitration Agreement is not a valid and enforceable agreement because of lack of consideration.

The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 581 S.E.2d161, 166 (S.C. 2003) "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Plantation A.O., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship.*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998)). Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

In determining whether adequate consideration exists in a contract, or arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confines of the four corners of the instrument. *State Acc. Fund v. S.C. Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts must assess whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate.

In the present case, there is insufficient consideration associated with the arbitration agreement, and therefore, the contract is unenforceable. Defendant maintained its own rights to have all disputes heard by an arbitrator of its own selection without benefit to the Plaintiff.

E. Mrs. Paris is not a Third-Party Beneficiary of the Agreement

“A third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Helms Realty, Inc. v. Gibson–Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). However, there can be no third-party beneficiary unless a valid contract exists. *See Dickerson*, 995 A.2d at 742 (“Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce.”). Here, George Paris was not authorized to execute the arbitration agreement on Mrs. Paris’ behalf. Therefore, she could not be the third-party beneficiary of the agreement.

F. Plaintiff received no benefit from the Arbitration Agreement

Any potential argument that Plaintiff is estopped from arguing against the enforcement of the arbitration agreement fails because she received no benefit from the arbitration agreement. The arbitration agreement is not a condition of residency, and therefore, the residency cannot be a benefit she purportedly received. Since admission is unavailable as a “direct benefit” to support estoppel, Defendants would be required to point to some benefit Plaintiff received from the Arbitration Agreement alone. However, any such attempt to find a benefit would have been futile given the Court of Appeals’ unambiguous ruling in *Thompson* which held that “any possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration agreement’s] requirement that [resident] waive her right to access the courts and her right to a jury trial.” 416 S.C. at 60, 784 S.E.2d at 688.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration or Alternatively, to Compel Arbitration and Stay Proceedings, is DENIED.



Orangeburg Common Pleas

Case Caption: Beverley Vaughn VS Saint Matthews Healthcare, Llc , defendant, et al

Case Number: 2022CP3800525

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2024-11-13 11:03:44 page 15 of 15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3800525

Beverley Vaughn

PLAINTIFF(S)

Saint Matthews Healthcare, Llc et al

DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on Defendant's Motion to Reconsider following the Court's denial of the Defendants' Motion to Compel Arbitration and subsequent Motions to Stay. Upon review of the record, the Court finds there is no new evidence nor error of law and respectfully DENIES this Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/17/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Orangeburg Common Pleas

Case Caption: Beverley Vaughn VS Saint Matthews Healthcare, Llc , defendant, et al

Case Number: 2022CP3800525

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-01-21 12:45:52 page 3 of 3

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-

Beverly Vaughn as Personal
Representative of the Estate of Loris
Paris,

Plaintiff,

v.

St. Matthews Healthcare, LLC; Melissa
Kizer; Melissa Davis; Angela Smith
Teliha;

Defendants.

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or her attorneys, Janek C. Kazmierski, Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Note: If Defendants contend there is an Arbitration Agreement in question here, Plaintiff herewith demands a copy of same. The failure to provide a copy of any alleged Arbitration Agreement within sixty (60) days of service shall be deemed a waiver of same. Additionally, failure to file a motion to dismiss and compel arbitration within sixty (60) days of service shall be deemed a waiver of same.

{signature page only to follow}

Dated: April 08, 2022

Respectfully Submitted,

POULIN, WILLEY, ANASTOPOULO, LLC

/s/ Janek C. Kazmierski, Esq.
Eric M. Poulin (Bar No. 100209)
Roy T. Willey, IV (Bar No. 101010)
Janek C. Kazmierski (Bar No. 100951)
32 Ann Street
Charleston, SC 29403
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E: eric@akimlawfirm.com
roy@akimlawfirm.com
janekk@akimlawfirm.com

ATTORNEYS FOR THE PLAINTIFF

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-

Beverly Vaughn as Personal
Representative of the Estate of Loris Paris,

Plaintiff,

v.

St. Matthews Healthcare, LLC; Melissa
Kizer; Melissa Davis; Angela Smith
Teliha;

Defendants.

COMPLAINT
(Jury Trial Demanded)

COMES NOW Beverly Vaughn, as Personal Representative of the Estate of Loris Paris, deceased, and files this Complaint against Defendants, Saint Matthews Healthcare, LLC; Melissa Kizer; Melissa Davis; and Angela Smith Teliha, and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Beverly Vaughn, was duly appointed as the Personal Representative of the Estate of Loris Paris (hereinafter also referred to as "Decedent"), in Calhoun County, State of South Carolina.
2. That, upon information and belief, Saint Matthews Healthcare, LLC, is a foreign corporation d/b/a Calhoun Convalescent Center located in and with its principal place of business in Calhoun County, South Carolina. That Defendants Kizer, Davis, and Smith Tehila were, at all relevant times, employees, agents, and/or servants of Saint Matthews Healthcare and as such any acts or omissions on the part of the same would be attributable to and imputed to Defendant Saint Matthews Healthcare pursuant to the doctrine of *respondeat superior* or other similar theories of liability.
3. That, upon information and belief, Defendant Kizer is citizen of South Carolina and, at all relevant times, was employed as the licensed administrator of Saint Matthews Healthcare.
4. That, upon information and belief, Defendant Davis is a resident and citizen of Orangeburg County, South Carolina, and, at all relevant times, was employed as a licensed nurse at Saint Matthews Healthcare and provided care to the Decedent.
5. That, upon information and belief, Defendant Smith Teliha is a resident and citizen of Orangeburg County, South Carolina, and, at all relevant times, was employed as a licensed nurse at Saint Matthews Healthcare and provided care to the Decedent.

6. That the Defendant Saint Matthews Healthcare exercised control over the care of their residents, including Loris Paris, through staffing, training, budgeting, supervision, compliance, management, investigations, policies and procedures, care plans, and employment and/or contracting with health care professionals.
7. That this Court has jurisdiction over the subject matter and parties to this action and that venue is proper Orangeburg County.
8. Whenever the term “Defendants” is utilized in this Complaint, such terms collectively refer to and include all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.
9. That upon information and belief, at all material times, Defendants were responsible for ensuring that the activities and operations of the facility complied with all applicable state and federal statutes, laws, and regulations.

FACTS COMMON TO ALL COUNTS

10. That on or about April 12, 2019, Loris Paris was admitted to Defendant’s facility for skilled nursing and rehabilitative services.
11. That Loris Paris was totally dependent on staff for all activities of daily living (ADLs).
12. On admission, Defendants identified Loris Paris to be at moderate risk for developing pressure ulcers.
13. During Loris Paris’ residency at Defendant’s facility she developed and/or certain pressure ulcers deteriorated into severe pressure ulcers.
14. On or about November 27, 2019, Loris Paris was admitted to the Regional Medical Center for multiple medical complications including dehydration and infected pressure ulcers.
15. On or about May 19, 2020, Loris Paris was admitted to the Regional Medical Center with severe sepsis, dehydration, infected pressure ulcers, and malnutrition.
16. On or about July 7, 2020, Loris Paris was admitted to the Regional Medical Center for respiratory distress and was admitted for sepsis from a urinary tract infection, bacteremia, severe protein calorie malnutrition, pressure ulcers on her right foot, right hip, left ischium and sacrum.
17. On or about July 17, 2020, Loris Paris passed away.
18. As a patient, Loris Paris was entitled to and had the right to receive that degree of care, skill, and diligence ordinarily employed by members of the health care profession under the same or similar conditions and like surrounding circumstances.
19. At all material times, Defendant Saint Matthews Healthcare represented that they were capable of and competent to provide Loris Paris with the necessary care, treatment, and services and would provide the same.

20. Despite these representations, during her admission to Defendant's facility, Loris Paris suffered multiple injuries due to the negligent acts and/or omissions of the Defendants, including, but not limited to:
- (a) development of multiple pressure ulcers;
 - (b) malnutrition;
 - (c) physical suffering and mental anguish;
 - (d) pain and suffering; and
 - (e) destruction of her human dignity and violation of her rights.
21. Despite Loris Paris's sensory and mobility impairments, nursing assessments reported her at moderate risk for pressure ulcers and did not document her nutritional risks.

FOR A FIRST CAUSE OF ACTION
(Professional Negligence/Gross Negligence – As to All Defendants)

22. Plaintiff repeats each and every relevant paragraph as if restated verbatim herein.
23. This count involves professional negligence perpetrated by Defendants who provided services individually and/or in the course and scope of their employment to Loris Paris while she was a patient at Saint Matthews Healthcare from April 19, 2019 until her death on July 17, 2020.
24. The Defendants, individually and collectively and by virtue of their own independent actions and while acting as agents, servants, and/or employees, and while acting through the healthcare providers and the nursing staff employed or utilized by them at the facility, owed a duty to Decedent to comply with the standard of care and skill exercised by healthcare providers generally under similar conditions and like surrounding circumstances as those presented by Loris Paris during her admission to Saint Matthews Healthcare.
25. During Loris Paris's residency at Saint Matthews Healthcare, Defendants, individually and collectively, and by virtue of their own independent actions, and while acting as agents (actual or apparent), servants, and/or employees, and while acting through the healthcare providers employed, breached the applicable standard of care with respect to their assessment, diagnosis, planning, care, treatment, and evaluation of Loris Paris.
26. Their professional negligence and breaches of the applicable standard of care includes, but is not limited to, the following:
- a. Failure to conduct proper assessments;
 - b. Failure to properly assess the risk for development of pressure ulcers;
 - c. Failure to conduct appropriate skin assessments and inspections;
 - d. Failure to provide and monitor fluid intake;

- e. Failure to provide monitor nutrition via feeding tube;
 - f. Failure to develop and implement appropriate care plan;
 - g. Failure to implement appropriate and timely interventions to prevent pressure ulcer development;
 - h. Failure to take adequate measures to prevent the formation and deterioration of pressure ulcers;
 - i. Failure to turn and reposition as needed to prevent the formation and deterioration of pressure ulcers;
 - j. Failure to provide adequate and appropriate wound care; and
 - k. In such other particulars as may be shown at trial.
27. As a direct and proximate result of the violations of the standard of care by the Defendants as described above, Loris Paris suffered multiple injuries which included, but were not limited to, the development of multiple pressure ulcer and malnutrition. Prior to her death, Loris Paris suffered from conscious pain and suffering, mental distress, anguish, disability, and incurred medical expenses.
28. That Plaintiff is entitled to judgment against Defendants for actual, compensatory, and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Negligent Hiring, Negligent Training, Negligent Retention, and Negligent Supervision – as to Defendant Saint Matthews Healthcare)

29. Plaintiff repeats each and every relevant paragraph as if restated verbatim herein.
30. At all relevant times herein referenced, each employee, servant, and/or agent of Defendant Saint Matthew Healthcare was under Defendant's retention, control and supervision
31. At all relevant times herein referenced, Defendant knew of or had reason to know of its employees, servants and agents and the ability and means to hire, train, control and supervise the conduct and actions of them.
32. Defendant negligently, grossly negligently, carelessly, recklessly, willfully and wantonly failed to properly hire, train, control, and supervise the actions and conduct of its employees, servants, and agents, in the following particulars, to wit:

- a. In failing to train, hire, supervise, and instruct its employees, agents and servants as to how to properly assess patients for pressure sore development risk;
 - b. In failing to train, hire, supervise, and instruct its employees, agents and servants as to how to properly monitor patients for adequate nutrition and hydration;
 - c. In failing to train, hire, supervise, and instruct its employees, agents and servants as to how to prepare and implement care plans;
 - d. In failing to train, hire, supervise, and instruct its employees, agents and servants as to how to treat pressure ulcers and prevent infections;
 - e. In failing to remedy the improper conduct and actions of its employees, agents and servants;
 - f. In such others as may be shown at trial.
33. As a direct and proximate result of the violations of the standard of care by the Defendants as described above, Loris Paris suffered multiple injuries which included, but were not limited to, the development of multiple pressure ulcer and malnutrition. Prior to her death, Loris Paris suffered from conscious pain and suffering, mental distress, anguish, disability, and incurred medical expenses.
34. That Plaintiff is entitled to judgment against Defendants for actual, compensatory, and exemplary or punitive damages for his personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

WHEREFORE, Plaintiff prays for the following relief:

- (a) That Plaintiff recover a judgment against the Defendants in the form of actual and punitive damages in a sum in excess of One Hundred Thousand Dollars (\$100,000.00).
- (b) That all issues of fact be tried by jury.
- (c) That the costs of this action be taxed against Defendants.
- (d) For such other and further relief as the Court may deem just and proper.

{signature page only to follow}

Dated: April 08, 2022

Respectfully Submitted,

POULIN, WILLEY, ANASTOPOULO, LLC

/s/ Janek C. Kazmierski, Esq.

Eric M. Poulin (Bar No. 100209)

Roy T. Willey, IV (Bar No. 101010)

Janek C. Kazmierski (Bar No. 100951)

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roy@akimlawfirm.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LORIS PARIS,	)	CASE NO. 2022-CP-38-00525
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SAINT MATTHEWS HEALTHCARE, LLC; MELISSA KIZER; MELISSA DAVIS; AND ANGELA SMITH TELIHA ,	)	DEFENDANT SAINT MATTHEWS HEALTH CARE, LLC'S ANSWER TO THE PLAINTIFF'S COMPLAINT
	)	
	)	
DEFENDANT.	)	
	)	

TO: JANEK C. KAZMIERSKI, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Saint Matthews Health Care, LLC incorrectly referred to in the Plaintiff's Complaint as "St. Matthews Healthcare, LLC" (hereinafter this "Defendant"), by and through its undersigned counsel and subject to and without waiving its right to compel this matter to arbitration, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. This Defendant is without sufficient knowledge or information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

3. Responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant admits only that it is the sole licensee and operator of Calhoun Convalescent

Center (the “Facility”), which is located in Calhoun County, South Carolina and that Defendants Kizer and Davis were employed at the Facility while Ms. Paris was there. All other allegations are denied. To the extent the allegations in the above Paragraph are directed at other parties or call for legal conclusions, no response is required.

4. The allegations set forth in Paragraph 3 of the Plaintiff’s Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant admits that Defendant Kizer was employed at the facility as administrator at times relevant to the Plaintiff’s allegations and, upon information and belief, is a resident of South Carolina.

5. The allegations set forth in Paragraph 4 of the Plaintiff’s Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant admits that Defendant Davis was employed at the facility at times relevant to the Plaintiff’s allegations and, upon information and belief, is a citizen of Orangeburg County, South Carolina. This Defendant craves reference to Ms. Paris’ chart with reference to any care Defendant Davis may have provided to her, if any. Any allegations inconsistent with this response are denied.

6. The allegations set forth in Paragraph 5 of the Plaintiff’s Complaint appear to be directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies that Defendant Smith Teliha was an employee of the Facility and lacks sufficient knowledge and information to admit or deny that she is a resident of Orangeburg County and therefore denies this allegation. Further responding, this Defendant would crave reference to Ms. Paris’ medical records for any care Defendant Smith Teliha may have provided her, if any. Any allegations inconsistent with this response are denied.

7. This Defendant denies the allegations set forth in Paragraph 6 of the Plaintiff's Complaint as written or stated. Further responding, this Defendant asserts that the care it provided to Ms. Loris was in compliance with the applicable standard of care. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

8. The allegations set forth in Paragraph 7 of the Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, those allegations are denied.

9. The allegations set forth in Paragraph 8 of the Plaintiff's Complaint are not factual allegations requiring a response from this Defendant. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to these allegations and therefore they are denied and strict proof is demanded thereof. Further answering, this Defendant denies identifying all "Defendants" collectively throughout the Complaint is proper under the South Carolina Rules of civil procedure.

10. In responding to the allegations set forth in Paragraph 9 of the Plaintiff's Complaint, this Defendant admits that it is subject to certain federal and state laws and regulations for licensing and regulatory purposes and endeavors to ensure these regulations are met.

11. Responding to the allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, and 17 of the Plaintiff's Complaint, this Defendant would crave reference to Ms. Paris' medical records and death certificate for their contents. Any allegations inconsistent with those contents or which imply or assert liability as to this Defendant are denied. Further responding, this Defendant maintains that the care provided to Ms. Loris was at all times in compliance with the

applicable standard of care. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

12. Responding to the allegations set forth in Paragraph 18 of the Plaintiff's Complaint, this Defendant admits it had a duty to provide care to Ms. Loris in accordance with the applicable standard of care and maintains this was done. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

13. Responding to the allegations set forth in Paragraph 19 of the Plaintiff's Complaint, this Defendant admits that it offers services and nursing care to residents in accordance with the applicable standard of care and maintains the care provided to Ms. Paris was in compliance with the applicable standard of care. However, this Defendant denies making any specific representations to Ms. Paris or her family as stated in the Complaint.

14. This Defendant denies the allegations set forth in Paragraph 20 of the Plaintiff's Complaint, including its subparts, and demands strict proof thereof.

15. Responding to the allegations set forth in Paragraph 21 of the Plaintiff's Complaint, this Defendant would crave reference to Ms. Paris' medical records for their contents. Any allegations inconsistent with those contents or which imply or assert liability as to this Defendant are denied.

16. Responding to Paragraph 22 of Plaintiff's Complaint, this Defendant reasserts its responses above as if set forth herein verbatim.

17. This Defendant denies the allegations set forth in Paragraph 23 of the Plaintiff's Complaint and demands strict proof thereof.

18. Responding to the allegations set forth in Paragraph 24 of the Plaintiff's Complaint, this Defendant admits it had a duty to provide care to Ms. Loris in accordance with

the applicable standard of care and maintains this was done. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

19. This Defendant denies the allegations set forth in Paragraphs 25, 26, 27, and 28 of the Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

20. Responding to Paragraph 29 of Plaintiff's Complaint, this Defendant reasserts its responses above as if set forth herein verbatim.

21. The allegations set forth in Paragraphs 30 and 31 of the Plaintiff's Complaint contain conclusions of law and no response is required. To the extent that a response is required, these allegations are denied.

22. This Defendant denies the allegations set forth in Paragraphs 32, 33 and 34 of the Plaintiff's Complaint and demands strict proof thereof.

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

24. This Court lacks jurisdiction over this matter as Plaintiff's claims against this Defendant are subject to arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation and therefore this matter should be dismissed or stayed and compelled to arbitration pursuant to Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3 and Rule 12(b)(1), SCRCP.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

25. Plaintiff's claim for punitive damages and an award of punitive damages would violate those clauses of the Constitutions of the United States and South Carolina related to privileges and immunities, due process and equal protection and this Defendant would further

assert the protections, defenses, and statutory rights set forth in S.C. Code Ann. § 15-32-510, *et seq.*, including §15-32-520, §15-32-530, and §15-32-540.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

31. This Defendant would assert that some or all of the statutes, laws, and regulations referenced by the Plaintiff do not create a standard of care applicable to Plaintiff's claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

33. Some or all of the Plaintiff's claims are barred by the applicable Statute of Limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

35. This Defendant asserts that the care provided to Ms. Paris was at all times compliant with the governing standard of care.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

36. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Answer to assert any such defenses. Furthermore, this Defendant hereby incorporates all defenses asserted by its Codefendants, as may be applicable, in this matter.

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

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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

tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant Saint Matthews Health Care, LLC incorrectly referred to in the Plaintiff's Complaint as "St. Matthews Healthcare"

Charleston, South Carolina

Dated: May 16, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL	)	CASE NO. 2022-CP-38-00525
REPRESENTATIVE OF THE ESTATE	)	
OF LORIS PARIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT MELISSA KIZER'S
	)	MOTION TO STAY ACTION
SAINT MATTHEWS HEALTHCARE,	)	
LLC; MELISSA KIZER; MELISSA	)	
DAVIS; AND ANGELA SMITH	)	
TELIHA ,	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ATTORNEY FOR THE PLAINTIFF:

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

Defendant Saint Matthews Health Care, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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

tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant Melissa Kizer

Charleston, South Carolina

Dated: August 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LORIS PARIS,	)	CASE NO. 2022-CP-38-00525
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANT MELISSA DAVIS' ANSWER
	)	TO PLAINTIFF'S COMPLAINT
SAINT MATTHEWS HEALTHCARE, LLC; MELISSA KIZER; MELISSA DAVIS; AND ANGELA SMITH TELIHA,	)	
	)	
	)	
DEFENDANT.	)	
	)	

TO: JANEK C. KAZMIERSKI, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Melissa Davis (hereinafter this "Defendant"), by and through the undersigned counsel and subject to and without waiving her right to compel this matter to arbitration, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. This Defendant is without sufficient knowledge or information to respond to the allegations set forth in Paragraph 1 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

3. Responding to the allegations set forth in Paragraph 2 of Plaintiff's Complaint, this Defendant admits only that she was employed at Calhoun Convalescent Center (the "Facility") while Ms. Paris was a resident there. All other allegations are denied. To the extent

the allegations in the above Paragraph are directed at other parties or call for legal conclusions, no response is required.

4. The allegations set forth in Paragraph 3 of the Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations are indirectly regarding this Defendant or imply liability as to this Defendant, they are denied.

5. Responding to the allegations set forth in Paragraph 4 of the Plaintiff's Complaint, this Defendant admits that she is a resident of Orangeburg County and was employed as a licensed nurse at the Facility. This Defendant would crave reference to Ms. Loris' medical records for any care she may have provided to Ms. Loris. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

6. The allegations set forth in Paragraph 5 of the Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those allegations are indirectly regarding this Defendant or imply liability as to this Defendant, they are denied.

7. Responding to the allegations set forth in Paragraph 6 of the Plaintiff's Complaint, this Defendant admits that as the sole licensee of the Facility, the Facility Defendant provided care to its residents, including Ms. Paris. This Defendant further asserts that at all times, that the care provided to Ms. Loris was in compliance with the applicable standard of care. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

8. The allegations set forth in Paragraph 7 of the Plaintiff's Complaint call for legal conclusions and therefore no response is required. To the extent a response is required, those allegations are denied.

9. The allegations set forth in Paragraph 8 of the Plaintiff's Complaint are not factual allegations requiring a response from this Defendant. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond to these allegations and therefore they are denied and strict proof is demanded thereof. Further answering, this Defendant denies identifying all "Defendants" collectively throughout the Complaint is proper under the South Carolina Rules of civil procedure.

10. In responding to the allegations set forth in Paragraph 9 of the Plaintiff's Complaint, to the extent these allegations are directed towards this Defendant, this Defendant admits upon information and belief, that the Facility Defendant is subject to certain federal and state regulations. This Defendant denies that such regulations constitute the applicable standard of care or that she is solely responsible for compliance with such regulations. Any and all allegations inconsistent with the above response are hereby denied and strict proof is demanded thereof.

11. Responding to the allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, and 17 of the Plaintiff's Complaint, this Defendant would crave reference to Ms. Paris' medical records and death certificate for their contents. Any allegations inconsistent with those contents or which imply or assert liability as to this Defendant are denied.

12. Responding to the allegations set forth in Paragraph 18 of the Plaintiff's Complaint, this Defendant admits the Facility Defendant had a duty to provide care to Ms. Loris in accordance with the applicable standard of care and maintains this was done. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

13. The allegations set forth in Paragraph 19 of the Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent those

allegations indirectly concern this Defendant or imply liability and/or damages as to this Defendant, they are denied.

14. This Defendant denies the allegations set forth in Paragraph 20 of the Plaintiff's Complaint, including its subparts, and demands strict proof thereof.

15. Responding to the allegations set forth in Paragraph 21 of the Plaintiff's Complaint, this Defendant would crave reference to Ms. Paris' medical records for their contents. Any allegations inconsistent with those contents or which imply or assert liability as to this Defendant are denied. To the extent the allegations in the above Paragraph are directed at other parties, no response is required.

16. Responding to Paragraph 22 of Plaintiff's Complaint, this Defendant reasserts her responses above as if set forth herein verbatim.

17. This Defendant denies the allegations set forth in Paragraphs 23 of the Plaintiff's Complaint.

18. Responding to the allegations set forth in Paragraph 24 of the Plaintiff's Complaint, this Defendant admits that to the extent she provided care to Ms. Loris, she owed a duty to provide such care in accordance with the applicable standard of care and maintains this was done. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

19. This Defendant denies the allegations set forth in Paragraphs 25, 26, 27, and 28 of the Plaintiff's Complaint, including all subparts. To the extent the allegations set forth in the above paragraphs are directed at other parties, no response is required.

20. Responding to Paragraph 29 of Plaintiff's Complaint, this Defendant reasserts its responses above as if set forth herein verbatim.

21. The allegations set forth in Paragraphs 30, 31, and 32 of the Plaintiff's Complaint, including all subparts, appear to be directed at a party other than this Defendant and therefore no response is required. To the extent a response is required, those allegations are denied.

22. This Defendant denies the allegations set forth in Paragraphs 33 and 34 of the Plaintiff's Complaint and demands strict proof thereof.

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

24. This matter must be stayed against this Defendant pending the result of arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation pursuant to Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

29. This Defendant would affirmatively assert the defense of intervening and superseding negligence of third parties.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

30. This Defendant would assert that some or all of the statutes, laws, and regulations referenced by the Plaintiff do not create a standard of care applicable to Plaintiff's claims or private right of action in this matter.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

32. Some or all of the Plaintiff's claims are barred by the applicable Statute of Limitations.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

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

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

34. This Defendant maintains that she did not breach any duty of care owed to the Plaintiff.

FURTHER ANSWERING AND FOR A FURTHER AFFIRMATIVE DEFENSE

35. This Defendant hereby gives notice that she intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend her Answer to assert any such defenses. Furthermore, this Defendant hereby incorporates all defenses asserted by her Codefendants, as may be applicable, in this matter.

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

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

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

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Attorneys for the Defendant Melissa Davis

Charleston, South Carolina

Dated: May 16, 2022

) IN THE COURT OF COMMON PLEAS

) FIRST JUDICIAL CIRCUIT

) NO. 2022-CP-38-00525

)

)

d) TRANSCRIPT OF RECORD

) Motions

THE HONORABLE MAITE MURPHY, JUDGE

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

Attorney for the Plaintiff

Attorney for the Defendants Saint Matthews
Healthcare, LLC, Melissa Kizer, and Melissa Davis

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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INDEX TO WITNESSESDIRECT: CROSS: REDIRECT: RECROSS:

(No witnesses called.)

INDEX TO EXHIBITSIDENTIFIED: ADMITTED:

(No exhibits marked.)

- - - - -

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought

ellipses ... trailing off

[ph] phonetically written

[sic] written as said

[indiscernible] unable to be understood

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

CLERK OF COURT: Case No. 2022-CP-38-00525, Beverly Vaughn versus Saint Matthews Healthcare. And this is Defendant Saint Matthews Healthcare's motion to compel.

THE COURT: Good morning, counsel.

ATTORNEY HINES: Good morning, Your Honor. And may it please the Court. Russ Hines, here for the Defendant Saint Matthews Healthcare. Your roster, I believe, also has the third motion on it. It's a motion to stay, and that's filed by the Defendant Melissa Kizer. And there's a relationship between that motion and the motion that's at No. 2 by Saint Matthews Healthcare.

And, in fact, there's also another motion that I don't see in your roster but it's by Defendant Melissa Davis, and it's completely identical to the motion filed by Ms. Kizer to stay. Usually these motions are all heard at the same time. I think the motions, they were filed on the same day, and I don't know why they wouldn't be on the same roster, but my point is, only for the interest of judicial economy, if the Court would want to take them all up at the same time I wouldn't expect opposing counsel to have a problem with that, although I won't speak for him.

But basically the idea is the only big motion is the motion to compel arbitration. The other two motions just kind of tag along with it and sort of ride on its coattails; I mean, either

1 they rise or fall on the first motion. So it makes sense, as I
2 see it, to take care of them all at one time. Again, however the
3 Court wishes to proceed. And I also don't want to speak for
4 opposing counsel if that causes a problem for him.

5 THE COURT: Mr. Cantwell.

6 ATTORNEY CANTWELL: Good morning, Your Honor. Josh Cantwell
7 here for the plaintiff. We are fine with addressing all of the
8 motions at one time. As Mr. Hines says, that the first motion is
9 really the meat of it all and the other two are just dependent on
10 the Court's ruling on the first one.

11 THE COURT: All right. Thank you, gentlemen. All right.
12 Mr. Hines, are you ready to proceed?

13 ATTORNEY HINES: Yes, Your Honor, and thank you very much
14 for that. And just to sort of button up the idea of those two
15 tagalong motions, they rely on the Federal Arbitration Act, it's
16 Section 3, and both Ms. Kizer and Davis have filed memoranda in
17 support of their motions, but the sum and substance of both of
18 them is that Section 3 of the FAA -- and there's a case called
19 *Stokes v. Metropolitan Life* that's cited, it's a South Carolina
20 case, 351 S.C. 606, and if the Court will indulge me, it just
21 reads: The FAA clearly requires a court stay any suit or
22 proceeding pending the arbitration of any issue referable to
23 arbitration under an agreement in writing for such arbitration
24 upon the application of one of the parties, the idea being that
25 if the case -- if the motion is granted as to the Saint Matthews

1 Healthcare's motion to compel arbitration, these other two
2 defendants rely on that section of the FAA to say that the case
3 should be stayed as to them pending the outcome of the
4 arbitration.

5 Now, Your Honor, as to the motion to compel arbitration,
6 this is a case that arises in the context of a skilled nursing
7 care facility. I'll just refer to the Defendant Saint Matthews
8 Healthcare as the facility for short. I've got a little bit of
9 ground to cover and I want to try to do it as fast as possible
10 because there are, what is a nuance, two different lines of
11 argument that I'm going to present the Court with. The first one
12 actually does rely on a power of attorney. The second relies on
13 the doctrines of merger and equitable estoppel.

14 And the Court perhaps, and understandably, might have
15 blocked this out of the Court's memory the last time I appeared
16 to argue merger and equitable estoppel -- and I'll get to that in
17 a moment -- but in terms of trying to enforce this arbitration
18 agreement, the first argument has to do with the power of
19 attorney, and in this case the decedent is Ms. Paris, Loris
20 Paris. She was a resident of the facility. This case is being
21 brought by her daughter, Beverly Vaughn, as her personal
22 representative of her estate.

23 Going back to the admission of Ms. Paris into our facility,
24 the admission agreement and arbitration agreement were signed by
25 another of Ms. Paris's children, his name is George, George

1 Paris. When George signed the admission and arbitration
2 agreement, he did so at the direction of Beverly Vaughn.

3 Some years, I think about four years prior to the
4 admission -- this admission happened in April of 2019 -- Beverly
5 Vaughn and Ms. Paris had executed a durable power of attorney in
6 favor of Ms. Vaughn, making Ms. Vaughn her attorney-in-fact, with
7 all authority to act essentially in all ways in which Ms. Paris
8 herself could act as if she was personally present and acting,
9 and it included specifically the power to arbitrate.

10 Now, it was a springing durable power, meaning that it did
11 not become effective until Ms. Paris was/became incompetent, or
12 incapacitated, was lacking capacity. There was some issue raised
13 in that regard by opposing counsel in the past. I have emailed
14 to the Court some medical records, and I also copied opposing
15 counsel, of course, but I didn't file them. Those records show
16 that, at the time of the admission in April of 2019, there was a
17 physician's certification indicating that Ms. Paris was unable to
18 consent to healthcare decisions; there is nursing documentation
19 showing that she's suffering from an altered mental state;
20 there's documentation of dementia and inability, or limitations
21 on her ability to communicate and to make decisions. And I think
22 that's all there in the record that we've now provided to show
23 that her condition, that being Ms. Paris, had gotten to the point
24 that the power had sprung into effect.

25 Moreover, the depositions that have been taken in this case,

1 specifically the deposition of Beverly Vaughn, shows Beverly
2 Vaughn herself had acted, was acting at that time, and had been
3 acting for some time before the admission, as if the power had
4 sprung into effect and that she had the ability to act on behalf
5 of her mother. And we cited that in our briefing and provided
6 deposition transcripts.

7 So we take the position, Your Honor, that the record is
8 clear that there is medical documentation related to her
9 capacity. And also, the person who was nominated, or made her
10 attorney-in-fact, Ms. Vaughn, herself, conducted her actions as
11 if she believed her powers had taken effect on the agreement. I
12 mean, she was power of attorney.

13 Nothing -- I would point out, and I do point this out in our
14 brief, is that the power of attorney specifically speaks in terms
15 of third parties and their ability to rely on the actions of the
16 attorney-in-fact, that being Ms. Vaughn. And this is on page 6
17 of the power which we've provided:

18 It says: without limiting in any way the right of third
19 parties to rely on actions by my attorney-in-fact without
20 inquiring as to the propriety of such actions -- I believe that's
21 a typo; I think it's supposed to read the propriety of such
22 actions. But it continues -- I do hereby declare, as between me
23 and my attorney-in-fact, a fiduciary relationship exists, and
24 that my attorney-in-fact shall not satisfy her legal obligations
25 out of any property subject to this power of attorney, nor may my

1 attorney-in-fact exercise this power in favor of herself, or
2 predators, or the predators of the estate.

3 I realize that's a mouthful, but my point being is that even
4 in terms of capacity we have medical records, we have actual
5 actions of Ms. Vaughn taking the position in this case, in her
6 deposition in this case, that she was properly acting as
7 attorney-in-fact, we have this provision of power of attorney
8 that talks about the right of third parties to rely on the
9 actions of the attorney-in-fact without inquiring as to the
10 propriety of those actions, and in making her the fiduciary,
11 establishing a fiduciary relationship between the
12 attorney-in-fact and the principal, Ms. Paris.

13 So if we've crossed the hurdle there of having the power,
14 having sprung into effect, we then have the question of
15 Ms. Vaughn holding, properly having, the power of attorney at the
16 time of admission, and then Ms. Vaughn is actually speaking
17 with -- Ms. Vaughn had lived out of state at the time of the
18 admission. She spoke with the admissions director. Her name is
19 Cindy Reck, and Ms. Reck -- and this is reflected in the
20 depositions of both Ms. Reck and Ms. Vaughn -- Ms. Vaughn
21 recognizes that -- she spoke with Ms. Reck, told her that her
22 brother, George, was going to be signing admissions documentation
23 in conjunction with having her mother admitted.

24 Now, Ms. Vaughn herself had signed certain other documents
25 around that time, but she specifically, since she was not going

1 to be there when her mother was admitted, gave consent for her
2 brother, George, to do this and communicated to Ms. Reck that her
3 brother, George, was coming to do this, and that she had power of
4 attorney, she, Ms. Vaughn, had power of attorney, and she was
5 operating on that basis.

6 Ms. Vaughn, during her deposition, tried to suggest that she
7 had limited what George could do in terms of the authority that
8 she had inferred upon him to just strictly -- it somehow did not
9 include the ability to sign an arbitration agreement, but
10 Ms. Vaughn, under some questioning, admitted that she couldn't
11 specifically recall what she told Ms. Reck in that regard.

12 And Ms. Reck, for her part, says she was never told that
13 there was any limitation upon what George could sign and would
14 not have offered him an arbitration agreement to sign if she was
15 under the impression that he couldn't have signed it.

16 So all that leads to this, Your Honor: We either have a
17 situation where Beverly Vaughn, acting as power of attorney for
18 her mother and thereby standing in her mother's shoes and acting
19 as if she were, in fact, her mother, gave either actual authority
20 to George, who then signed the arbitration agreement, or if short
21 of actual authority, she created an apparent authority in George
22 by virtue of her communications with Ms. Reck that did not limit,
23 in any way, George's ability to sign paperwork in conjunction
24 with the admission, which included the arbitration agreement
25 and/or, I should say, an estoppel situation.

1 And to me, the estoppel, agency by estoppel and the apparent
2 authority sort of get to become inflated terms, but the bottom
3 line is in this case Ms. Vaughn is essentially Ms. Paris because
4 of the power of attorney, she's standing in those shoes. It
5 would be as if Ms. Paris herself called Cindy Reck and said,
6 Cindy, my son is coming down here to sign these papers, and she
7 doesn't give him any indication that there's any limitation on
8 what he can do.

9 So that's the first argument, Your Honor. That's the power
10 of attorney, and that's the way that it flows all the way down to
11 an enforceable arbitration agreement that was signed by George,
12 with authority. It was either actual, or apparent, or by
13 estoppel based upon the communications from Ms. Vaughn to Cindy
14 Reck.

15 On the other side of it, Your Honor, a separate argument is
16 this idea of merger and equitable estoppel. I know I've argued
17 it to you before -- it might have been a little while -- but I'll
18 try to speed through it. We do have it in our brief, and I'm
19 happy to answer any questions.

20 But the basic idea here is is that the doctrine of merger
21 says that when we have two instruments that are signed at the
22 same time by the same parties for the same purpose and in the
23 course of the same transaction, they are deemed to be merged and
24 considered and treated as one contract unless there is evidence
25 indicating any intent contrary to merger.

1 This always -- and I'll have to be candid, and we do get
2 into this in our briefing -- there is a case called *Solesbee v.*
3 *Fundamental* that came down, well, a while back, within the last
4 year, and it ruled against us on this argument. I know that
5 opposing counsel, and rightly so, has brought that case to the
6 Court's attention. And what I would say to that, Your Honor, is
7 it's certainly true that the arbitration agreement we have here,
8 the admission agreement that we have here -- those are the two
9 documents we're arguing that merge -- that they, those were the
10 same documents that were at issue in the case of *Solesbee*, the
11 same four documents, and we lost on the merger argument there.

12 But in that decision, the *Solesbee* court simply has not
13 actually addressed all of the arguments that were presented to
14 the Court here today, and for that reason we think it's fair game
15 that we can argue that there is some daylight between the
16 *Solesbee* decision, what the court actually said, and --

17 (Internet interruption.)

18 THE COURT: I lost you, Mr. Hines.

19 ATTORNEY HINES: ... it's governed by South Carolina law,
20 and the arbitration agreement provides --

21 THE COURT: Mr. Hines, I lost you a couple minutes ago. I
22 think back when you said there might be light, the Court of
23 Appeals, they might have automatically muted you. I don't know.
24 I'm kidding.

25 ATTORNEY HINES: It might have been the equivalent of --

1 THE COURT: There might be an automatic --

2 ATTORNEY HINES: It might be automatic. Your Honor, I don't
3 need to waste the Court's time unduly. I recognize *Solesbee* is
4 an obstacle course, and our position is that we can wiggle our
5 way past *Solesbee* because if you look at the actual analysis in
6 the *Solesbee* decision it doesn't slam the door shut entirely on
7 all of our arguments because it just doesn't address them all,
8 and so, therefore, there's meat left on that bone to be argued.

9 And suffice it that for the purposes of argument for me just
10 to rely on what we briefed in that regard, it's all set there, I
11 understand, Your Honor's got a full docket, so I don't need to
12 get into all that, if it's sufficient for me just to point to the
13 brief and leave it at that.

14 THE COURT: Yes, sir. And of course I'm going to take the
15 time to review all the briefs and those other followings before
16 making a decision.

17 ATTORNEY HINES: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Hines. Counsel, your response?

19 ATTORNEY CANTWELL: Good morning, Your Honor. Josh Cantwell
20 here for the plaintiff. I just wanted to address a few issues
21 touched on by Mr. Hines.

22 The first argument in our brief deals with the issue that
23 neither Mrs. Paris, nor her power of attorney, Mrs. Vaughn,
24 signed the actual arbitration agreement. The power of attorney
25 was executed in February of 2015 giving her daughter, Beverly,

1 the authority to act on her behalf upon and only during any
2 period of mental incompetence or incapacity.

3 There's nothing in the record which suggests that prior to
4 the time of signing of the admissions documents and the
5 arbitration document that there was a finding of mental
6 incompetence or incapacity on the part of Ms. Paris.

7 And so the extent of what happened in this situation was
8 Ms. Paris was transferred to the defendant's facility.
9 Ms. Vaughn was helping, and the facility knew that. The facility
10 sent her healthcare consent forms to sign, an advance healthcare
11 directive to sign, resident fund account authorizations, Medicare
12 screening questionnaires, other consents and acknowledgments that
13 she was going to be the one involved in helping her mother get
14 into the facility. However, she was never presented with a copy
15 of the arbitration agreement.

16 Now, she was out of town on the date that Ms. Paris was
17 placed into the facility, and her brother, George Paris, was
18 there to physically take Ms. Paris to the facility and to check
19 her in, so to speak.

20 So he did have the authority to sign the admissions
21 document, but the power of attorney, Ms. Vaughn was never
22 provided anything about an arbitration agreement, and never gave
23 her brother, George, the authority in order to do that.

24 On April 12, 2019, Loris Paris was admitted to the
25 defendant's facility, and on that date George Paris signed off on

1 the admissions documents to have his mom enter into the facility.

2 Now, there's a little bit of dispute in the record about
3 what happened over the next three days, but it's Mr. Paris's
4 contention that three days later the facility called him to come
5 back to sign additional paperwork and at that point in time the
6 issue of the arbitration agreement was presented to him. He did
7 not have the authority to do that, but he was told that he needed
8 to sign that, with the remaining forms, to have his mother there
9 in care.

10 During the depositions, of Ms. Vaughn first, she testified
11 that there was no, there was no problem with her mother's
12 cognitive ability at that time; she was able to communicate. And
13 counsel has presented these physician's review forms from days
14 after she enters into the facility, and it says that she's having
15 issues with possible dementia, things like that, and can't make
16 these decisions, but at the point of time of when she was
17 entering into the facility she was not presented with the
18 discussion of whether she wanted to give up her Seventh Amendment
19 right to a jury trial, anything like that, in the context of an
20 arbitration.

21 So she wasn't presented with that option, it wasn't
22 presented to Ms. Vaughn, her power of attorney, and Ms. Paris
23 didn't do anything to specifically indicate that her son, George,
24 had some sort of authority to make that decision about her
25 Seventh Amendment right for her.

1 On April 15th when Mr. Paris went back to the facility --
2 and during his deposition he testified that he was only given the
3 authority in order to check her in and to sign the documents as
4 far as admission, nothing to do with the actual arbitration
5 agreement. In fact, I asked him during the deposition if Cindy
6 Reck, the admissions director of the facility, had discussed the
7 arbitration with him at all and he said that, no, it wasn't
8 explained to him, he didn't know what it was, he was just told
9 that he had to sign it.

10 And so I took not only his deposition but also Mrs. Reck's
11 deposition. And we asked her to explain the context of the
12 arbitration agreement, what exactly it was. And essentially she
13 said that by signing that the parties were waiving their rights
14 to a jury trial and there would be, if a dispute had arose, that
15 the parties -- the home would appoint someone to have someone
16 essentially mediate the case and then it would be arbitrated from
17 a panel. Well, I asked her what that panel was, you know, what
18 rules would apply, how much it would cost, what sort of discovery
19 limitations there would be or anything like that, and she had no
20 information to provide. She just said I didn't know, I'm not
21 sure, you know, and, in essence, this is the only chance for a
22 family member being presented with any of this information, and
23 the person from the home could not provide the simplest
24 explanation for what arbitration even was. She didn't know how
25 much it would cost, where it would be, any of these things.

1 So certainly Mr. Paris didn't know what he was signing, he
2 didn't have the authority to sign it, and no one, neither
3 Ms. Vaughn nor Ms. Paris, indicated to the home that he had such
4 authority to do that.

5 And I think it's important to note that Ms. Vaughn received
6 numerous forms. There were 30 - 40 pages of documents that she
7 went through, and signed everything, but for some reason this
8 arbitration agreement was left out of that packet and just kind
9 of slipped in three days later after Ms. Paris had already been
10 there at the facility.

11 The other issue that counsel touched on was the *Solesbee*
12 decision that has come out since this case was filed. And we
13 think it is very appropriate in regards to the arguments of
14 merger and equitable estoppel. And in that case the court sites
15 to the *Coleman v. Mariner Health Care* decision, the *Hodge v.*
16 *Unihealth Post-Acute Care* decision, and the *Thompson v. Pruitt*
17 *Corporation* case, all which deal with the issues of the
18 arbitration agreements.

19 And in that, the court, dealing with the issues, found the
20 arbitration agreements to be unenforceable when a family member
21 signed an arbitration agreement near the time of admission for a
22 decedent and did not have the actual authority to do so, that
23 there was no implied authority and, there was no estoppel
24 applied.

25 The *Thompson* court and the *Hodge* court also noted that the

1 authority conveyed by a principal to an agent to handle finances
2 or make healthcare decisions does not encompass executing
3 agreements to resolve legal claims by arbitration, thereby
4 waiving the principal's right to access of the courts for a jury
5 trial.

6 So, Your Honor, for these reasons, and for the reasons
7 stated in our brief, we ask that Your Honor deny the defendant's
8 motion to compel arbitration and let the case proceed to trial.
9 Thank you.

10 THE COURT: Mr. Hines, any brief reply?

11 ATTORNEY HINES: Very briefly, Your Honor. About the
12 capacity issue, the documents that we provided the court are from
13 the time of admission. The Nursing Data Collection Tool was the
14 name of one of them, it had to be completed within 24 hours of
15 the admission on April 12th. The Daily Skilled Nurse's Note that
16 we provided is actually from April 12th, date of admission, and
17 admittedly the physician's certification regarding ability to
18 consent is from April the 16th, 2019. That was from four days
19 after date of admission, which is specific certification.

20 So I think that it's hard to say that what was certified on
21 April 16th was not at all indicative of her state on the 12th.
22 That seems, you know, that's, in fairness and logically, that
23 seems to be a stretch, especially when what was certified on the
24 16th was entirely consistent with the records from the 12th, not
25 to mention the fact that I think part of counsel's argument is

1 that Ms. Paris -- excuse me, Ms. Vaughn -- did have authority to
2 sign what she signed. Well, the reason she had authority is
3 because she was acting under the authority given to her by power,
4 and so there's this recognition that she was lawfully acting in
5 accordance with the power, which she -- I also stated admissions
6 back the finding. There is no procedure in the power of attorney
7 that talks about requiring a finding of incapacity. In fact, as
8 I mentioned, there's language in there about the reliance that
9 third parties, like a facility, can have on the fiduciary,
10 Ms. Vaughn, in exercising that power without having to inquire
11 into the propriety of it.

12 So on that point I really don't -- I do think that we're in
13 pretty good shape with what the record says and what the document
14 itself, the power, says on the capacity issue, that Ms. Vaughn,
15 herself, at the time, admitting that she was, in fact, operating
16 under the understanding that she was the duly authorized power of
17 attorney.

18 And as far as her mother being able to communicate,
19 Ms. Vaughn, herself, said in the deposition that she wasn't
20 talking at the time of the admission. And that's reflected in
21 the records where it looks like her ability to communicate was
22 severely limited, not to mention her mental state. And her
23 records indicate this she didn't know she was in a nursing home;
24 she didn't know what the season was. You know, she was in her
25 early 80s and was dealing with quite a lot of significant issues.

1 Mr. Cantwell says that the facility even says, the facility
2 knew that Ms. Vaughn was helping with this admission. That's
3 absolutely true. And in knowing that, the facility, Ms. Reck,
4 spoke on the phone, as Ms. Vaughn herself admits, with Mr.
5 Vaughn -- Ms. Reck spoke with Ms. Vaughn, and said my brother,
6 George, is coming down to sign the papers, the additional papers
7 that need to be sign. When she says that she cannot say that she
8 recalls limiting what her brother could do. There was no
9 evidence that that was communicated to Ms. Reck, and Ms. Reck
10 certainly was not equivocal that it was not communicated to her.

11 As far as there being a gap in between George signing the
12 admission agreement on, I think he signed the admission agreement
13 on, the 12th, the arbitration agreement on the 18th, Ms. Reck
14 explained that he abruptly left in the middle of the process on
15 the 12th and said he needed to go somewhere.

16 She tried to get in touch with him and said we have not got
17 through all the admissions documentation that we need to go
18 through, and she wasn't able to get in touch with him. And she
19 spoke with Ms. Vaughn, and Ms. Vaughn asked him to come back, and
20 he did, and came back and signed the rest of it.

21 So the idea, Your Honor, that Mr. Paris didn't know what he
22 was signing, well, Your Honor, that's just inconsistent with the
23 law. For one, Mr. Paris admitted in his deposition that no one
24 forced him to sign any documents, that's on page 25. But the law
25 is when you sign something, you are deemed, you are presumed,

1 rather, to have read, understood, and agreed with what you
2 signed.

3 So the idea he didn't know -- it's a one-page document. And
4 as far as it being in Ms. Reck's knowledge, she's not a lawyer,
5 she's never represented to him that he was representing her. She
6 knew that it was a document that provided for an agreement to
7 arbitrate. And it specifically says, I should note, that
8 arbitration agreement pursuant to South Carolina ADR rules, the
9 very first one of which says: These rules shall be construed to
10 secure the just, speedy, inexpensive and collaborative resolution
11 of each dispute. The point being, it can't be argued that
12 arbitration, in accordance with the rules, they shall be
13 construed to provide for the just, speedy, inexpensive,
14 collaboration -- collaborative resolution of every dispute is
15 somehow some sort of unconscionable term, or unconscionable way
16 to resolve the dispute. It's baked into the rules that they
17 shall be just, speedy, inexpensive, and collaborative.

18 And the idea that the arbitration agreement was slipped in
19 in some way, that's fiction, Your Honor. That's something that's
20 just -- there's no evidence of that. That's just argumentation,
21 the idea that that happened. There's no deposition testimony,
22 there's no evidence to cite that there was anything underhanded
23 about that. That's just, you know, it's narrative, it's the idea
24 that maybe Your Honor -- maybe we can call it that, but there's
25 no reason to call it that, that's completely speculative, and

1 there's no evidence that actually supports it.

2 So, Your Honor, those are my points in response. And I do
3 thank you for your indulgence.

4 THE COURT: Mr. Cantwell.

5 ATTORNEY CANTWELL: Your Honor, may I just briefly?

6 THE COURT: Sure, just briefly.

7 ATTORNEY CANTWELL: Your Honor, I just wanted to point out
8 specifically there was no reason that the home couldn't have
9 called Ms. Vaughn in order to sign whatever remaining forms that
10 needed to be signed, to email them to her, things like that, and
11 so just the situation where the fact that she's already a
12 resident at the facility and they somehow begged Mr. Paris to
13 come back in there and sign something that doesn't need to be
14 signed, I mean, I think it just shows actually how the situation
15 went, where they found out that they didn't have the arbitration
16 signed and they went in there and just said we just need some
17 forms for you to sign, Mr. Paris, nothing specific to exactly
18 what he was signing.

19 And still, even with any of the capacity issues, there's no
20 authority for Mr. Paris to sign away someone's Seventh Amendment
21 right.

22 THE COURT: Thank you, gentlemen. I'll take the time to
23 review your memorandums and filings, and then do an opinion.

24 (End of Transcript of Record.)
25

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/proceedings of the captioned case in the Court of Common Pleas for Orangeburg County, South Carolina, on the 6th day of June, 2024.

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

Date: March 2, 2025

\s\ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG * TRANSCRIPT OF RECORD

-----X
BEVERLY VAUGHN as Personal *
Representative of the Estate *
of Loris Paris, *
Plaintiff, *
vs. * Case No. 2022-CP-38-00525
SAINT MATTHEWS HEALTHCARE, *
LLC; MELISSA KIZER; MELISSA *
DAVIS; ANGELA SMITH TELIHA, *
Defendants. *

-----X

January 22, 2025

B E F O R E:

The Honorable Maite Murphy, Presiding Judge

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

Joshua P. Cantwell, Esq.
Attorney for the Plaintiff

Russell G. Hines, Esq.
Attorney for the Defendants

Recorded by: WebEx Recording

Court Transcriber: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION

PAGE

Proceedings

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is not
known due to audio recording quality

P R O C E E D I N G S

THE COURT: All right. Are we ready to proceed on this matter?

MR. HINES: Yes, Your Honor.

THE COURT: All right. I'll be happy to hear from you.

MR. HINES: Thank you, Your Honor, and may it please the Court. Russ Hines for the defendants, Saint Matthews Healthcare LLC, Melissa Kizer, and Melissa Davis.

This is a -- well, this is actually a motion to reconsider following the denial of a motion to compel arbitration and to stay. The motion to compel arbitration is made by Saint Matthews Healthcare, the skilled nursing facility, and then there's two other defendants, Ms. Kizer and Ms. Davis. Their motions -- underlying motions were to stay pending the results of the motion to compel arbitration and any arbitration proceedings.

Given that this is a motion to reconsider -- and I appreciate Your Honor hearing us at all -- and I know that you have got a full docket this morning, I will try to just hit the high points, Your Honor. I know this is like a bit of, perhaps, déjà vu for you, as I think your day yesterday included me making some of these arguments to you. I'm going to try to do better and be more brief.

This is a case where we do have, again, the merger and equitable estoppel argument in favor of our motion to compel

1 arbitration. The argument there, again, is a merger of two
2 documents: admission agreement and arbitration agreement. And
3 if you would agree that they were merged -- and the theory
4 that they're merged is based upon the idea that they were
5 signed at the same time by the same parties for the same
6 purpose in the course of the same transaction.

7 In this case, those documents were signed by a lady named
8 Beverly Vaughn for her mother, Loris Paris, who was the -- who
9 was admitted to our facility. If you'd go along with that
10 part of the argument, the second part is the direct benefits
11 estoppel; the idea being, then, that if the admission
12 agreement and the arbitration agreement are merged and
13 considered to be one contract, that benefits were received by
14 Ms. Paris under the admission agreement in the form of her
15 admission, her room, her board, various services that she
16 received while a resident, and that those -- having received
17 them under the theory of direct benefits estoppel, she can't
18 essentially accept and agree with terms under the contract
19 that benefit her and not under terms that she doesn't like, in
20 which case the term that she wouldn't like would be the
21 arbitration agreement.

22 Now, Your Honor, all of that is set forth in much more
23 detail in our motion to reconsider, which also addresses the
24 Solesbee case, which I know was talked about in the hearing
25 yesterday.

1 And, Josh, for your benefit, I was arguing another motion
2 to compel yesterday in front of Her Honor, and so she heard
3 more about this then than she probably ever wants to hear.

4 But -- and, again, since this is a motion to reconsider,
5 again, this is -- we have set forth, you know, fully in our
6 motion -- in our written motion.

7 But in addition to the merger and estoppel component of
8 this particular argument, Your Honor, we do have an additional
9 one that sometimes we don't have, and that's based upon
10 agency. And I'll just at least sketch out our position.

11 Ms. Vaughn is the daughter of Ms. Paris, the resident
12 here. This is a nursing home case about Ms. Paris and
13 allegations about deficient care and treatment she received.

14 Ms. Vaughn held durable power of attorney at the time
15 Ms. Paris was admitted to this facility, and Ms. Vaughn -- we
16 took some depositions in this regard of Ms. Vaughn, of her
17 brother, and Ms. Paris's son, George Vaughn -- excuse me,
18 George Paris, and also of our admissions personnel, Cindy
19 Wreck (ph) was her name -- is her name.

20 And in the course of those depositions, we take the
21 position that the testimony that was given establishes both an
22 actual agency and an apparent agency. And, Your Honor, I
23 think I may have misspoken earlier when I said that Beverly
24 Vaughn signed the admission and arbitration agreement. She
25 did not. I think I got ahead of myself. It was signed by

1 George Paris, who is her brother and Ms. Paris's son. And
2 both the admission and arbitration agreement was signed by
3 George.

4 The -- Ms. Vaughn had power of attorney at the time -- a
5 durable power of attorney, and what the evidence from their
6 deposition shows, that she allowed or sent Mr. Paris to sign
7 those documents and didn't place any restrictions on his
8 ability to sign documents in association with Ms. Paris's
9 admission to the facility.

10 Again, this is a motion to reconsider. Your Honor has
11 already ruled against us on this, but we're -- as part of our
12 one-full-bite-at-the-apple argument asking Your Honor to
13 reconsider that evidence and see it our way, which is to say
14 that Ms. Vaughn made George Paris her agent. Ms. Vaughn,
15 having stepped into the shoes of her mother by virtue of the
16 power of attorney, made George her agent and sent him to sign
17 these documents without a limitation on what he could sign. I
18 think their position -- contrary position is that she only
19 allowed him to sign admissions documents, and they take the
20 position that the arbitration agreement was not one of those
21 documents.

22 Respectfully, what the testimony says is that she didn't
23 actually place any limitation on what or she couldn't remember
24 placing any limitation on what she sent him there to sign
25 because, at the time, Ms. Vaughn was living out of state and

1 George was local.

2 And we believe that gives rise to the basis for
3 enforcement of the arbitration agreement under both actual
4 agency and apparent agency because Ms. Vaughn had
5 communications with Cindy Wreck (ph), our admissions director,
6 at this time and gave her the reason to believe that Mr. Paris
7 -- George -- had the authority to sign those documents.

8 So, Your Honor, there is merger and equitable estoppel,
9 one bases; actual and apparent authority under the agency
10 theory on the other; and all of it is much more fully set
11 forth in our motion, and we'll be happy to just rely on that,
12 and thank you very much for hearing us once more on this.

13 THE COURT: Thank you, Mr. Hines.

14 Mr. Blanchard, your response, sir? Or Cantwell. I'm
15 sorry.

16 MR. CANTWELL: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. CANTWELL: Josh Cantwell here for the plaintiff.

19 I think Mr. Hines did clarify on the fact that George
20 Paris was the son of Ms. Paris, who actually signed the
21 documents. One of the big issues in this case with respect to
22 the merger and estoppel arguments was that George Paris was
23 just trying to get his mother into the home. And so he goes
24 on the date of her admission to the facility, and he signs the
25 admissions documents. Now, that, he was given the authority

1 to do so by his sister, Ms. Beverly Vaughn, who was the power
2 of attorney at the time.

3 Now, a couple of days later, they asked him to come back
4 in to sign some documents. He didn't know what it was, but he
5 did end up signing an arbitration agreement on that day,
6 several days later.

7 And so we think that this case is just like the Soulsbee
8 decision. I know that you probably heard a lot about that
9 with respect to the motions that you've heard recently from
10 Mr. Hines, but it's the same situation. You've got a son
11 placing a mother in a nursing home, but the sons, they don't
12 have any sort of power of attorney to do so.

13 The details and the forms that were used in both of these
14 cases are exactly the same. It's the same admissions
15 agreement, same arbitration agreement, same language, and
16 Mr. Hines knows -- he was counsel for the Solesbee decision,
17 so I understand that he doesn't like it and he wants to take
18 it back up to the Court of Appeals, but we believe that the
19 Solesbee Court was right, the Court of Appeals was right, that
20 Your Honor was right in the first decision on this case.

21 And so for the reasons that we've cited in our brief, we
22 would ask that you deny the defendant's motion to reconsider.

23 THE COURT: All right. Thank you, Counselor.

24 Anything further, Mr. Hines?

25 MR. HINES: No, thank you, Your Honor. I think we've got

1 it set forth fully in what we've submitted in writing, and
2 thank you very much for allowing us to be heard this second
3 time on reconsideration.

4 THE COURT: All right. Thank you, Counsel. I'll take it
5 under advisement and read your memos and issue an opinion.
6 Thank you so much.

7 (The above hearing concluded.)
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Certificate of Transcriber

CASE NAME/NUMBER: Beverly Vaughn v. Saint Matthews Healthcare

DATE OF HEARING: 2/22/25

RECORDING METHOD: WebEx Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 3/6/25

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL	)	CASE NO. 2022-CP-38-00525
REPRESENTATIVE OF THE ESTATE	)	
OF LORIS PARIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT SAINT MATTHEWS
	)	HEALTH CARE, LLC'S MOTION TO
SAINT MATTHEWS HEALTHCARE,	)	COMPEL ARBITRATION
LLC; MELISSA KIZER; MELISSA	)	
DAVIS; AND ANGELA SMITH	)	
TELIHA ,	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ATTORNEY FOR THE PLAINTIFF:

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

This Defendant further requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions

or discovery filed or served by Plaintiff while the current motion is pending. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

James D. Gandy, III

SC State Bar ID No.: 11925

Gaillard T. Dotterer, III

SC State Bar ID No.: 103620

P.O. Box 993, Charleston, SC 29402

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tgandy@ycrlaw.com, gdotterer@ycrlaw.com

Attorneys for the Defendant Saint Matthews Health
Care, LLC

Charleston, South Carolina

Dated: August 9, 2022

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Calhoun Convalescent Center ("Facility"), its agents, employees and servants, and Loris Paris ("Resident") or George Parks ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

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

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

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

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

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

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

X [Signature] 4/15/19
Resident/Representative Signature Date

X George Paris
Printed Name of Resident/Representative

Cindy Beck 4/15/19
Authorized Agent of Facility Date

Cindy Beck
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

**DEFENDANT'S
EXHIBIT**

A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL	)	CASE NO. 2022-CP-38-00525
REPRESENTATIVE OF THE ESTATE	)	
OF LORIS PARIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT MELISSA KIZER'S
	)	MOTION TO STAY ACTION
SAINT MATTHEWS HEALTHCARE,	)	
LLC; MELISSA KIZER; MELISSA	)	
DAVIS; AND ANGELA SMITH	)	
TELIHA ,	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ATTORNEY FOR THE PLAINTIFF:

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

Defendant Saint Matthews Health Care, LLC (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

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Attorneys for the Defendant Melissa Kizer

Charleston, South Carolina

Dated: August 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL	)	CASE NO. 2022-CP-38-00525
REPRESENTATIVE OF THE ESTATE	)	
OF LORIS PARIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT MELISSA DAVIS' MOTION
	)	TO STAY ACTION
SAINT MATTHEWS HEALTHCARE,	)	
LLC; MELISSA KIZER; MELISSA	)	
DAVIS; AND ANGELA SMITH	)	
TELIHA ,	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ATTORNEY FOR THE PLAINTIFF:

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

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This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

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

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Attorneys for the Defendant Melissa Davis

Charleston, South Carolina

Dated: August 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL	)	CASE NO. 2022-CP-38-00525
REPRESENTATIVE OF THE ESTATE	)	
OF LORIS PARIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT MELISSA KIZER'S
	)	MEMORANDUM IN SUPPORT OF
SAINT MATTHEWS HEALTHCARE,	)	MOTION TO STAY
LLC; MELISSA KIZER; MELISSA	)	
DAVIS; AND ANGELA SMITH	)	
TELIHA ,	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, Defendant Melissa Kizer (hereinafter “this Defendant”), by and through her undersigned attorneys and submits this Memorandum in Support of her Motion to Stay Action.

BACKGROUND FACTS

In this nursing home malpractice case, Defendant Saint Matthews Health Care, LLC (hereinafter “Facility Defendant”) has filed a motion to compel Plaintiff’s claims against it to arbitration. *See Exhibit 1.* Per the statutory mandate of the FAA and this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter must be stayed as to this Defendant until such time as the Facility Defendant’s motion to compel arbitration is finally determined and any arbitration proceedings are finally concluded, to include the final determination/conclusion of any and all appellate proceedings relating thereto. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, a

stay would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

The FAA, 9 U.S.C. § 3, entitled “Stay of proceedings where issue therein referable to arbitration,” states the following:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, **the court** in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement**, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis added.)¹

Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); *see also Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) (“The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement.”).

Moreover, this Court possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court’s discretion. *Id.* *See also Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) (“[T]he power to stay proceedings is

¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See* S.C. Code Ann. § 15-48-20(d) (“Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section...” (emphasis added))

incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

In the instant matter, the Plaintiff’s claims against this Defendant arise out of the exact same factual underpinnings as his claims against Calhoun Convalescent Center, a party to the Arbitration Agreement. To be sure, the claims against both this Defendant and the Facility Defendant are solely concerned with Ms. Paris’ stay at Calhoun Convalescent Center and the provision of care and treatment provided to her. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration between Plaintiff and the Facility Defendant. Without the issuance of a stay, disposition of the Plaintiff’s claims against this Defendant may affect the disposition of the matter against Calhoun Convalescent Center, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Generally, Plaintiff’s allegations of liability in the Complaint make very little distinction between this Defendant and Calhoun Convalescent Center. Rather, Plaintiff repeatedly lumps this Defendant in with others referring to them collectively as the “Defendants” throughout the Complaint. If this Defendant is forced to continue with this litigation, the arbitration proceedings against the Facility Defendant could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Calhoun Convalescent Center. Should discovery and the trial of this matter continue against this Defendant in this Court, the right to arbitration of the Facility Defendant would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000) (Stay granted to defendant non-signatory to

arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.). Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

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Attorneys for the Defendant Melissa Kizer

Charleston, South Carolina

Dated: January 3, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
BEVERLY VAUGHN AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LORIS PARIS,	)	CASE NO. 2022-CP-38-00525
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT MELISSA DAVIS'
	)	MEMORANDUM IN SUPPORT OF
SAINT MATTHEWS HEALTHCARE, LLC; MELISSA KIZER; MELISSA DAVIS; AND ANGELA SMITH TELIHA ,	)	MOTION TO STAY
	)	
	)	
DEFENDANT.	)	
	)	

TO: JOSHUA CANTWELL, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, Defendant Melissa Davis (hereinafter “this Defendant”), by and through her undersigned attorneys and submits this Memorandum in Support of her Motion to Stay Action.

BACKGROUND FACTS

In this nursing home malpractice case, Defendant Saint Matthews Health Care, LLC (hereinafter “Facility Defendant”) has filed a motion to compel Plaintiff’s claims against it to arbitration. *See Exhibit 1.* Per the statutory mandate of the FAA and this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter must be stayed as to this Defendant until such time as the Facility Defendant’s motion to compel arbitration is finally determined and any arbitration proceedings are finally concluded, to include the final determination/conclusion of any and all appellate proceedings relating thereto. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, a

stay would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

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Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); *see also Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) (“The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement.”).

Moreover, this Court possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court’s discretion. *Id.* *See also Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) (“[T]he power to stay proceedings is

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incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

In the instant matter, the Plaintiff’s claims against this Defendant arise out of the exact same factual underpinnings as his claims against Calhoun Convalescent Center, a party to the Arbitration Agreement. To be sure, the claims against both this Defendant and the Facility Defendant are solely concerned with Ms. Paris’ stay at Calhoun Convalescent Center and the provision of care and treatment provided to her. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration between Plaintiff and the Facility Defendant. Without the issuance of a stay, disposition of the Plaintiff’s claims against this Defendant may affect the disposition of the matter against Calhoun Convalescent Center, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Generally, Plaintiff’s allegations of liability in the Complaint make very little distinction between this Defendant and Calhoun Convalescent Center. Rather, Plaintiff repeatedly lumps this Defendant in with others referring to them collectively as the “Defendants” throughout the Complaint. If this Defendant is forced to continue with this litigation, the arbitration proceedings against the Facility Defendant could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Calhoun Convalescent Center. Should discovery and the trial of this matter continue against this Defendant in this Court, the right to arbitration of the Facility Defendant would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000) (Stay granted to defendant non-signatory to

arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.). Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

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For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

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Attorneys for the Defendant Melissa Davis

Charleston, South Carolina

Dated: January 3, 2023

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-00525

BEVERLY VAUGHN AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF LORIS PARIS,

Plaintiff,

v.

SAINT MATTHEWS HEALTHCARE,
LLC; MELISSA KIZER; MELISSA
DAVIS; AND ANGELA SMITH
TELIHA

Defendants.

**SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO MOTION TO DISMISS,
STAY LITIGATION AND DISCOVERY
AND COMPEL ARBITRATION**

TO THE HONORABLE COURT AND ALL ATTORNEYS FOR DEFENDANTS:

Plaintiff, through his attorney, respectfully submits this Supplemental Memorandum of Law in Opposition to Defendants' Motion to Dismiss, Stay Litigation and Discovery and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings.

FACTUAL BACKGROUND

On or about April 12, 2019, Loris Paris was admitted to Defendant's facility for skilled nursing and rehabilitative. Prior to the date of admission, Loris Paris executed a Power of Attorney for naming her daughter, Beverly Vaughn, as her agent, (Exhibit A). At no time did Loris Paris or Ms. Vaughan review or sign the arbitration agreement, nor did she at any time consent to the arbitration agreement or authorize the signing of the agreement.

On April 8, 2022, Plaintiff filed a Summons and Complaint and discovery requests. In lieu of providing a response to the pleadings, Defendants filed a Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration.

BURDEN OF PROOF

The Defendant facility seeks to compel arbitration. Defendant carries the burden to prove that a valid and enforceable arbitration agreement exists. The party seeking to establish contractual waiver of jury bears the burden of proof to establish that the waiver was signed in a “knowing, voluntary and intentional” capacity. Of those courts that have decided this question, most have held that it is the proponent of the waiver who bears the burden, reasoning that the jury trial right is fundamental, and should not be waived absent clear evidence.¹ In interpreting a jury trial waiver narrowly, some courts have also emphasized “the basic principle that ambiguities in a contract are construed against the drafting party.”² Whether the parties agreed to arbitrate is a question of substantive state law. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). *In Chassereau v. Global Sun Pools, Inc.*, 644 S.E.2d 718 (S.C. 2007), the Supreme Court stated:

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to

¹ See e.g., *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986) (“Where waiver is claimed under a contract executed before litigation is contemplated, we agree with those courts that have held that the party seeking enforcement of the waiver must prove that consent was both voluntary and informed.”); *Nat’l Equip. Rental Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (implying that party defending waiver bears burden of proof); *Luis Acosta, Inc. v. Citibank, N.A.*, 920 F.Supp. 15, 18 (D.P.R. 1996) (rejecting a waiver, after concluding that “the burden of proving the waiver of such a fundamental right properly rests upon the party seeking to enforce such a waiver”); *Phoenix Leasing Inc. v. Sure Broadcasting, Inc.*, 843 F.Supp. 1379, 1384 (D.Nev. 1994) (“An informal survey indicates the majority of courts having considered this question followed the approach in *Leasing Service* [and placed burden of proof on proponent of waiver].”); *Smyly v. Hyundai Motor Am.*, 762 F.Supp. 428, 429 (D.Mass. 1991) (concluding that “since it is a waiver of a constitutional right,” proponent of waiver bears burden of showing agreement was made knowingly and intentionally).

² *Nat’l Acceptance Co.*, 381 F.Supp. at 271).

generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the arbitration agreement at issue in the instant case.

While there is a presumption in favor of arbitration agreements, this presumption only applies after the court finds there is a valid enforceable arbitration agreement. *EEOC v. Waffle House*, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); *Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581 (2003). Plaintiff does not dispute the mandatory language in the Federal Arbitration Agreement ("FAA"). However, it is important to note that this mandatory language only applies in instances where a valid arbitration agreement has been established. This is evident from the FAA provisions: "The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement...is not in issue." 9 U.S.C. § 4. While it is true that the U.S. Supreme Court has held that the FAA "leaves no place for the exercise of discretion," the Court also cited the FAA's savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2.

However, not all arbitration clauses are enforceable. While federal law preempts state laws that would invalidate arbitration agreements on most public policy grounds, the FAA looks to state law to decide the threshold questions of contract formation. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360, 364 (2001); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'"). Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West. Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010); *Simpson*, 373 S.C at

14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability. *See Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d.302, 205 (4th Cir.2001). The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). Pro-arbitration policy does not validate a contract that lacks the building blocks of a binding contract.

LEGAL ARGUMENT

A. Neither Mrs. Paris, nor her power of attorney, signed the arbitration agreement.

On February 6, 2015, Mrs. Loris Paris executed a Power of Attorney giving her daughter, Beverley Vaughn, authority to act on her behalf, being effective “upon, and only during, any period of mental incompetence or incapacity.” Ex. A. On April 11, 2019, as a part of the admissions process, Mrs. Vaughan was presented with and signed numerous other documents including healthcare consent forms, advanced healthcare directives, resident fund account authorizations, Medicare screening questionnaire, and other authorizations, consents, and acknowledgements; however, she was not provided a copy of and did not sign the facility’s arbitration agreement. Ex. B. On April 12, 2019, Loris Paris was admitted to Defendant’s facility for skilled nursing and rehabilitative care, and her son, George Paris, signed off on the admissions paperwork at his sister’s direction.

On April 15, 2019, Mrs. Paris' son, George Paris, was told by the facility that he needed to come back in to the facility to sign more paperwork. At that time, the Defendant's staff made him sign the facility's arbitration agreement for his mother, however, he did not have any authority to do so because the Power Attorney executed by his mother only granted Beverley Vaughn the power to act on behalf of her mother in times of incapacity. Therefore, the arbitration agreement is unenforceable.

- i. There is no evidence in the record that Plaintiff was unable to make decisions for herself.

As a threshold matter, there is no evidence in the record that Mrs. Paris could not make decisions for herself at the time of her admission to the facility. The power of attorney executed by her gave her daughter (only) the power to make certain business decisions "upon, and only during, any period of mental incompetence or incapacity." Ex. A. During her deposition, Mrs. Vaughan testified that her mother was typically able to sign medical forms when she went to her doctor's office and that if she needed her daughter to sign something she would on her mother's behalf but that no one else would sign things for her mother. Ex. C. Dep. Vaughan 10:15-11:11. When asked about her mother's cognitive ability, Mrs. Vaughan testified that she was unaware of any physician ever deeming her mother unfit to manage her own personal affairs or make decisions for herself. Ex. C. Dep. Vaughan 21:2-7. Furthermore, there is absolutely no evidence to suggest that the arbitration agreement was ever actually provided to Mrs. Paris or that she instructed anyone to sign it on her behalf.

- ii. George Paris was only given the authority to admit his mother to the facility.

On April 15, 2019, three days after Mrs. Paris was admitted to the facility, George Paris was presented with the arbitration agreement and told that he needed to sign it. Despite the fact that Defendant knew that his sister was the person with the power of attorney, and who had just

signed numerous documents just days prior, she was not provided a copy of the arbitration agreement. Mrs. Vaughan testified that she gave her brother the authority to sign the admission paperwork in order to admit her mother into the facility but that she never gave him the authority to agree to arbitration.

2 Q. Okay. So just George?

3 A. Yes. I gave him permission to have her
4 admitted.

5 Q. Okay. So you gave her -- you gave him
6 the authority to act for you because you weren't
7 there?

8 MR. CANTWELL: Object to the form.

9 THE WITNESS: I gave him the authority
10 to have her -- have him sign her in. I gave the --
11 the convalescent home okay for him to sign her --
12 admit her because she was already there. She had
13 already arrived at the convalescent home before the
14 paperwork was signed.

15 BY MR. DOTTERER:

16 Q. Okay. So you were relying on him to
17 execute all the paperwork in connection with
18 admission to the nursing facility; is that right?

19 MR. CANTWELL: Object to the form.

20 THE WITNESS: **With admission to the**
21 **nursing facility only.**

Vaughan Dep. 18:2-21 (emphasis added).

B. The Arbitration Agreement is Unconscionable

“In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

i. Lack of Meaningful Choice

In determining whether a party lacks meaningful choice, courts look to (1) the injuries the party suffered; (2) whether the party is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause.

In this case, Mr. Paris was not provided with any information to allow him to make a meaningful choice concerning the arbitration agreement. He was merely a son trying to get his mother the medical care that she needed. He did not have any experience with arbitration or even know what the term meant. He was provided with the boilerplate arbitration agreement without any information about its contents and the ramifications of what would happen if he agreed to it. He testified in his deposition that he was not provided with any explanation of what the arbitration agreement was, only that it was something he needed to sign with all the other paperwork for his mother's admission. He had no bargaining power over any terms or conditions of the agreement.

15 Q. Let me ask that again. So no one at
16 the Calhoun Convalescent Center talked with you
17 about the issue of arbitration; is that correct?

18 A. No, sir.

19 Q. And they didn't explain to you what an
20 arbitration agreement was?

21 A. I never even knew what an arbitration
22 agreement was until you guys brought it up today.

Dep. George Paris 39:15-22, Ex D. In fact, when Defendant's admissions director, Cindy Reck, was asked about the arbitration process during her deposition, she testified that it was her understanding that in the event of a dispute, the Defendant would pick an arbitrator from the facility to handle any resident grievances to work between the parties to come to an agreement.

3 Q So what did you tell him about the

4 arbitration agreement?
 5 A The arbitration agreement is an
 6 agreement between the facility and the person
 7 signing it that they waive their right to a jury
 8 trial; and if they have any grievances, that we
 9 can assign an arbitrator from the facility to work
 10 between the two parties to come to an agreement.
 11 If that cannot be done, the
 12 Court will assign an arbitrator to work with the two
 13 parties to come to an agreement.
 14 Q Okay. So it's your understanding that the
 15 facility will assign an arbitrator, and if the
 16 parties don't agree, then a Court will pick an
 17 arbitrator?
 18 A Yes.
 19 Q And –
 20 A No, the corporate has the arbitrator.
 21 If that's not agreed upon, the courts assign an
 22 arbitrator.
 23 Q Okay. But it's your understanding the
 24 corporate -- are you talking about Calhoun
 25 Convalescent Center?
 1 A Yes.
 2 Q They pick the arbitrator, and that's your
 3 understanding, right?
 4 A Yes, that's what's in the document.
 5 Q And then if the parties don't agree, then
 6 a Court will pick the arbitrator?
 7 A Yes.

Depo. Reck 23:3-24:7, Ex. E. Her description of the process seems to conflate the mediation and arbitration process, which certainly would be confusing to a family member trying to find a nursing facility for a loved one. Additionally, during her deposition, she couldn't provide any details about the costs, payment terms, location, or even what panel of arbitrators would potentially decide any dispute. Her testimony showed that she didn't actually have any experience with arbitration at all.

25Q All right. Do you know how the arbitrator is paid?
 2 A No, I don't.
 3 Q Did Mr. Paris ask about if it would cost

4 anything to arbitrate the matter?
 5 A No, he did not.
 6 Q Okay. Do you know whether the arbitration
 7 would take place in South Carolina?
 8 A I can't answer that.
 9 Q As the admissions director for the
 10 facility, have you ever been involved in any
 11 arbitrations?
 12 A No.
 13 Q Have you ever been involved in an
 14 arbitration outside of the context of a nursing
 15 home?
 16 A No.
 17 Q It says in this document, the parties
 18 shall select an arbitrator from a panel having
 19 experience and knowledge of the health care
 20 industry. What panel is that?
 21 A I can't answer that.

Depo. Reck 24:25-25:21, Ex. E. Plaintiff was not given a copy of the South Carolina Alternate Dispute Resolution Rules with the agreement and wouldn't have known even where to find the rules. As such, the evidence in this case shows that Plaintiff did not have a meaningful choice in agreeing to arbitrate and George Paris only signed the documents because he was told it was a part of the admission process.

ii. Unconscionable Terms

The Arbitration Agreement also contains unconscionable terms. First of all, the arbitration agreement states it is irrevocable and "shall survive any termination or breach of this Agreement or the Admissions Agreement." Typically, arbitration agreements can include a process for revoking such an agreement to arbitrate or timeframe in regards to the same. Here, the agreement is irrevocable from the point of admission, with no exceptions.

The agreement is also excessively broad by including language to address any and all disputes amongst the parties, including violations of any rights granted under State law or any

federal or state statutory or regulatory claim. Effectively, it potentially attempts to encompass complaints to administrative agencies such as SC DHEC and other regulatory bodies.

Further, the agreement makes the arbitration binding with no appeal process and fails to set forth any guidance or terms with respect to the “panel” of which arbitrator is to be chosen, the location or jurisdiction of the proceeding, the costs of the party, the availability of discovery.

The agreement purports that its enforcement is not subject to the South Carolina Uniform Arbitration Act, yet the decision of the arbitrator may be enforced by a court of competent jurisdiction. Essentially, taking all of this into account, Plaintiff was stripped of her right to a jury trial without receiving any benefit whatsoever.

C. No Agency Relationship Exists

There is no evidence that George Paris was granted the authority to sign off on the arbitration agreement. Defendant did not inquire with Mrs. Paris whether her son could sign on her behalf. Defendant knew that Beverly Vaughan was her mother’s power of attorney, as they had received all of the medical authorizations from her the day before her admission. “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Frasier v. Palmetto Homes*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996). In the present case, all of the testimony suggests that George Paris was there only to help admit his mother and not to make any medical or business decisions regarding her care or legal rights concerning the same. By Defendant’s own admissions, Plaintiff had already been admitted to the facility and its admissions director called Mr. Paris back out to the facility because additional paperwork needed to be sign.

In order to bind a principal to a legal contract, the agent who signs on the principal’s behalf must be an agent of the principal. *See generally Hodge v. UniHealth Post-Acute Care of*

Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) reh'g denied (May 2, 2018), cert. denied (Aug. 21, 2018). A person may become the agent of a principal by express appointment or implied from the words and conduct of the parties and the circumstances of the particular case. *Bruce v. Leatherwood, Walker, Todd and Mann*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984) (citations omitted). An express appointment of agency may be conferred by power of attorney. “[A] power of attorney should be evidenced by an instrument in writing.” *Matter of Celsor*, 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998).

The South Carolina Supreme Court has held that a signatory without proper legal authority cannot bind a person to arbitration.

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

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

The Court of Appeals addressed these issues in the *Hodge* case, where the Resident was admitted to a nursing facility while competent and without any Power of Attorney. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018). In *Hodge*, the decedent's husband signed all paperwork on her behalf, including an Arbitration Agreement. *Id.* at 550, 813 S.E.2d at 296. The Court of Appeals affirmed the Circuit Court's finding that “Husband's signing of the Arbitration Agreement, Admission Agreement, and other forms does not make him [wife]'s agent. [Wife] did not have a health care power of attorney. Additionally, the Facility knew she was competent at the time of admission as indicated

by the doctor's examination and allowed her to sign other forms. The record contains no evidence from the Facility that [Wife], as the principal, represented Husband was her agent.” *Hodge* at 573-74, 813 S.E.2d at 308.

In the present case, there is no evidence that Mrs. Paris lacked the capacity to review and sign the arbitration agreement or that she allowed George Paris to sign on her behalf. Additionally, there is no evidence that supports the Defendant’s argument that Beverley Vaughan gave George Paris any authority to sign off on the arbitration agreement.

D. The Arbitration Agreement is not a valid and enforceable agreement because of lack of consideration.

The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 581 S.E.2d161, 166 (S.C. 2003) "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Plantation A.O., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 1 98, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship.*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998)). Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

In determining whether adequate consideration exists in a contract, or arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confines of the four corners of the instrument. *State Acc. Fund v. S.C. Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts must assess

whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate.

In the present case, there is insufficient consideration associated with the arbitration agreement, and therefore, the contract is unenforceable. Defendant is not giving up anything at all. Defendant is effectively robbing Plaintiff of her Constitutional right to a jury trial, while maintaining its own rights to have all disputes heard by an arbitrator of its own selection.

E. Mrs. Paris is not a Third-Party Beneficiary of the Agreement

“A third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). However, there can be no third-party beneficiary unless a valid contract exists. *See Dickerson*, 995 A.2d at 742 (“Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce.”). Here, George Paris was not authorized to execute the arbitration agreement on Mrs. Paris’ behalf. Therefore, she could not be the third-party beneficiary of the agreement.

F. Plaintiff received no benefit from the Arbitration Agreement

Any potential argument that Plaintiff is estopped from arguing against the enforcement of the arbitration agreement fails because he received no benefit from the arbitration agreement. The arbitration agreement is not a condition of residency, and therefore, the residency cannot be a benefit she purportedly received. Since admission is unavailable as a “direct benefit” to support estoppel, Defendants would be required to point to some benefit Plaintiff received from the Arbitration Agreement alone. However, any such attempt to find a benefit would have been futile given the Court of Appeals’ unambiguous ruling in *Thompson* which held that “any possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration

agreement's] requirement that [resident] waive her right to access the courts and her right to a jury trial." 416 S.C. at 60, 784 S.E.2d at 688.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration or Alternatively, to Compel Arbitration and Stay Proceedings, should be denied.

Dated: February 6, 2024

Respectfully Submitted,

POULIN, WILLEY, ANASTOPOULO, LLC

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ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO. 2022-CP-38-00525
BEVERLY VAUGHN	)	
as Personal Representative of	)	
the Estate of Loris Paris,	)	
	)	DEFENDANT SAINT MATTHEWS
Plaintiff,	)	HEALTHCARE, LLC’S SECOND
	)	AMENDED MEMO IN SUPPORT OF ITS
vs.	)	MOTION TO COMPEL ARBITRATION
	)	
ST. MATTHEWS HEALTHCARE, LLC;	)	
MELISSA KIZER; MELISSA DAVIS; and	)	
ANGELA SMITH TELIHA,	)	
	)	
Defendants.	)	

Defendant Saint Matthews Healthcare, LLC, incorrectly identified in this action as “St. Matthews Healthcare, LLC” (the “Facility”),¹ submits this second amended memo in support of its motion to compel Plaintiff’s² claims against it to arbitration and, in turn, in support of Defendants Melissa Kizer and Melissa Davis’s (collectively, the “Other Defendants”) motions to stay this litigation pending the outcome of arbitration between Plaintiff and the Facility.

Plaintiff has sued Defendants³ for injuries Ms. Paris allegedly sustained while a resident at the Facility. In conjunction with Ms. Paris’ admission to the Facility, her son, George Paris (“Mr. Paris”), executed an Arbitration Agreement, the scope of which unquestionably includes all of Plaintiff’s claims against the Facility, and Plaintiffs’ claims against the Facility should be compelled to arbitration—and, in turn, the litigation should be stayed as to the Other Defendants

¹ The Facility is a skilled nursing facility.

² “Plaintiff” refers to Plaintiff, Beverly Vaughn (“Ms. Vaughn”) as Personal Representative of the Estate of her late mother, Loris Paris. “Ms. Paris” refers to the decedent Loris Paris.

³ “Defendants” refers to the Facility and the Other Defendants, collectively.

pending the outcome of arbitration between Plaintiff and the Facility—because (a) the Arbitration Agreement was duly signed by Mr. Paris with authority (as conferred upon him by Ms. Paris’s duly authorized attorney-in-fact, his sister, Ms. Vaughn) and/or (b), even assuming, *arguendo*, the Arbitration Agreement was not duly signed by Mr. Paris with authority and is therefore not enforceable per se, proper application of the doctrines of merger and equitable estoppel bars Plaintiff from denying its enforceability.

Accordingly, as more fully explained below (together with the Other Defendants’ previously filed memos in support of their motions to stay), the Facility respectfully requests that this Honorable Court compel Plaintiffs’ claims against the Facility to arbitration and stay this litigation as to the Other Defendants pending the outcome of arbitration between Plaintiff and the Facility.

BACKGROUND

With the help of both Ms. Vaughn and Mr. Paris, Ms. Paris, age 80, was admitted to the Facility in April of 2019 for skilled nursing care following a hospitalization. In conjunction with Ms. Paris’s admission to the Facility, Mr. Paris signed an Admission Agreement and an Arbitration Agreement on Ms. Paris’s behalf. (See **Exhibit D** [Admission Agreement]; **Exhibit E** [Arbitration Agreement].)

At the time of her admission, Ms. Paris was no longer able to care for herself (**Exhibit B** [Dep. of Beverly Vaughn] pp. 16:22-17:15.) According to Mr. Paris, by the time Ms. Paris went to the Facility, he was no longer able to have a conversation with her: “it was no more speaking or talking or anything like that.” (**Exhibit G** [Dep. of George Paris] pp. 10:18-11:6; see also **Exhibit B** [Dep. of Beverly Vaughn] p. 29:4-11 (referring to Ms. Paris’s status with respect to communication at the time of her admission to the Facility: “She would not. She wasn’t talking.”).)

Medical records from the time, copies of which are attached hereto as Exhibits M, N, and O, respectively, but are only being provided to the Court and opposing counsel via email rather than filing, reflect that Ms. Paris was suffering from dementia; an inability to recall the current season, staff names/faces, the location of her room, or that she was in a nursing home; impaired mental status; disorganized thinking; altered level of consciousness; difficulty speaking, and an inability to provide consent regarding health care decision as defined by the South Carolina Adult Health Care Consent Act. (See **Exhibit M** [Nursing Data Collection Tool (Bates No. Paris, Loris_St. Matthews 001392)] (regarding diagnosis of dementia, lack of recall, and limited ability to understand and be understood); **Exhibit N** [Daily Skilled Nurse's Note dated April 12, 2019 (Paris, Loris_St. Matthews 001454)] (regarding impaired decision making, disorganized thinking, altered level of consciousness, and difficulty speaking); **Exhibit O** [Physician Certification Regarding Ability to Consent [Paris, Loris_St. Matthews 000065]] (regarding dementia and inability to provide consent to health care decisions).

Years earlier, on February 6, 2015, Ms. Paris had executed a Durable Power of Attorney (the "power of attorney"), naming Ms. Vaughn as her attorney-in-fact. (See **Exhibit A** [Durable Power of Attorney].) In broad and unlimited terms, the power of attorney granted Ms. Vaughn authority "to do and perform all acts, deeds, matters, and necessary and advisable . . . as fully and effectual for all intents and purposes as [Ms. Paris] could do if personally present and acting" and expressly granted Ms. Vaughn authority to "arbitrate" on behalf of Ms. Paris. (See **Exhibit A** [Durable Power of Attorney] pp. 1, 5.) Ms. Vaughn herself understood that the power of attorney allowed her to "handle whatever needed to be handled" on her mother's behalf as if she "acted as Loris Paris." (**Exhibit B** [Dep. of Beverly Vaughn] p. 9:12-22.) Specifically, she understood that the power of

attorney gave her the authority to execute legally binding documents on behalf of her mother. (**Exhibit B** [Dep. of Beverly Vaughn] p. 40:4-8.)

When Ms. Paris was admitted to the Facility, Ms. Vaughn was living out of state and could not be present. Ms. Vaughn contacted the Facility and spoke with former Admissions Director, Cindy Reck, concerning her mother's admission. (**Exhibit C** [Dep. of Cindy Reck] p. 8:11-18.) Ms. Reck offered to send Ms. Vaughn the admission paperwork, but Ms. Vaughn declined to sign the documents herself. (**Exhibit C** [Dep. of Cindy Reck] p. 8:9-21.) Instead, Ms. Vaughn had Mr. Paris complete the paperwork. (**Exhibit C** [Dep. of Cindy Reck] p. 8:9-21.) Ms. Vaughn told Ms. Reck specifically that Mr. Paris could complete the admissions paperwork. (**Exhibit C** [Dep. of Cindy Reck] p. 26:12-16, p. 27:1-14.) She also told Ms. Reck that she was her mother's "power of attorney" and that Mr. Paris had permission to sign paperwork for Ms. Paris to be admitted to the Facility. (**Exhibit B** [Dep. of Beverly Vaughn] p. 27:1-15; **Exhibit C** [Dep. of Cindy Reck] p. 27:1-15). When she was deposed in this case, Ms. Vaughn was unable to recall telling Ms. Reck that there was any limitation on the type of paperwork that Mr. Paris was authorized to sign for Mr. Paris. (**Exhibit B** [Dep. of Beverly Vaughn] pp. 27:17-29:8.)

Mr. Paris met with Ms. Reck at Facility and signed the Admission Agreement on April 12, 2019. (See **Exhibit D** [Admission Agreement] p. 12.) According to Ms. Reck, Mr. Paris said he could not stay to complete the remaining paperwork and left the Facility after signing the Admission Agreement, but at the request of Ms. Reck and Ms. Vaughn, Mr. Paris returned to complete the remaining paperwork, including the Arbitration Agreement and certain authorization, consents, and acknowledgements, relating to his mother's care on April 15, 2019. (See **Exhibit C** [Dep. of Cindy Reck] pp. 17:19-23:2; **Exhibit E** [Arbitration Agreement]; **Exhibit F** [Authorizations, Consents & Acknowledgments].)

Ms. Reck explained to Mr. Paris what the Arbitration Agreement was and told him it was optional (**Exhibit C** [Dep. of Cindy Reck] p. 22:21-22, p. 23:3-10.) She also asked him to read the Arbitration Agreement before signing it. (**Exhibit C** [Dep. of Cindy Reck] p. 24:8-10.) During their meeting, Mr. Paris had the opportunity to read any of the documents, including the Arbitration Agreement, he was signing. Ms. Reck was also there to answer any questions he may have had. (**Exhibit G** [Dep. of George Paris] p. 23:17-20, p. 24:15-17.)

As with the Admission Agreement, Mr. Paris signed the Arbitration Agreement on behalf of Ms. Paris as her responsible party and representative.

The Arbitration Agreement specifically provides:

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

(**Exhibit E** [Arbitration Agreement].)

The Arbitration Agreement further provides:

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

(**Exhibit E** [Arbitration Agreement].)

Regarding Mr. Paris's authority to sign, the Arbitration Agreement states:

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

(Exhibit E [Arbitration Agreement].)

Through her conversations with Ms. Vaughn, Ms. Reck understood that Mr. Paris had the authority to sign the admission paperwork, including the Arbitration Agreement. **(Exhibit C** [Dep. of Cindy Reck] p. 29:6-10.) Neither Mr. Paris nor Ms. Vaughn ever explained to her that Mr. Paris was only authorized to sign the Admission Agreement and not the Arbitration Agreement. **(Exhibit C** [Dep. of Cindy Reck] p. 29:11-16.) In fact, Ms. Reck testified she would not have presented Mr. Paris with the Arbitration Agreement, had she known he was not authorized to sign. **(Exhibit C** [Dep. of Cindy Reck] p. 29:17-21.)

ARGUMENT

I. The FAA governs the Arbitration Agreement.

The Arbitration Agreement, by its terms and by law, is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. ("FAA"). The Arbitration Agreement expressly states that the FAA applies:

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

Moreover, and in any event, the FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that

the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause). Our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

II. The FAA requires arbitration agreements to be placed on equal footing with all other contracts under South Carolina law.

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

While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S.

⁴ *Allied–Bruce*, 513 U.S. at 270.

333, 339 (2011)). Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*” *Concepcion* at 339 (emphasis added); *see also Allied–Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted).

III. The Arbitration Agreement is valid on its face.

The Arbitration Agreement is valid on its face. In other words, there is nothing within the four corners of the document itself that calls its validity into question. It bears Mr. Paris’s signature on behalf of Ms. Paris, along with Mr. Paris’s express representation that he is authorized to sign for Ms. Paris.⁵ It is countersigned by Ms. Reck for the Facility. It is duly supported by consideration and sets forth all necessary terms, containing, as it does, the parties’ mutual promises to submit a certain defined scope of disputes to binding arbitration⁶ before an arbitrator who is either agreed

⁵ By virtue of his signature, Mr. Paris is “presumed to have read, understood, and assented to [the] terms” of the Arbitration Agreement, *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”), including, of course, the express representation therein of his authority to act on Ms. Paris’ behalf. Moreover, there is an implied covenant of good faith and fair dealing in every contract, *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) (“There exists in every contract an implied covenant of good faith and fair dealing.”), and Ms. Paris is no less bound by this covenant than the Facility.

⁶ The parties’ mutual promises to arbitrate constitute sufficient consideration. *O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”) (citing *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“[T]he exchange of promises qualified as

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

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

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

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

consideration."); see also *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) ("Mutual promises also constitute a good consideration.").

State where Health Care Center is located that are qualified to provide such care to Resident.

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

By signing the Arbitration Agreement and Admission Agreement, Mr. Paris, acting on behalf of Ms. Paris, with express authority effectively from Ms. Paris herself via her attorney-in-fact Ms. Vaughn (who, again, according to the plain language of the power of attorney, was authorized “to do and perform all acts, deeds, matters, and necessary and advisable . . . as fully and effectual for all intents and purposes as [Ms. Paris] could do if personally present and acting”⁷ and was expressly authorized to “arbitrate” on behalf of Ms. Paris⁸), represented that he understood and assented to their terms. Indeed, he was given the option of entering into the Arbitration Agreement – *or not* – and he freely and voluntarily made the decision to proceed. The Arbitration Agreement by its plain language was not a precondition of admission to the Facility and simply could not have been an adhesion or “take it or leave it” contract. Mr. Paris had the option not to enter into the Arbitration Agreement on behalf of his mother, yet he voluntarily did so, voluntarily did not retract his agreement thereto, and his mother stayed at the Facility and received skilled nursing care after admission.

Ms. Reck gave Mr. Paris the option of entering into the Arbitration Agreement after explaining it to him and he made the decision to proceed. In addition, she was available to answer any questions he may have had about any of the paperwork he signed. Mr. Paris did not have to accept this offer nor has there been any allegation or evidence that he was coerced into signing

⁷ (See **Exhibit A** [Durable Power of Attorney] p. 1.)

⁸ (See **Exhibit A** [Durable Power of Attorney] p. 5.)

anything. In fact, he agreed he was not “forced” into signing anything at the facility. (**Exhibit G** [Dep. of George Paris] p. 25:2-4.)

Nonetheless, even if Plaintiff could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiff must still show that the “terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, the Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 25, 644 S.E.2d at 668. Under the terms of the Arbitration Agreement, the parties are to select a third-party arbitrator *jointly* “from a panel having experience and knowledge of the health care industry.” (**Exhibit E** [Arbitration Agreement].) If the parties are unable to agree upon such an arbitrator, the agreement vests the Court with authority to make a selection. The selected neutral arbitrator is vested with authority to hear the case and make a decision which is “binding on all parties.” As a result, it can only be said that the Arbitration Agreement allows for complete mutuality of remedies. Neither party is given an advantage by its terms. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration. And there is nothing about the Arbitration Agreement—which, again, calls for arbitration conducted pursuant to the South Carolina ADR Rules—that would suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker. Indeed, Rule 1 of the South Carolina ADR Rules expressly states, “These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.”

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

IV. Plaintiff's claims are within the scope of the Arbitration Agreement.

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

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

(Exhibit E [Arbitration Agreement].)

This plain language clearly embraces the subject matter of Plaintiff's claims. And even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor

of arbitration” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

V. The Arbitration Agreement is valid and enforceable, or, alternatively, Plaintiff should be estopped to deny its enforceability.

A. The plain language of the agreement binds Plaintiff.

According to the plain language of the Arbitration Agreement and consistent with his actions during the admissions process, Mr. Paris represented himself to admissions personnel at the Facility as possessing the authority to sign documents and enter agreements on her behalf.⁹ This is indisputable. It was clearly Mr. Paris’ intention to bind Ms. Paris according to the terms of the Admission Agreement and Arbitration Agreement. Moreover, he evinced no intentions or directions to the contrary when the agreement was signed. Accordingly, the plain language of the Arbitration Agreement and his conduct during the admissions process confirm that Mr. Paris was authorized to sign it the Arbitration Agreement and the Agreement directly applies to the instant dispute. The Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has recently found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances nearly identical to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit H**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit**

⁹ See Ex. E (“By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident...”)

D. In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident's wife in each case executed an admissions agreement and an arbitration agreement *identical* to the ones in the case at bar, and as here represented to the facility that she had authority to enter these agreements on her husband's behalf. (See Ex. H, p. 2-3; see Ex. I, p. 1). The plaintiffs in *Price* and *Spears* later executed contradictory affidavits in opposition to the Defendants' motion to compel arbitration, disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs' attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. The Court should reach the same conclusion in the present case and enforce the Arbitration Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[.]" because it was clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See Ex. H, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident identical to Mr. Paris' attestation in the Arbitration Agreement noted above. As such, this Court in *Spears* held, in part, that the wife's authority to sign the arbitration agreement at issue was "valid on its face" by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff's authority beyond her own attestation. (See Ex. I, p. 4). As in *Price* and in *Spears*, Mr. Paris in this matter expressly attested to his own authority to enter into the Arbitration Agreement on behalf of his mother, Ms. Paris. Therefore, the Court should find that

Plaintiff is bound by the plain language of the Arbitration Agreement and compel this matter to arbitration.

B. Mr. Paris possessed the actual, apparent, and inherent authority to execute and bind Ms. Paris to the Arbitration Agreement and/or Plaintiff should be estopped to deny Mr. Paris' authority.

1. Agency Relationship

In addition to representing himself as authorized to enter the Arbitration Agreement on his mother's behalf by the plain language of the Arbitration Agreement and his conduct during the admission process, Mr. Paris possessed the *actual, apparent, and inherent authority* to bind Ms. Paris under this Agreement. A true agency relationship may be established by evidence of actual or apparent authority. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)).

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

2. Actual Authority

“A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal.” *Watson v. Underwood*, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *In re Thames*, 344 S.C. 564, 569, 544 S.E.2d 854, 856 (Ct. App. 2001)) (internal quotation marks omitted). “[T]he holder of [the] power of attorney steps into the shoes of the grantor and is basically the alter ego of the grantor.” *Bennett v. Carter*, 421 S.C. 374, 382, 807 S.E.2d 197, 201 (2017).

Mr. Paris possessed the actual authority to execute the Arbitration Agreement in addition to the other admissions paperwork he signed for his mother. The power of attorney permitted Ms. Vaughn as attorney-in-fact to “do and perform all acts, deeds, matters...as [Ms. Paris] could do if personally present and acting.” (Ex. A. at 1). Commensurate with this broad authority, Ms. Vaughn was expressly permitted to “appoint agents...upon such terms and conditions and at such compensation as [Ms. Vaughn] shall deem proper in the exercise of the powers herein granted.” Ex. A at 5). Ms. Vaughn also possessed the authority arbitrate disputes on her mother’s behalf. (*Id.*, “On my behalf and in my name or the name of my Attorney, to institute, prosecute, appear in, defend, compromise, **arbitrate**...any legal, equitable, or administrative hearings actions, suits...to which I am or may become a party or in which I have any interest.) There can be no dispute that Ms. Vaughn, acting as her mother’s attorney in fact, appointed Mr. Paris as her representative to execute admission paperwork. The record contains no indication that Ms. Paris ever expressly limited George Paris’ authority to specifically exclude the authority to sign arbitration agreements.

And while the power of attorney was a springing power, i.e., it did not become effective until Ms. Paris was mentally incompetent or incapacitated, the record (cited in the background

section above) shows that Ms. Paris was indeed mentally incompetent/incapacitated when she was admitted to the Facility. Moreover, in response to questioning from Plaintiff's own counsel about whether she "w[as] the person that should be signing documents for [Ms. Paris]" at the time of her admission, Plaintiff herself testified, "Absolutely." (**Exhibit B** [Dep. of Beverly Vaughn] pp. 32:18-33:1.) In other words, Plaintiff herself clearly takes the position that any conditions precedent to her ability to act as Ms. Paris's attorney-in-fact had come to pass by the time Ms. Paris was admitted to the Facility. Further still, the power of attorney does not define incompetent/incapacitated or establish any particular procedure for determining when this has occurred. This reflects an intent to prioritize flexibility and functionality so that Ms. Vaughn was able to seamlessly step in to protect Ms. Paris's interests when Ms. Vaughn believes such action is warranted—and clearly, given all of her admitted actions as attorney-in-fact at the relevant time, Ms. Vaughn believed such action was warranted when Ms. Paris was admitted to the Facility. Indeed, the power of attorney expressly gives third parties, like the Facility, the right to rely on the actions Ms. Vaughn took as attorney-in-fact "without inquiring" as to their propriety. (Exhibit A [Durable Power of Attorney] p. 6 (Without limiting in any way the right of third parties to rely on actions by my Attorney-in-Fact without inquiring as to the property [sic] of such actions, I do hereby declare as between me and my Attorney-in-Fact a fiduciary relationship exist").)

3. Apparent Authority

Mr. Paris also possessed the *apparent authority* to execute the Arbitration Agreement. Ms. Vaughn clearly held Mr. Paris out as her agent to sign admission paperwork for their mother, with no indication to the contrary. Based on Ms. Vaughn's (and George conduct and representations during the admissions process, Ms. Reck believed she possessed the authority to execute all admissions documents on his behalf, including the Arbitration Agreement. Neither of the siblings

ever communicated to Ms. Reck that George specifically did not have the authority to sign the Arbitration Agreement. Ms. Reck understood George had the authority to sign any admissions paperwork, including the Arbitration Agreement. She presented him with Arbitration Agreement based on the understanding he was in a position to accept or decline arbitration. She would not have presented the agreement to him, had she known he lacked the ability to make such a decision. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances”) (emphasis added).

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable belief that the agent has been authorized to act.* By telling Ms. Reck Mr. Paris was authorized to sign admissions paperwork, Ms. Vaughn cloaked Mr. Paris with the authority to execute the admissions paperwork, including the Arbitration Agreement. Further, no family member ever repudiated or invalidated Mr. Paris' actions. Instead, Ms. Vaughn allowed her mother to remain at the Facility and receive skilled nursing care and services, thereby ratifying her brother's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, Ms. Reck and the Facility were further justified in believing Mr. Paris had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Arbitration Agreement should be deemed enforceable.

4. Inherent Authority

Even if Mr. Paris lacked the actual authority to sign the Arbitration Agreement, he still possessed sufficient inherent agency powers to render the agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” *See*, §§ 8A, 161 *Restatement (Second) of Agency* (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (*abrogated on unrelated grounds*) (examining whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987) (“[t]he powers of an agent are, prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”) (*citing Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

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

5. Agency by Estoppel

“When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.” *R & G*, supra, 343 S.C. at 433, 540 S.E.2d at 118. To properly show estoppel in South Carolina, a party must show: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” *Boyd v. Bellsouth Tel.Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

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

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

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

Similarly, in *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) the United States District Court of South Carolina concluded

the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (Attached hereto as Exhibit J). As in the present case, the husband in *McCutcheon* executed a number of documents on his wife's behalf upon her admission to a nursing home facility, including an admissions agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife's legal representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

Like in *Price* and *McCutcheon*, it would be disingenuous and inequitable to allow the Plaintiff in this case to assert that Mr. Paris was authorized to sign the Admissions Agreement, and the other forms he signed on admission but not the Arbitration Agreement. In the case at bar, the Facility had no knowledge or reason to believe that Mr. Paris was not authorized to execute Arbitration Agreement and other admissions paperwork. The Facility relied on the affirmative representations and conduct of Mr. Paris and Ms. Vaughn in admitting their mother to the Facility for the provision of skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by the Facility, only for the instant lawsuit to

seemingly ignore the binding agreement. Accordingly, Plaintiff should be estopped from denying the validity of the Arbitration Agreement.

C. The Arbitration Agreement and the Admission Agreement merged (i.e., should be construed together as a single contract), and Plaintiff should be estopped from denying the enforceability of the Arbitration Agreement.

In any event, the Admission Agreement and the Arbitration Agreement merged (and therefore should be considered as one), and because Ms. Paris received direct benefits under the Admission Agreement (with which the Arbitration Agreement merged), Plaintiff should be estopped to deny the enforceability of the Arbitration Agreement.

1. Merger

The Arbitration Agreement and Admission Agreement were executed by Mr. Paris on behalf of his mother. The enforceability of these instruments must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010).

The Arbitration Agreement provides that “any controversy or dispute between the parties arising out of or relating to Facility’s Admission Agreement . . . or relating in any way to Resident’s stay at Facility” shall be resolved by arbitration pursuant to the terms of the Arbitration Agreement. (See Ex. E.) (Emphasis added.) As previously described, the Arbitration Agreement and the Admissions Agreement were both signed by Mr. Paris on behalf of his mother at substantially the same time, for the same purpose, and in the course of the same transaction—Ms. Admore’s admission to the Facility.

Courts in South Carolina construe contemporaneous instruments together; if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be

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

Indeed, in *Coleman v. Mariner Health Care, Inc.*, even though our Supreme Court found against merger on the particular facts of the case, it nonetheless confirmed the validity of the general proposition of law on which the *Coleman* appellants based their merger/equitable estoppel argument in the very context of nursing home admission agreements and arbitration agreements. 407 S.C. 346, 354–355, 755 S.E.2d 450, 455 (2014) (“Appellants’ equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. . . . Here, the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.”).

As indicated previously, the court in *McCutcheon* analyzed facts almost identical to the case at bar and determined that the arbitration agreement and admissions agreement had merged

for purposes of equitable estoppel. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011WL6318575. (See Ex. J.) Indeed, this Court has cited to *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admission agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC et al*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* attached hereto as Exhibits K and L, respectively.)

The Admission Agreement and the Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.¹⁰ They should be considered merged, i.e., they should be considered and construed together as effectively one contract.

2. Equitable Estoppel of Merged Agreement

“South Carolina has recognized several theories that could bind non-signatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel.” *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). “Equitable estoppel precludes a party from asserting rights she otherwise would have had against another when her own conduct renders assertion of those rights contrary to equity.” *Int'l Paper Co. v. Schwabedissen*

¹⁰ To be clear, *Coleman* unequivocally answers the question of whether the Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

Maschinen & Anlaegen GMBH, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). “A non-signatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)); *see also Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290–297, 733 S.E.2d 597, 601–605 (Ct. App. 2012) (applying the direct benefits test as set forth in *International Paper Co.* to reverse the circuit court’s denial of a motion to compel arbitration); *Wilson*, 426 S.C. 326, 339–345, 827 S.E.2d 167, 174–177 (favorably discussing the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson*, 400 S.C. 281, 733 S.E.2d 597, and under which the Facility contends Plaintiff is estopped to deny the enforceability of the Arbitration Agreement here, where Ms. Doe received direct benefits (in the form of her admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement merged); *see also id.* at 340, 827 S.E.2d at 175 n. 6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added).

Because of the doctrine of merger referenced above, this legal principle is properly applied in this case. The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” *S. Ill. Bev., Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no

party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(citing *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

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

. . . .

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

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing in part *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).¹¹

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

Of note, this Court applied this precise reasoning in *Spears*, referenced above. (See Ex. I, pg. 9). In that case and as discussed above, a woman admitted her husband to a skilled nursing facility and in connection with her admission, executed admission and arbitration agreements *identical* to the ones here. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from refusing to comply with the arbitration agreement where, like here, the resident received “direct benefits from the Admission Agreement in the form of her admission to the Facility, including, without limitation, the room, board, care, and treatment she received therein.” *Id.*, pg. 10 (footnote omitted).

The key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the non-signatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (“Under direct benefits estoppel, [a] non-signatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits theory of estoppel, a non-signatory may be compelled to arbitrate where the non-signatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to

WL 6863550, at *4 (D.S.C. Oct. 31, 2014), *report and recommendation adopted*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

distinguish direct benefits from indirect benefits because when the benefits to a non-signatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the non-signatory exploits the contractual relationship of the parties but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with the Court of Appeals’ decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the non-signatory has exploited other parts of the contract by reaping its benefits. Indeed, to require more than this—or, in other words, to limit the applicability of direct benefits estoppel to only instances where the non-signatory’s claim relies solely on the contract terms to impose liability—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. Neither *Wilson* nor *Pearson* nor general notions of equity countenance,¹² much less call for, such a result.

¹² *See Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

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

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Ms. Paris received the benefit of her admission to the Facility, including, without limitation, the room, board, care, and treatment she received therein. This Court should find that the Arbitration Agreement merged with the Admission Agreement and that Plaintiff is estopped to deny the Admission Agreement/Arbitration Agreement's enforceability, Ms. Paris having effectively embraced the contract with the Facility for the purpose of her admission and receipt of the benefits thereof.

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

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

In *Coleman*, Ann Coleman signed a number of documents, including arbitration agreements, when admitting her sister to a health care facility. 407 S.C. at 350, 755 S.E.2d at 452.

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

Similarly, in *Hodge*, the admission agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law. 422 S.C. 544, 813 S.E.2d at 302. Furthermore, like in *Coleman*, the arbitration agreement in *Hodge* recognized a separateness, as it referenced the two documents separately, stating “[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.” *Id.* Finally, the arbitration agreement in *Hodge* stated it could be revoked within thirty days, whereas the admission agreement contained no such indication. *Id.* In *Thompson*, the arbitration agreement also contained a disclaimer provision but the admission agreement did not.

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

Instead, in the present case, the agreements were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction and, therefore, the documents merged. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts*, *supra*, 268 S.C. at 88, 232 S.E.2d at 24).¹³

While the Admission Agreement in this case does contain an “Entire Agreement” clause, unlike the admission agreements in those other cases, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn’t refer to it at all). Indeed, directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court¹⁴), the “Entire Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” And without question, the Arbitration Agreement is among these other admissions materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission documentation—including the Arbitration Agreement.”) (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at

¹³ To be clear, even though the *Coleman* Court found evidence of an intent contrary to merger on the particular facts before it, it nonetheless recognized as *correct* the general proposition of law on which the *Coleman* Appellants’ based their merger argument, i.e., the *Coleman* Court expressly observed that the admission agreements and arbitration agreements before it (which, in this respect, are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), “the documents were [indeed] executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

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

550, 813 S.E.2d at 295 (“Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.”) (emphasis added)).

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

Similarly, the termination provisions provide no evidence of “separatedness.” Again, the only reason for the Arbitration Agreement is the Admission Agreement—the only point of the Arbitration Agreement is to cover disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still *connected* to the Admission Agreement even after the termination of the Admission Agreement. This is simply how agreements to arbitrate work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582,

612–13 (D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”¹⁵ there is evidence to upset the *default presumption* that the contracting parties intended the instruments to be construed together as effectively one contract. As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties’ possessed a contrary intention. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. It does not even make sense that the parties would not have intended the Admission Agreement and the Arbitration Agreement to merge.

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

¹⁵ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of merger is to *merge* separate documents.

And—besides the fact that there is no ambiguity as to the merger of the Admission Agreement and the Arbitration Agreement to begin with—to fall back on the idea that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context. It must be remembered that, as a matter of law, *merger is the default position*, i.e., it is *presumed*, and that this presumption arises only upon the occurrence of a specific set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these align—same time, same parties, same purpose, same transaction—our courts will consider and construe the documents together *unless* there is evidence of a contrary intention.

The *Coleman* Court clearly endorsed the rule of law that a presumption of merger arises where, as here, multiple instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction and that upsetting this presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter,¹⁶ (a) it did so in dicta and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this case¹⁷—in recognizing a rule of law creating a presumption in favor of merger (i.e., in recognizing the occurrence of a set of circumstances (same time, parties, purpose, and transaction) as sufficiently probative to

¹⁶ *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455.

¹⁷ To be clear, none of *Coleman*’s progeny has addressed this either.

affirmatively tip the scales in favor of merger) while at the same time allowing that presumption to be completely overturned by evidence that is merely ambiguous, i.e., that does not even go so far as to clearly indicate a contrary intention and, indeed, is actually still susceptible to a reasonable conclusion in favor of merger. *See S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.”). To allow the merger presumption to be upset based on evidence that is merely ambiguous is to allow the exception to devour the rule.

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

It matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission; and, here, there can be no question that the

Arbitration Agreement—once agreed upon—was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Ms. Paris’s relationship with the Facility. Indeed, this conclusion finds direct support in the Admission Agreement’s “Entire Agreement” provision, which states, “[t]he undersigned further acknowledges that he/she has received and read the Admission Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.” (Ex. D, p. 12 (emphasis added)). Had the Arbitration Agreement not been executed, it would not constitute admissions material, but, of course, it was executed, and it does constitute admissions material; most respectfully, to conclude otherwise simply does not make sense.

A finding against merger here can only rest on impermissible speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent. It must be remembered that the presumption of merger arises only where the four elements of time, parties, purpose, and transaction coincide—as they all do here. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. If even one of these is lacking, there is no merger. This is why, for the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). The merger presumption is “earned,” so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of

this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

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

4. Respectfully, the Court of Appeals’ recent decision in *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), is erroneous and should not control the disposition of the instant motion.

During the pendency of this case, the Court of Appeals decided *Solesbee*, wherein it affirmed the denial of a motion to compel arbitration in the face of a merger/equitable estoppel argument substantially the same as the Facility’s here. Indeed, the Arbitration Agreement and Admission Agreement in issue in the instant case are the same form documents as in *Solesbee*.

In affirming the denial of the motion to compel arbitration in *Solesbee*, the Court of Appeals likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no merger of the Admission Agreement and the Arbitration Agreement and, in turn, had properly denied the Facility’s equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 (“Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and [the Facility’s] equitable estoppel argument was properly denied.”).¹⁸ Most respectfully, the *Solesbee* Court’s merger analysis is itself erroneous—and *Solesbee* should not control the disposition of the instant motion.¹⁹

¹⁸ To be clear, the Court of Appeals’ decision in *Solesbee* turned on its affirmance of the circuit court’s ruling against *merger* of the Arbitration Agreement and the Admission Agreement. Consequently, the *Solesbee* Court did not address the substance of the *equitable estoppel* prong of the merger/estoppel argument.

¹⁹ In this regard, Defendants would also note that it is still possible that the Supreme Court might review *Solesbee* via a writ of certiorari.

First, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.” 438 S.C. at 648, 885 S.E.2d at 149. It is simply not true that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.”

Regarding governing law, what the Admission Agreement actually states is this: “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which the Facility is located.” (Admission Agreement p. 10.) And what the Arbitration Agreement actually states is this:

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

(Arbitration Agreement.)

As explained above, the FAA applies whenever an arbitration agreement involves interstate commerce—and this is so even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (The FAA “create[d] a body of federal substantive law,” which is “applicable in state and federal courts.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.”); *see also Allied-Bruce*, 513 U.S. 265, 270–77. Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles

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

Again, essentially, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are to the effect that South Carolina law applies except where displaced by federal law, and they do not support any reasonable inference of any intent contrary to merger.

Second, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement ‘shall survive any termination or breach of this Agreement or the Admission Agreement.’” 438 S.C. at 648–49, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger here. Unlike in *Coleman* and *Hodge*, the supposed textual recognition of the Admission Agreement as being separate from the Arbitration Agreement is not included in any “Entire Agreement” provision. Rather, the “Entire Agreement” provision of the Admission Agreement expressly states, “other Admissions materials . . . are made a part of this Agreement by reference.” (Admission Agreement p. 12.) And as in the instant case, the Arbitration Agreement that was signed in conjunction with the admission is clearly among these “other Admissions materials.” Moreover, that the Arbitration Agreement “shall survive any termination or breach of

this Agreement or the Admission Agreement” just means that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. Again, this is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. 2d at 612–13 (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

Third, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, ‘Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. The absence of a “revocation” provision is one way in which the Arbitration Agreement is materially different from those at issue in *Coleman* and *Hodge*, and, for that matter, *Thompson*. Moreover, the *Solesbee* Court drew a false equivalency between the concepts of “revocation” and “termination.” A “revocation” is an annulment (i.e., making something a nullity),²⁰ whereas “termination” is putting or bringing something that properly exists to an end—which is materially different from making something a nullity, i.e., void and never having properly existed in the first place. *Id.* at p. 1482. And, again, that the Arbitration Agreement survives the termination of the Admission Agreement is simply how arbitration

²⁰ *Black’s Law Dictionary* p. 1321 revocation (7th ed. 1999); *id.* at 89 annulment (“The act of nullifying or making void.”).

agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. at 612–13.

Fourth, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages.” 438 S.C. at 648, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, the fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about whether they were intended to be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. Again, the very nature of *merger* is to *merge* multiple things together as one.

Finally, the *Solesbee* Court erroneously found against the Facility on merger on the basis that Arbitration Agreement was voluntary. 438 S.C. at 648, 885 S.E.2d at 149. While, again, it is certainly true that the Arbitration Agreement was voluntary (*see* No. 3 above), this fact provides no reasonable inference of an intent contrary to merger. Again, to be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for the resident to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed.

Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. Again, the two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

To say that the Arbitration Agreement was not required for admission, which it was not, is not to say that it was not intended to be part of the admissions materials in the event it was agreed to, which it was, by Mr. Dover on Ms. Solesbee's behalf in *Solesbee* and by Mr. Paris on Ms. Paris' behalf in the instant case. While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: the Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement's) sole reason for being. (See Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident . . .”); *id.* (“This [Arbitration] Agreement shall remain in effect for all care rendered at Facility . . .”).)

Again, even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission, whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one

instrument governing various interrelated aspects of the resident's relationship with the Facility: the Admission Agreement setting forth the terms of the admission, the Arbitration Agreement providing for arbitration of disputes arising out of the admission. (*Compare* Admission Agreement (setting forth the terms of the admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of the admission).)

CONCLUSION

For the reasons set forth herein, this Defendant respectfully requests that this Court enter an Order dismissing or staying the pending action and compelling arbitration.

Respectfully submitted,
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Charleston, South Carolina

June 5, 2024

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
 _____)

DURABLE POWER OF ATTORNEY
A

EXHIBIT

KNOW ALL MEN BY THESE PRESENTS that, LORIS PARIS, a resident of _____ Vance, South Carolina _____ desiring to execute a Durable Power of Attorney, have made constituted and appointed and by these presents do make, constitute and appoint my daughter, BEVERLEY VAUGHN of _____ New Haven, Connecticut _____ as my Attorney-in-Fact for me and in my name, place and stead to do and perform all acts, deeds, matters, and necessary and advisable in the judgment of my said Attorney-in-Fact as fully and effectual for all intents and purposes as I could do if personally present and acting. This Durable Power of Attorney shall be effective upon, and only during, any period of mental incompetence or incapacity. The powers granted to my Attorney-in-Fact shall include, but not be limited to, each and every one of the following matters.

1. REAL PROPERTY TRANSACTIONS:

a.) To purchase, contract to purchase, receive, lease or rent for any term, accept or otherwise acquire real estate or any option thereon or interests therein, wherever situated, on such terms, conditions and considerations as my Attorney-in-Fact shall deem proper, in my name or jointly in my name and that of any other party or parties, including my Attorney-in-Fact.

b.) To sell, contract to sell, mortgage, encumber exchange, lease or rent for any term, grant options to purchase or otherwise deal in and dispose of any real estate in which I now have or may hereafter acquire any right, title or interest, whether such real estate be owned in joint tenancy in common, or in any other manner or capacity, and in my name, or jointly with any other party or parties, including my Attorney-in-Fact, on such terms, conditions and considerations as my Attorney-in-Fact, shall deem proper; to sign, seal, execute,

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 ORANGEBURG
 COUNTY
 ELAINE G. ALEXANDER
 REGISTER
 OF DEEDS

acknowledge and deliver any and all instruments in writing of any kind and nature, as may be necessary, containing such terms and conditions, and such warranties and covenants, if any as my said Attorney-in-Fact shall deem advisable.

c.) To manage, utilize, conserve, demolish, repair, rebuild, alter or improve any real estate or structure thereon owned or claimed to be owned by me in whole or in part, and to protect the same by action, proceeding or otherwise, including but not limited to, the recovery of possession thereof and the removal of tenants or other persons, animals or objects therefrom.

2. PROPERTY TRANSACTIONS:

a.) To store, conserve, hold, buy, contract to buy, accept, sell, exchange, mortgage, encumber, pledge, lease or rent, contract for the repair of, and in any and every manner deal in and with any and all personal property of every kind whatever, tangible or intangible, which I may now or in which I now have or hereafter may acquire any right, title or interest, on such terms, conditions and considerations as my Attorney-in-Fact shall deem proper.

b.) To execute and deliver to the proper persons and authority any and all documents, instruments and papers necessary to effect the proper registration and licensing of any automobile, vehicle, boat, motor, or trailer in which I now have or may hereafter have an interest.

c.) To enter into contracts for the storage and conversation of tangible personal property of every kind owned by me.

d.) To take possession and order the removal and shipment of any of my property from or to any warehouse or other place of storage, safekeeping or use, and to execute and deliver any release, receipt shipping ticket, certificate or other instrument necessary or convenient for such purposes.

3. BUSINESS TRANSACTIONS:

a) To demand, sue for, recover, receive, compromise, settle, adjust and pay all accounts, legacies, bequests, interest, dividends, annuities, demands, debts, taxes and any and all other obligations, which may now or hereafter be due, owing or payable by or to me, and to carry on and transact every kind of business on my behalf, in my name or jointly in my name and that of any other person or persons, including my Attorney-in-Fact, including, but not limited to transactions concerning any and all investments and shares of stock, bonds, securities, certificates of deposit and savings or checking accounts, on such terms, considerations and conditions as my Attorney-in-Fact may deem proper, and to invest and reinvest and exchange investments, and to execute and deliver

good and sufficient instruments for the accomplishment thereof and to act as my Attorney or proxy with respect to any stocks, shares, bonds, or other investments, rights of interest as I may now or hereafter hold.

b.) To vote, manage, administer, transfer and/or liquidate any and all stock or other beneficial interest I now or hereafter hold or possess.

4. FINANCIAL TRANSACTIONS:

a.) To deposit or withdraw for any purpose, in or from any bank savings and loan association, trust company or other financial institution any funds or other credits which I now or hereafter may have on deposit or be entitled to, and to draw, endorse, cash and receive the proceeds of any and all checks, drafts or other orders for money, to continue, open, modify or close accounts, purchase or redeem certificates of deposit or other evidences of deposits, and to receive statements, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I may have an interest.

b.) To have access for all purposes to any or all safety deposit boxes or vaults rented in my name or in the names of any other persons and myself, with full power to use the same for safekeeping any property or papers, and to remove there from at any time or from time to time, all or any part of the contents of any such box or vault.

c.) To borrow money and to execute in my name any instrument including, but not limited to, promissory notes and credit card applications and agreements, evidencing indebtedness incurred on my behalf and to extend and renew the same, as well as any indebtedness heretofore incurred by me, for the payment of which I may in any way be liable, upon such terms, conditions and rates of interest as my Attorney-in-Fact shall deem advisable.

d.) To prepare or have prepared from time to time financial statements concerning my assets and liabilities or income and expenses and to deliver such statements to any banker, banking institution or other person.

e.) To apply for and to receive letters or creditor traveler's checks from any banker or banking institution giving such indemnity or other agreements in connection therewith as my Attorney-in-Fact shall deem desirable or necessary.

f.) To use any funds which I may have or to which I may have access, for the purpose of paying all bills incurred by me for household expenses and maintenance of my home, utility bills, tax bills, insurance bills, nursing home or extended care facility bills, physicians and hospital bills, medical bills,

prescriptions, expenses incurred by me or on my behalf for Attorney and accountants and any other reasonable expenses.

g.) No person who may act in reliance upon the representations of my Attorney-in-Fact for the scope of authority granted to the Attorney-in-Fact shall incur any liability as to me or to my estate as a result of permitting my Attorney-in-Fact to exercise this authority, nor is any such person who deals with my Attorney-in-Fact responsible to determine or ensure the proper application of funds or property.

5. TAXES:

To make, sign, execute and file income and all other tax returns and declarations of estimated tax required to be made by me by a law or regulation of any government or governmental authority, to represent and act for me in all tax matters in any audit, examination, dispute or litigation, in any governmental department, board of court, to receive, endorse and collect checks in settlement of any refund of taxes, to execute consents agreeing to a later determination of taxes that is provided by statutes of limitation, to execute closing agreements relative to tax liabilities, to file claims for abatement, refund or credit taxes, to make any adjustment or settlement, and to sign any and all receipts, waivers, settlements or agreements pertaining to any income or other taxes assessed against me or my property by law.

6. INSURANCE TRANSACTIONS:

a.) To take out, pay the premiums on, modify, rescind, release, terminate, or execute any rights, privileges, or options of any contract of life, accident, health, disability, property or other insurance presently owned by me or by a person on my behalf, or hereafter acquired.

b.) To procure new, different or additional contracts of insurance on my life or with respect to protecting me or my property from ill health, disability, accident, liability or loss.

c.) To apply for, and receive, any loan on the security of any contract of insurance, to surrender value to exercise or obtain any money, dividend or other thing of value to which I am or to which I may become entitled as the proceeds or other return or profit arising out of any contract of insurance or of any one or more of the insurance transactions herein enumerated.

7. **REPRESENTATION AND EMPLOYMENT OF ASSISTANCE:**

a.) On my behalf and in my name or the name of my Attorney, to institute, prosecute, appear in, defend, compromise, arbitrate, settle or dispose of any legal, equitable or administrative hearings, actions, suits, attachments, claims or other proceedings, to which I am or may become a party or in which I have any interest.

b.) To hire, engage, employ and appoint agents, accountants, employees and counsel upon such terms and conditions and at such compensation as my said Attorney-in-Fact shall deem proper in the exercise of the powers herein granted. To dismiss and remove at pleasure any such agents, employees and counsel, as well as any agents, employees and counsels heretofore or hereafter employed by me or in my behalf.

8. **MISCELLANEOUS:**

a.) To sign, seal, acknowledge and deliver any instrument necessary to accomplish any of the powers herein granted.

b.) To modify, reform, renegotiate or rescind any contract or obligation heretofore or hereafter made by me or in my behalf.

9. **GENERAL PROVISIONS:**

a.) All business transacted hereunder for me or for my account shall be transacted in my name, and all endorsements and instruments executed by my Attorney-in-Fact for the purposes of carrying out any of the foregoing powers, shall contain my name, followed by that of my Attorney-in-Fact and the designation, "Attorney-in-Fact".

b.) This instrument shall be construed and interpreted as a General Power of Attorney. The enumeration of the specific items, rights, acts or powers herein is not intended to, nor does it limit or restrict, and shall not be construed or interpreted as limiting or restricting, the general powers herein granted as to said Attorney-in-Fact.

c.) I do hereby ratify and confirm and covenant to ratify and confirm all acts done and caused to be done by my said Attorney-in-Fact, including, but not limited to, anything which may be done between the revocation of these presents by death or in any manner, and notice of such revocation reaching said Attorney-in-Fact.

d.) Without limiting in any way the right of third parties to rely on actions by my Attorney-in-Fact without inquiring as to the property of such actions, I do hereby declare as between me and my Attorney-in-Fact a fiduciary relationship exist and that my Attorney-in-Fact shall not satisfy her legal obligations out of any property subject to this Power of Attorney, nor may my Attorney-in-Fact exercise this Power in favor of herself, her creditors, or the creditors of her estate.

e.) If the authority contained herein shall be revoked or terminated by operation of law without notice, I hereby agree for myself, my executors, administrators, heirs, and assigns, in consideration of my Attorney-in-Fact's willingness to act pursuant to this Power of Attorney, to save and hold my Attorney-in-Fact harmless from any loss suffered or any liability incurred by my Attorney-in-Fact in so acting after such revocation or termination without notice.

f.) My Attorney-in-Fact may serve without bond and is not required to file any accounting with the Probate Court or any other court in connection with the use of the powers granted herein.

g.) I direct that this Power of Attorney shall be effective upon, and only during, any period of mental incompetence or incapacity.

h.) The terms and conditions hereof shall insure to the benefit of and become binding upon the undersigned parties, their heirs, assigns, executors and administrators.

i.) No cancellation hereof, by operation of law or otherwise shall be effective as to any person relying upon this Power of Attorney unless such person shall have received actual notice in writing of its cancellation.

j.) This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate.

IN WITNESS WHEREFORE, I have hereunto set my Hand and Seal, dated at Orangeburg, South Carolina this 6th day of February, 2015.


LORIS PARIS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

ATTESTATION

The foregoing Durable Power of Attorney was this 6th day of February, 2015 signed, sealed, published and declared by the principal as the principal's appointment and empowerment of Attorney-in-Fact, in the presence of us who at the principal's request and in the principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto and furthermore, the below signed witnesses herein attest to the comprehension, lucidity, intentions and mental competence of the principal above named.

Byron E. Gipson of Johnson, Taul + Battiste, PA
130 Centre St. Orangeburg, SC 29115

Tammie Fields of Johnson, Taul + Battiste, PA
130 Centre St, Orangeburg, SC 29115

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

PROBATE

Personally appeared deponent and made oath that deponent saw the within named principal sign, seal and as the principal's act and deed deliver the within Durable Power of Attorney and the Deponent, with the other witnesses whose names are subscribed above, witnesses the execution thereof.

[Signature]
 (Witness)

SWORN to and subscribed to before me

this 6th day of February, 2015

Wangle Pancharis-Snell
 Notary Public for South Carolina

My Commission Expires: January 3, 2022

Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 BEVERLY VAUGHN AS PERSONAL
4 REPRESENTATIVE OF THE ESTATE
5 OF LORIS PARIS,

Plaintiff,

6 vs.

CASE NO. 2022-CP-38-00525

7 SAINT MATTHEWS HEALTHCARE,
8 LLC; MELISSA KIZER; MELISSA
9 DAVIS; and ANGELA SMITH
10 TELIHA;

Defendants.

EXHIBIT

B

11 DEPOSITION OF: BEVERLEY MINITEE VAUGHN

12 DATE: July 11, 2023

13 TIME: 10:00 a.m.

14 LOCATION:

Rustburg, VA

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: TRISHA M. THOMAS, RPR
17 (Appearing by videoconference)
18
19
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 BEVERLEY VAUGHN AS PERSONAL
4 REPRESENTATIVE OF THE ESTATE OF LORIS
5 PARIS:

6 POULIN WILLEY ANASTOPOULO, LLC
7 BY: JOSHUA P. CANTWELL
(Appearing by videoconference)
8 32 Ann Street
Charleston, SC 29403
(800) 313-2546
Josh.cantwell@akimlawfirm.com

9 ATTORNEYS FOR THE DEFENDANTS

10 SAINT MATTHEWS HEALTHCARE, LLC; MELISSA
11 KIZER; and MELISSA DAVIS:

12 CLEMENT RIVERS, LLP
13 BY: GAILLARD T. DOTTERER, III
(Appearing by videoconference)
14 25 Calhoun Street, Suite 400
15 Charleston, SC 29401
16 (843) 577-4000
Gdotterer@ycrlaw.com

17 (INDEX AT REAR OF TRANSCRIPT)
18
19
20
21
22
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25

1 THE REPORTER: The attorneys
2 participating in this deposition acknowledge that I
3 am not physically present in the deposition room
4 and that I will be reporting this deposition
5 remotely. They further acknowledge that in lieu of
6 an oath administered in person, I will administer
7 the oath remotely. The parties further agree that
8 if the witness is testifying from a state where I
9 am not a Notary that the witness may be sworn in by
10 an out-of-state Notary.

11 If any party has an objection to this
12 manner of reporting, please state it now.

13 MR. DOTTERER: No objection.

14 MR. CANTWELL: No objection.

15 THE WITNESS: No objection.

16 BEVERLEY MINITEE VAUGHN
17 being first duly sworn, testified as follows:

18 EXAMINATION

19 BY MR. DOTTERER:

20 Q. Could you state your name for the
21 record please, ma'am?

22 A. Beverley M. Vaughn.

23 Q. Ms. Vaughn, my name is Gilly Dotterer,
24 and I represent Calhoun Convalescent Center in this
25 case. We're here today to talk about some

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1 documents that were signed in connection with your
2 mother's admission to Calhoun Convalescent Center.
3 Is that your understanding?

4 A. Yes.

5 Q. And are you also the Plaintiff in this
6 case?

7 A. Yes.

8 Q. Have you ever given a deposition?

9 A. No.

10 Q. Well, there's some rules I'll need to
11 explain to you before we get started. It's
12 important that you give verbal answers to my
13 questions rather than head nods and uh-uhs. It's
14 hard sometimes, but it's important that you give
15 clear answers, and that's for the benefit of the
16 court reporter. Can you agree to do that for me
17 today?

18 A. Yes.

19 Q. Okay. I can't imagine that we'll be
20 here too long, but if you need to take a break at
21 any time, just let me know, and we can stop.

22 A. Okay.

23 Q. And if you have -- if you have a
24 recollection of something that's relevant to one of
25 my questions and you can't remember a hundred

1 percent, will you agree to qualify your testimony
2 to that end?

3 A. What do you mean, qualify my testimony?

4 Q. So, for instance, if -- if I ask you --
5 this is a silly example, but if I ask you what
6 color was the admissions director's hair, and you
7 can't quite remember, will you agree to explain
8 that to me, if you can't remember a hundred
9 percent?

10 A. Okay. If I can't remember, I would
11 respond: I don't remember.

12 Q. Okay. That's fine. That's fine.

13 A. Uh-huh.

14 Q. And you understand that you're under
15 oath today, under penalty of perjury, and I just
16 want to make sure that the answers you give me are
17 going to be the same as the answers you would give
18 to a judge at a later time. Is that fair?

19 A. Yes.

20 Q. Okay. And if you answer one of my
21 questions, I'm going to assume that --

22 A. Yes. Did you -- did you get that?

23 Q. I did. I heard you.

24 A. Okay.

25 Q. And if you answer one of my questions,

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1 I'm going to assume that you understood my
2 question. Is that fair?

3 A. Yes.

4 Q. Okay. Where do you live, Ms. Vaughn?

5 A. Rustburg, Virginia.

6 Q. Okay. And how long have you lived
7 there?

8 A. This year is the first year. I moved
9 from Connecticut.

10 Q. Okay. And were you living in
11 Connecticut in April of 2019?

12 A. Yes.

13 Q. And where in Connecticut is that?

14 A. New Haven.

15 Q. Okay. Have you ever sued -- have you
16 ever filed a lawsuit other than this one?

17 Uh-oh.

18 A. -- before this one. Are you there?

19 Q. I didn't quite -- yeah. I didn't quite
20 get your --

21 MR. CANTWELL: I think you froze up for
22 a second.

23 MR. DOTTERER: Yeah.

24 THE WITNESS: Okay. No. Prior to
25 this, I've never filed a lawsuit.

1 BY MR. DOTTERER:

2 Q. Okay. Have you been sued before?

3 A. No.

4 Q. And I ask this to all my witnesses, but
5 have you ever been convicted of a crime or
6 arrested?

7 A. No.

8 Q. I understand your mother, Ms. Loris
9 Paris, executed a power of attorney making you her
10 agent at some point; is that correct?

11 A. Exactly, yes.

12 Q. When was that power of attorney
13 executed?

14 A. It's in the paperwork. I think it was
15 2014 or 2015, something like that.

16 Q. Okay. And how did that come to be that
17 she made -- she executed that power of attorney?

18 A. She was not able -- she was
19 physically -- she had chronic rheumatoid arthritis
20 and a lot of -- she also was hearing-impaired and
21 speech-impaired, and so a lot of her decisions and
22 things like that that needed to be made at that
23 point, she wanted me to be the person making
24 decisions.

25 Q. Okay. Understood.

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1 I'm going to -- bear with me for a
2 second.

3 A. Hello?

4 Q. I'm sharing my screen with you. Are
5 you able to see what I'm showing you?

6 A. You're breaking up, but, yes, I see
7 that you have three pdfs on the screen.

8 Q. Okay. My screen is showing just one.
9 Can you see that?

10 A. No. I see three.

11 MR. CANTWELL: Gilly, it's showing the
12 folder that has the three pdfs in it, not the one
13 that you -- I presume you've pulled up.

14 MR. DOTTERER: I see. Okay. One
15 second.

16 There we go. Is that better?

17 MR. CANTWELL: That's it.

18 THE WITNESS: Yes.

19 BY MR. DOTTERER:

20 Q. Does this appear to be the power of
21 attorney that your mother executed naming you as
22 her attorney-in-fact?

23 A. Yes. Says February 2015.

24 Q. Okay. So I believe -- and correct me
25 if I'm wrong -- we were talking about the power of

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1 attorney, but you said that that was executed
2 because your mother needed help with certain things
3 and you needed to be the one there managing her
4 affairs; is that correct?

5 A. I said that what she wanted was some --
6 was for me to be making decisions on her behalf.
7 As -- you know, you get older, and you want to make
8 sure that things are -- you know, someone is able
9 to handle your business, handle your information,
10 all that kind of stuff, and that's what she made
11 me.

12 Q. Sure. And so what kind of things were
13 you handling for her? Were you, you know, signing
14 bank documents, things like that?

15 A. -- attorney gives you power of attorney
16 to act on anything.

17 Q. Yeah. I lost you on that. Could you
18 repeat what you just said?

19 A. That as power of attorney -- she made
20 me power of attorney to handle whatever needed to
21 be handled. If it was bank, if it was insurance,
22 if it was whatever, I acted as Loris Paris.

23 Q. Sure. Who was taking care of your
24 mother in April of 2019 and before that? I guess
25 in between the time that she signed this power of

1 attorney and April of 2019?

2 A. She lived at home with her -- my
3 brother lived with her.

4 Q. Is your brother George Paris? Is that
5 who --

6 A. Yes.

7 Q. -- was living with her? Okay.

8 A. Uh-huh.

9 Q. So who would take her to doctors'
10 appointments? George?

11 A. George or friends or her sisters. She
12 has sisters. She has a brother. She has nieces
13 and nephews. Many people participated in what she
14 needed, her care.

15 Q. Okay. So if -- if you needed paperwork
16 filled out on her behalf, would she -- you being in
17 Connecticut, you couldn't handle it yourself. How
18 would you go about seeing that that paperwork was
19 filled out appropriately?

20 A. What do you mean? What paperwork?

21 Q. So, for instance, if she went to the
22 doctor's office and she needed to sign some
23 paperwork --

24 A. She could sign --

25 Q. -- how would -- who would sign that

1 paperwork?

2 I lost you again.

3 A. She -- if she was -- if she was there
4 and able to sign something, she would.

5 Q. Okay.

6 A. If she needed me to sign something, I
7 would.

8 Q. Okay. I got you.

9 And would she also get other people to
10 sign things for her?

11 A. Absolutely not.

12 Q. Okay. So is it your testimony that she
13 never had somebody else sign paperwork for her?

14 A. I can't say never. I wasn't with her
15 24/7. But I can say, as far as I know, no, she did
16 not have someone else sign on her behalf. It was
17 her or me.

18 Q. And I understand that she was admitted
19 to the Orangeburg Regional Medical Center before
20 she was transferred to Calhoun Convalescent Center.
21 Who signed the paperwork related to that admission?

22 A. To what admission?

23 Q. To the hospital admission.

24 A. When she went to the hospital?

25 Q. Yeah.

1 A. I wasn't there, so I would say
2 probably, you know, whoever -- if she needed to be
3 signed in, it would have been her or the
4 convalescent home.

5 Q. No. I'm referring to the hospital
6 paperwork. So she was at the hospital before she
7 went to Calhoun Convalescent Center. So my
8 question was: Who signed the paperwork to get her
9 admitted to the hospital?

10 A. Say that one more time. You broke up.

11 Q. Right. We were -- I was -- I was --
12 can you hear me okay?

13 A. Now I can, yes.

14 Q. Okay.

15 A. But what was your question before? I
16 didn't hear that.

17 Q. Sure. So she went to Orangeburg
18 Regional Medical Center before she was transferred
19 to Calhoun Convalescent Center.

20 A. Oh, yes.

21 Q. My question was --

22 A. Before she was admitted? You're saying
23 before she was admitted to Calhoun?

24 Q. Correct.

25 A. Yes, yes.

1 Q. To Calhoun Convalescent Center.

2 A. Yes, she did.

3 Q. Okay.

4 A. Yes.

5 Q. So my question was: Who signed the
6 paperwork relating to her admission to the
7 hospital?

8 A. Well, she was taken to the hospital in
9 an ambulance, so I have no idea. When she got
10 there -- is that normal for somebody to sign you in
11 when you're taken to the hospital?

12 Q. Well, I can't answer that question. I
13 can't answer that question. But my under -- what I
14 understand that you're telling me is that you don't
15 know who signed any paperwork related to that
16 admission?

17 A. Exactly. No.

18 Q. Okay.

19 A. 'Cause, you know, she went in an
20 ambulance. So when she got there, I have no idea.

21 Q. Okay.

22 A. That would be on hospital admission
23 paper records, wouldn't it?

24 Q. It may or may not be.

25 And we were discussing the admission to

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1 the hospital. Do you remember what -- why she came
2 to go to the Orangeburg Regional Medical Center?

3 A. You're -- you froze. I -- you were
4 completely frozen, so --

5 MR. DOTTERER: Can we go off the record
6 for a second?

7 (Off-the-record conference.)

8 BY MR. DOTTERER:

9 Q. Okay. We're back on the record.
10 Ms. Vaughn, we were having some connection issues,
11 but I think we've got it figured out now.

12 A. Yes.

13 Q. Before we took a break, I was -- I was
14 asking you what led to the admission to the
15 Orangeburg Regional Medical Center prior to --

16 A. She --

17 Q. -- the nursing admission.

18 A. She was -- she was kind of lethargic
19 and she had a fever, and so they called the
20 ambulance and took her to the hospital.

21 Q. I've got you.

22 And how long was she in the hospital?

23 MR. CANTWELL: Gilly, I'm just going to
24 stop you right there. This deposition is supposed
25 to only be about the arbitration issue.

1 MR. DOTTERER: Yeah, yeah. Josh, I
2 understand that. And I'm not -- I'm not really
3 going to get into the care or anything like that.
4 I just wanted to ask her these questions for
5 background information and really just her
6 understanding as to this admission and the
7 admission to the nursing home and, you know, where
8 she was --

9 MR. CANTWELL: I think the other --
10 yeah. The other admission doesn't matter as far as
11 the admission to your client's facility.

12 MR. DOTTERER: Okay. Well, Josh, I'm
13 not going to get into the care. I just want to
14 know if she knows about, you know, where she was
15 and just --

16 MR. CANTWELL: Yeah. You just asked --
17 you just asked her why she was there. That's
18 getting into the care.

19 MR. DOTTERER: Okay. Fine. I'll move
20 on if you're going to be difficult. That's fine.
21 BY MR. DOTTERER:

22 Q. Ms. Vaughn -- so I'll move on from that
23 questioning.

24 When was she admitted to Calhoun
25 Convalescent Center?

1 A. I -- I don't remember the exact date.
2 It's on the paperwork, isn't it?

3 Q. I can't answer that question. I'm
4 asking if you remember when she was admitted.

5 A. No. I don't remember the exact date,
6 no.

7 Q. Okay.

8 A. That was like four years ago or
9 something. I don't remember the exact date, no.

10 Q. Okay. And if the records mention that
11 she was admitted around April 12 of 2019, is that
12 consistent with what you remember?

13 A. April 12?

14 Q. Yeah.

15 A. I guess I thought it was before that,
16 but I don't know the exact date, so if that's what
17 the paperwork says, then that would be the date, I
18 imagine.

19 Q. Okay. And were you present when she
20 was admitted to the nursing facility?

21 A. No. I was in Connecticut.

22 Q. Okay. So describe to me your
23 understanding of how she came to be admitted to the
24 nursing facility.

25 A. She was -- the hospital advised that

1 she could no longer take care of herself and that
2 she could no longer be cared for by people who were
3 not professional, who could tell if she had an
4 infection or something like that, so she had to be
5 admitted to a nursing home.

6 Q. Okay. And did you have a conversation
7 with her about being admitted to the nursing home?

8 A. Yes.

9 Q. Okay. And what was that conversation?

10 A. That you're going to have to go to a
11 nursing home. You can't -- they can't take care of
12 you at home any longer.

13 Q. Okay. And was George at all involved
14 in having her admitted to the nursing home?

15 A. Yes. He was there.

16 Q. Okay.

17 A. Uh-huh.

18 Q. Was anybody else other than George
19 involved?

20 A. His fiancée -- involved in getting her
21 to the hospital, or what do you mean? Getting her
22 care? What? I don't know what you mean.

23 Q. Yeah. Just getting her admitted to the
24 nursing home.

25 A. No. That was -- it was just one person

1 required to do that.

2 Q. Okay. So just George?

3 A. Yes. I gave him permission to have her
4 admitted.

5 Q. Okay. So you gave her -- you gave him
6 the authority to act for you because you weren't
7 there?

8 MR. CANTWELL: Object to the form.

9 THE WITNESS: I gave him the authority
10 to have her -- have him sign her in. I gave the --
11 the convalescent home okay for him to sign her --
12 admit her because she was already there. She had
13 already arrived at the convalescent home before the
14 paperwork was signed.

15 BY MR. DOTTERER:

16 Q. Okay. So you were relying on him to
17 execute all the paperwork in connection with
18 admission to the nursing facility; is that right?

19 MR. CANTWELL: Object to the form.

20 THE WITNESS: With admission to the
21 nursing facility only.

22 BY MR. DOTTERER:

23 Q. Okay. So what do you mean by that?

24 A. With admission to the -- to the -- to
25 the nursing facility only.

1 Q. Okay.

2 A. No other permission was given for
3 anything other than admission to the facility.

4 Q. Okay. Did you have any conversation
5 with anybody at the facility in connection with
6 this admission?

7 A. Yes.

8 Q. Who did you speak with?

9 A. I don't remember her name. I think it
10 was Queck or something like that -- Geck -- but I
11 don't remember the name of the specific person that
12 I spoke with.

13 Q. If I mention the name Cindy Reck, does
14 that ring a bell to you?

15 A. Yes, yes.

16 Q. And was that the person you spoke with?

17 A. Yes.

18 Q. Okay. What was your conversation with
19 Ms. Reck like?

20 A. That my mother was already at the
21 facility and they could not -- they needed
22 admission papers signed or they could not receive
23 her in, and because I wasn't in South Carolina, I
24 asked -- or she asked if there was anyone else that
25 could sign her in, and I said: Yes. My brother.

1 I can give him permission to sign her in.

2 Q. Okay.

3 A. And she said: Okay.

4 Q. Okay. You weren't there, but do you
5 have an understanding of how your mother was doing
6 at that point, physically?

7 A. I'm sure at that point. I don't
8 remember right now. But, yeah, I'm sure I did. I
9 kept up on everything that was concerning her.
10 Yes. I kept e-mails, text messages, phone call
11 notes, everything.

12 Q. Sure.

13 A. So, yes, I would have been aware.

14 Q. Right. So what you're telling me is,
15 sitting here today, you don't have a recollection
16 of how she was from a physical standpoint when she
17 was admitted to the nursing facility?

18 A. She was unable to care for herself.
19 That's what I know.

20 Q. Are you aware of any diagnosis of
21 dementia or Alzheimer's?

22 A. No, no. Her doctor did not diagnose
23 her with dementia.

24 Q. Okay.

25 A. We talked about it, but there was no

1 diagnosis.

2 Q. So are you -- are you aware of any
3 physician ever deeming her unfit to manage her
4 personal affairs or make decisions for herself?

5 A. A physician?

6 Q. Yes.

7 A. No.

8 Q. I've reviewed some of the admissions
9 paperwork in this case, and it appears that you --
10 you started -- or you at least signed some of the
11 documents in connection with the admission. Do you
12 remember signing any documents?

13 A. Yes. I flew down after her admission.
14 Yes. So whatever I signed was after I got there,
15 but, yes, I do remember sitting in the office and
16 signing papers.

17 Q. Okay. Let me just -- I might pull up
18 these documents and show them to you real quick.

19 A. I have them also.

20 Q. Okay. Just give me one second.

21 A. Sure.

22 Q. Ms. Vaughn, I just shared my screen.

23 A. Yeah. I see it.

24 Q. Can you see that? Okay.

25 A. Looks -- I can see portions of it. I

1 can't see the top.

2 Okay. Yes, I see it.

3 Q. That's actually not what I wanted to
4 show you. We'll move on for this -- we'll move on
5 for now, and I might come back and ask you
6 questions about it later on.

7 But it's my understanding -- I see some
8 paperwork that you signed with a date of April 11,
9 2019, and it's my understanding based on the
10 paperwork that she was admitted on April the 12th.
11 So it appears that you signed some documents before
12 she was actually admitted, but you're telling me
13 that you -- you signed some paperwork after she was
14 admitted?

15 A. Yeah. But I -- that -- that looks
16 like -- that paperwork looks like hospital
17 paperwork. Is that from the hospital or from --

18 Q. So that was from the nursing facility,
19 and I have the documents that I want to ask you
20 about, but I might have to find them before I ask
21 you about them.

22 But do you remember signing anything
23 before the admission?

24 A. I -- I don't -- I don't remember the
25 admission date. I remember being in the office

1 signing papers. What the date was and all of that,
2 I don't remember, but I do remember being in the
3 office signing papers, in her office at the
4 facility. But I also filled out papers at the
5 hospital. That's what that looks like, actually,
6 for her insurance purposes to get her Medicaid or
7 Medicare or whatever that was.

8 Q. I see. I see.

9 A. So I don't know. I'd have to look at
10 those papers better than that 'cause they look
11 like -- that actually looks like the hospital
12 paper.

13 Q. Okay. Well, we'll come back. I'll
14 find them, and I'll show them to you.

15 Did you come down to see her at any
16 time before she was admitted to the nursing
17 facility?

18 A. I come down all the time. It's my
19 mother.

20 Q. Sure.

21 A. I was in South Carolina all the time,
22 often.

23 Q. That was a bad question, but did you --
24 did you come down when she was in the hospital in
25 Orangeburg?

1 A. Prior to her going to the convalescent
2 home?

3 Q. Correct.

4 A. No.

5 Q. Okay. And did you come down for her
6 admission to the -- to the nursing facility?

7 A. Did I come down for her admission?

8 Q. Yes.

9 A. I came down after she was admitted.

10 Q. Okay.

11 A. But, no, I wasn't there for her
12 admission.

13 Q. Okay. Understood.

14 And you mentioned that you went over
15 some paperwork after she was admitted; is that
16 correct?

17 A. Yes.

18 Q. Do you remember what that paperwork
19 was?

20 A. No.

21 Q. Okay. And was it -- was it a sit-down
22 meeting with you and somebody at the facility?

23 A. Yes.

24 Q. Okay. And who was the person that you
25 met with?

1 A. You told me. What's her name? I
2 remember the name that you said.

3 Q. Was it Cindy Reck?

4 A. Yes, Cindy Reck. I knew it was some
5 kind of Geck or Reck or something. Yes. Yes. She
6 was basically who I spoke with, period.

7 Q. Was your brother present for that
8 meeting?

9 A. No.

10 Q. What was the purpose of that meeting?

11 A. To sign the papers that weren't signed.

12 Q. Okay. So you were there just -- just
13 signing remaining admissions paperwork that George
14 wouldn't sign?

15 A. I don't know if it was admissions. I
16 think it -- I don't know if it was admissions. I
17 think it was paperwork to get her -- you know,
18 whatever gets her medicine, that kind of stuff.
19 That -- you know, it wasn't admission 'cause she
20 was already admitted, but there were other
21 paperwork that needed to be signed, and that's what
22 I was down for.

23 Q. I understand. I understand.

24 Did you ever receive the admissions
25 paperwork that was signed?

1 A. I -- I don't recall. I don't recall.
2 I probably got copies of my paperwork, but I don't
3 recall the admission paperwork. I'm sure it was in
4 there with when I went to -- and, you know, they
5 probably gave it to me. I don't know. I don't
6 remember.

7 Q. And I want to backtrack a little bit.
8 Earlier we were talking about George executing some
9 of the admissions paperwork to have your mother
10 admitted to the nursing facility, and you mentioned
11 that -- and correct me if I'm wrong -- but Cindy
12 said that somebody needed to be there to sign
13 certain paperwork to get her admitted; is that
14 right?

15 A. Right.

16 Q. Okay. And did you and George talk
17 about that at all?

18 A. Of course we did.

19 Q. What was --

20 A. I had to call him -- I had to call him
21 and tell him that we needed him to go to the
22 convalescent home and sign her in because she was
23 already there and they needed someone's signature
24 to say that she could be admitted, and so I called
25 him to go and do that.

1 Q. Okay. Did you mention to Cindy that
2 you had a power of attorney?

3 A. Of course, yes.

4 Q. What did you tell her about the power
5 of attorney?

6 A. What do you mean, what -- that I'm
7 power of attorney.

8 Q. Okay. And did you mention that George
9 had the authority to execute paperwork in
10 connection with the admission?

11 MR. CANTWELL: Object to the form.

12 THE WITNESS: I told her he could sign
13 her in, yes. I told her he could sign for her -- I
14 gave him permission to sign for her to be admitted
15 to the facility.

16 BY MR. DOTTERER:

17 Q. And you never told the -- Cindy or
18 anyone at the facility that George didn't have the
19 authority to sign certain documents, did you?

20 A. Of course I did.

21 MR. CANTWELL: Object to the form.

22 BY MR. DOTTERER:

23 Q. You did?

24 A. Yes. Of course.

25 Q. You said that --

1 A. He could sign her in, but he could not
2 sign -- anything legal, he could not sign. But he
3 could sign paperwork to admit her, yes.

4 Q. So you said --

5 A. Of course.

6 Q. You're sitting here -- your testimony
7 is that you told Cindy Reck that George didn't have
8 the authority to sign anything legal?

9 A. That he could sign to admit her to the
10 facility. Anything else needed to be signed by me
11 as the power of attorney, and I was only to be --

12 Q. And you specifically told Ms. Reck
13 that?

14 A. Say that again.

15 Q. Did you specifically tell Ms. Reck
16 that?

17 A. Specifically, it's difficult because
18 it's four years later. What the specific
19 conversation was, I can't say specifics, but I can
20 say logically what I do and how I handle things and
21 especially when it comes to documents like power of
22 attorney for my mother.

23 Q. Sure. But --

24 A. Yes.

25 Q. -- sitting here today, you don't have

1 any recollection about what you specifically said
2 to Ms. Reck?

3 A. No.

4 Q. And your mother, as far as you know,
5 did not say anything to give the staff the
6 impression that he didn't have the authority to
7 sign certain paperwork?

8 A. No.

9 MR. CANTWELL: Object to the form.

10 THE WITNESS: She would not. She
11 wasn't talking.

12 BY MR. DOTTERER:

13 Q. Okay. Did you ever speak with George
14 after he signed the paperwork?

15 A. Speak with him -- what do you mean?

16 Q. That was a poor question.

17 Once George had signed the paperwork,
18 did you have a conversation with him afterwards
19 about what he had signed?

20 A. No. He signed the paperwork. What
21 would the conversation be? She -- okay. She's at
22 the convalescent home. She's in. That's what the
23 conversation would have been.

24 Q. Did you ever personally review the
25 admissions paperwork?

1 A. Review it for -- what do you mean,
2 review? All the paperwork, the 35 pages or
3 whatever of paperwork?

4 Q. Correct. Did you look at the paperwork
5 that George was going to sign to have your mother
6 admitted?

7 A. No. No. Whoever I was speaking with
8 said it was intake papers.

9 Q. Are you aware of any discussions George
10 had with Ms. Reck or anybody else at the facility
11 regarding the admissions paperwork?

12 A. No.

13 I -- I have -- I have a question.

14 Q. I can't answer your questions.

15 A. What's this call -- what's this call
16 for? I don't -- now I'm confused as to why we're
17 meeting.

18 Q. Ms. Vaughn, I can't answer the
19 question. But at the beginning of your deposition,
20 I asked you if we were here to talk about documents
21 that were signed in connection with your mother's
22 admission, and you indicated that you understood
23 that.

24 A. Okay. Okay.

25 Q. So...

1 A. Okay. What document is in question?

2 Q. I can't answer the question,

3 Ms. Vaughn.

4 A. Oh, okay. Okay.

5 MR. DOTTERER: Ms. Vaughn, those are
6 all the questions I have for you today. Your
7 attorney might have some questions for you.

8 EXAMINATION

9 BY MR. CANTWELL:

10 Q. Hey, Ms. Vaughn. How are you doing?

11 A. I'm good.

12 Q. Can you hear me okay?

13 A. Yes, I can.

14 Q. All right. Great. I do have a couple
15 of follow-up questions for you. And --

16 A. Okay.

17 Q. -- first I'm going to share my screen
18 and show you some documents.

19 A. Okay.

20 Q. All right. Can you see my screen?

21 A. Yes.

22 Q. All right. This is an authorization
23 form for release of health information; is that
24 right?

25 A. Yes.

1 Q. And it looks like this was --

2 A. That --

3 Q. Go ahead.

4 A. I was going to say Healthy Connection
5 was the hospital.

6 Q. Okay. And the permission that was
7 given at the bottom -- do you see that part? It
8 was given --

9 A. Yes.

10 Q. -- to Calhoun Convalescent Center; is
11 that right?

12 A. Right.

13 Q. And that's Cindy; is that correct?

14 A. Yes, yes.

15 Q. And then is that your signature at the
16 bottom, Beverley Vaughn?

17 A. Yes.

18 Q. And that's dated April 11, 2019; is
19 that right?

20 A. Right.

21 Q. Okay. So as of at least that date,
22 Calhoun Convalescent Center knew that you were the
23 person that should be signing documents for your
24 mother; is that right?

25 MR. DOTTERER: Object to the form.

1 THE WITNESS: Absolutely.

2 BY MR. CANTWELL:

3 Q. This next consent form, the South
4 Carolina Community Long Term Care Consent Form,
5 that also has your signature on April 11, 2019; is
6 that right?

7 A. Correct.

8 Q. Okay. The next form is a choice of
9 location services.

10 A. Uh-huh.

11 Q. And that's got your signature as well;
12 is that right?

13 A. Yeah.

14 Q. Do you believe that was signed on the
15 same date?

16 A. Yes. Uh-huh.

17 Q. This next form is an acknowledgement,
18 protection of resident funds, and that's got your
19 signature on that as well; is that right?

20 A. Yes.

21 Q. And do you believe that was signed on
22 April 11, 2019?

23 A. Yes. This package, uh-huh.

24 Q. The next page is a resident fund
25 account authorization, and under the responsible

1 party signature, is that your signature there?

2 A. Yes.

3 Q. Do you believe that was signed the same
4 date?

5 A. Yeah.

6 Q. Here we have a Medicare screening
7 questionnaire.

8 A. Uh-huh.

9 Q. And the beneficiary or representative
10 signature is Beverley Vaughn; is that correct?

11 A. Correct.

12 Q. And that's dated April 11, 2019; is
13 that right?

14 A. Correct, yes.

15 Q. Here we have a Calhoun Convalescent
16 Center admission signature document, and it talks
17 about resident transfers, diagnoses, grievance
18 procedures, funds, laundry, telephone, visiting
19 hours, and you signed the authorization on
20 April 11, 2019 --

21 A. Yes.

22 Q. -- is that right?

23 A. Right.

24 Q. For this next document, this is
25 involving the DNR, and it's got your signature on

1 here as Beverley Vaughn --

2 A. Yes.

3 Q. -- is that correct?

4 A. Uh-huh. Yeah.

5 Q. And if we go to the next page, a
6 consent for release of medical records, you've got
7 the name of your mother, the doctor's name, giving
8 the consent to Calhoun Convalescent Center, and
9 then you signed the form on April 11, 2019; is that
10 right?

11 A. Yes.

12 Q. On the next page we've got an
13 acknowledgment of mechanical lift and policy,
14 procedures, and you signed that one as well; is
15 that correct?

16 A. Uh-huh. Yeah.

17 Q. We have another copy. I believe this
18 is the same one, admission signature document,
19 about transfers, diagnoses, procedures, funds,
20 laundry, telephone, visiting hours, and you signed
21 that one April 11, 2019, right?

22 A. Yeah. Uh-huh.

23 Q. Here we have an informed consent from
24 Calhoun Convalescent Center for restraints.

25 A. Okay.

1 Q. And you signed that as your mother's
2 personal -- as her representative; is that correct?

3 A. Yes.

4 Q. You've got a smoking policy for Calhoun
5 Convalescent Center, the next document, and you
6 signed that one --

7 A. Yeah.

8 Q. -- is that right?

9 A. Yeah.

10 Q. This next page, some sort of
11 authorization for photographs, and you signed that
12 form on April 11, 2019; is that right?

13 A. Uh-huh.

14 Q. And that's under the legal
15 representative signature; is that right?

16 A. Yes. And initialed, yeah.

17 Q. And here we have another form stating
18 that you're the legal representative on April 11,
19 2019, and your printed name; is that right?

20 A. Yes.

21 Q. And then we have -- here's the official
22 DNR order, and you're signing off on that on
23 April 11, 2019; is that right?

24 A. Yes. Yes.

25 Q. Here we have another form for dental,

1 vision, audiology, and podiatry consents, and you
2 signed --

3 A. Uh-huh.

4 Q. -- that form April 11, 2019?

5 A. Yeah.

6 Q. For the laundry form, the next page,
7 you signed that form; is that right?

8 A. Uh-huh.

9 Q. Okay. And were all these forms signed
10 around the same time?

11 A. Yes.

12 Q. All right. And so at least by
13 April 11, 2019, you had told the home that you were
14 power of attorney and you should be signing all
15 forms regarding her care and any business matters;
16 is that right?

17 A. Correct.

18 MR. DOTTERER: Object to the form.

19 BY MR. CANTWELL:

20 Q. Now I'm going to show you this next
21 document, which is the purported arbitration
22 agreement.

23 A. Okay.

24 Q. Now, this states that the --

25 A. I can't see -- I don't -- I don't see

1 it good.

2 Q. Okay. Let me see if I can move it
3 around.

4 A. I see only -- okay. Okay. I see it.
5 All right.

6 Q. Can you see the top of it?

7 A. This is -- yes. This is --

8 Q. Okay. All right. And this is the form
9 that Calhoun Convalescent Center is stating that
10 George signed, and if we go down to the second page
11 of it, it's got George, his name listed, his
12 signature, and that's actually on April 15, 2019.
13 That's actually four days after you had signed all
14 those other forms; is that correct?

15 A. Okay.

16 Q. All right.

17 A. It looks like it, yeah.

18 Q. Yeah. So they should have known that
19 he wasn't the actual power of attorney for signing
20 any documents by that time 'cause you had already
21 signed those -- I don't know -- 15 or 20 other
22 forms four days earlier.

23 A. Exactly.

24 MR. DOTTERER: Object to the form.

25 THE WITNESS: What -- what is this --

1 document says what, now?

2 BY MR. CANTWELL:

3 Q. You don't know anything about this
4 document, do you?

5 A. No. And what is it, now? It says --

6 Q. Did anybody at the Calhoun Convalescent
7 Center ever talk with you about arbitration?

8 A. No.

9 Q. Did they ever talk with you or George
10 about the fact that they were trying to get y'all
11 to waive your mother's right to a jury trial?

12 A. Not me. George never mentioned that to
13 me, and so I doubt if anybody said anything to him.
14 And I would not authorize him to sign anything that
15 says, right next to his name -- go back up top.

16 Q. 'Cause George didn't have the power of
17 attorney; is that right?

18 A. Does not. And that says resident
19 durable power of attorney health -- that's not who
20 he is.

21 Q. Okay. If we look at this next
22 document, this is the durable power of attorney
23 that counsel showed you earlier. This was
24 originally --

25 A. Yes.

1 Q. -- signed off by your mother in
2 February of 2014 -- I mean, excuse me -- 2015.

3 A. Correct. Right.

4 Q. And that gave you the authority to act
5 on her behalf for all these transactions; is that
6 right?

7 A. Exactly. Anything durable or that is a
8 legal binding document, absolutely.

9 Q. Okay. And George was not given --

10 A. And George know --

11 Q. -- those same powers, right?

12 A. And George knows -- George knows that.
13 He knows he was not power of attorney, so that was
14 slipped in some kind of way. Huh-uh. No.

15 Q. Okay.

16 A. So am I able to ask you, Josh? Is that
17 what this call is about?

18 Q. Essentially I can't really answer
19 questions. I'm only allowed to ask you questions,
20 but this is about --

21 A. Okay. Okay.

22 Q. -- the arbitration agreement matter.

23 A. No problem. Okay. No problem.

24 Q. Now, when your mother went to the
25 Calhoun Convalescent Center, was she able to

1 understand you?

2 A. She could understand me, yes.

3 Q. Okay.

4 A. She didn't do a lot of talking and all
5 of that, but, yeah, she could understand.

6 Q. Okay. She hadn't been diagnosed with
7 dementia or anything like that, correct?

8 A. No, no.

9 Q. All right.

10 A. Her doctors would not diagnose her with
11 dementia. They said that was a diagnosis they had
12 to watch longer than they'd been watching her for
13 that, so they would not diagnose it.

14 Q. And so anybody that needed to sign off
15 on any legal documents would either need to be you,
16 as her power of attorney, or her herself; is that
17 correct?

18 A. Exactly.

19 MR. DOTTERER: Object to the form.

20 MR. CANTWELL: All right. That's all
21 the questions that I have. I would like to mark
22 these three documents as exhibits. And I will send
23 those to everybody and the court reporter.

24 MR. DOTTERER: That's fine. I had one
25 quick follow-up question.

EXAMINATION

BY MR. DOTTERER:

Q. Ms. Vaughn, we went over some documents -- your attorney went over some documents with you just now.

A. Yes.

Q. Some of these documents were a part of the set of admissions documents that were signed in connection with your mother's admission. You would agree that you had the opportunity to ask the facility to review these documents before they were signed, wouldn't you?

MR. CANTWELL: Object to the form.

THE WITNESS: Say that -- what did you say?

BY MR. DOTTERER:

Q. Sure. You would agree with me that you had the opportunity to talk with somebody at Calhoun Convalescent Center and ask any questions you might have about any of the paperwork that was signed in connection with your mother's admission; is that right?

MR. CANTWELL: Object to the form.

THE WITNESS: All -- you know, it -- it depends on what you -- I don't know where you're

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1 going, but it depends on what you're asking that we
2 talk about. We talk about every aspect of her
3 being admitted there. But paperwork? No. We
4 never went over specific paperwork: Here, explain
5 this to me, explain that to me. No. Because I
6 read it.

7 BY MR. DOTTERER:

8 Q. Sure. And that's -- that wasn't -- my
9 question really was: You would agree that you had
10 -- at least had the opportunity to call somebody at
11 the facility and ask them about the paperwork if
12 you had any questions?

13 MR. CANTWELL: Object to the form.

14 BY MR. DOTTERER:

15 Q. You still have to answer the question,
16 Ms. Vaughn, if you can.

17 A. Okay. I really don't understand the
18 question. I really don't.

19 Q. Okay.

20 A. I don't understand what you're asking.

21 Q. I'll ask it again.

22 Any paperwork that was signed in
23 connection with your mother's admission, you would
24 agree that you at least, if you wanted to, could
25 have called the facility and asked to see the

1 paperwork before it was signed?

2 MR. CANTWELL: Object to the form.

3 THE WITNESS: If I wanted to? Why
4 would I object to papers being signed to admit her?
5 Isn't that the norm? That's the process.

6 BY MR. DOTTERER:

7 Q. Ms. Vaughn, my question is --

8 A. You have to have papers signed.

9 Q. My question is really simple. I'm just
10 asking if you'll agree that you at least -- it was
11 possible for you to call somebody at the facility
12 and ask them questions about documents that were
13 signed in connection with the admission?

14 MR. CANTWELL: Object to the form.

15 THE WITNESS: Absolutely. Anything is
16 possible. There's a possibility for anything, yes.

17 MR. DOTTERER: Thank you. Thank you.

18 THE WITNESS: There's a possibility.

19 MR. DOTTERER: Those are all the
20 questions I have for you.

21 EXAMINATION

22 BY MR. CANTWELL:

23 Q. Just one quick follow-up.

24 Ms. Vaughn, you never spoke with
25 anybody at the facility about the arbitration

1 agreement, did you?

2 A. No.

3 Q. And you didn't even see it until after
4 this lawsuit was filed; is that correct?

5 A. Exactly. And I did not expect it,
6 honestly. I didn't expect that.

7 Q. Okay. And if you were given that -- if
8 you were given that document as the power of
9 attorney, would you have given up your mother's
10 right to a jury trial, her constitutional right?

11 MR. DOTTERER: Objection to the form of
12 the question.

13 THE WITNESS: Absolutely not. No.

14 MR. CANTWELL: That's all the questions
15 I have.

16 THE WITNESS: I would not ever do that.

17 MR. DOTTERER: Okay, Ms. Vaughn. I
18 don't have any more questions for you. Thank you
19 for your time.

20 THE WITNESS: Okay. Thank you.

21 Thanks, Josh.

22 MR. CANTWELL: Thank you, Beverley.
23 Take care.

24 THE WITNESS: And court reporter.

25 THE REPORTER: Thank you.

1 Have you talked about reading and
2 signing?

3 MR. CANTWELL: Yeah. She'll waive it.

4 THE REPORTER: Okay. Thank you.

5 MR. CANTWELL: Thank you.

6 (EXHIBIT 1, Forms, was marked for
7 identification.)

8 (EXHIBIT 2, Durable Power of Attorney,
9 was marked for identification.)

10 (EXHIBIT 3, Arbitration Agreement, was
11 marked for identification.)

12 (The witness, after having been advised
13 of her right to read and sign this transcript,
14 waives that right.)

15 (The deposition was concluded at
16 10:57 a.m.)

CERTIFICATE OF REPORTER

I, Trisha M. Thomas, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 19th day of July,
2023, at Hardeeville, Jasper County, South
Carolina.



T Thomas

Trisha M. Thomas, RPR
My Commission expires
December 2027

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I N D E X

Page / Line

WITNESS / EXAMINATION

BEVERLEY MINITEE VAUGHN 3 16

EXAMINATION 3 18

BY MR. DOTTERER

EXAMINATION 31 8

BY MR. CANTWELL

EXAMINATION 42 1

BY MR. DOTTERER

EXAMINATION 44 21

BY MR. CANTWELL

CERTIFICATE OF REPORTER 47 1

REQUESTED INFORMATION INDEX

(No Information Requested)

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In The Matter Of:
Beverly Vaughn, et al. v.
St. Matthews Healthcare LLC, et al.

Cindy Reck
October 31, 2023
Zoom Videoconference

Janice D. Hayward, RMR
Independent Court Reporter
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EXHIBIT

C

Original File 10-31-23 Cindy Reck.txt
Min-U-Script® with Word Index

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2)
3 COUNTY OF ORANGEBURG) CASE NO. 2022-CP-38-00525
4

5 BEVERLY VAUGHN AS PERSONAL)
6 REPRESENTATIVE OF THE ESTATE OF)
7 LORIS PARIS,)
8)
9 Plaintiff,)
10)
11 vs.)
12)
13 ST. MATTHEWS HEALTHCARE LLC;)
14 MELISSA KIZER; MELISSA DAVIS;)
15 AND ANGELA SMITH TELIHA,)
16)
17 Defendants.)

18 -----

19 ZOOM VIDEOCONFERENCE DEPOSITION

20 WITNESS: CINDY RECK
21 DATE: Tuesday, October 31, 2023
22 TIME: 10:00 AM
23 LOCATION: Zoom Videoconference
24 REPORTED BY: Janice D. Hayward, RMR
25 NCRA Registered Merit Reporter
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Zoom Videoconference

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1 (The deposition began at 10:00 AM.)

2 (CINDY RECK, after being sworn via Zoom,
3 testified as follows:)

4 EXAMINATION

5 BY MR. CANTWELL:

6 Q Got morning, Miss Reck. How are you doing
7 today?

8 A I'm good.

9 Q We met just a minute ago. My name is
10 Josh Cantwell and I represent the plaintiff in this
11 case.

12 We are here today for your
13 deposition. Have you ever done a deposition before?

14 A No.

15 Q Basically, I just have to go over some
16 ground rules before we start. I'm going to be
17 asking you a series of questions. And please just
18 give verbal responses to the questions that I ask so
19 that our court reporter can take down everything
20 that's said, okay?

21 A Okay.

22 Q Sometimes I ask really bad questions.
23 They may be jumbled or whatnot. If you don't
24 understand me, please feel free to say, you know, I
25 don't understand, can you please rephrase that, and

1 I'm happy to do so, okay?

2 A Okay.

3 Q Like I said before we started, this is not
4 going to take a very long time, but if you need to
5 take a break at any time, go to the bathroom, get
6 some water, just let me know and happy to
7 accommodate your request for that, okay?

8 A Okay.

9 Q Great. Can you state your name for the
10 record?

11 A Cynthia Ann Reck.

12 Q And are you represented by counsel today?

13 A Yes -- well, no, I'm here by myself. I
14 don't have anybody.

15 Q You don't have a lawyer in this case,
16 right?

17 A No.

18 Q Is that a no?

19 A No.

20 Q You haven't paid anybody for
21 representation for this deposition, is that correct?

22 A No.

23 Q Tell me a little bit about your
24 background.

25 A I went to nursing school. My last year

1 I broke my back. And I worked at Lexington
2 Medical Center for 18 years. And then I
3 transferred to Calhoun Convalescent Center. And I
4 was there for three years and I retired.

5 Q Tell me about your position at Calhoun
6 Convalescent Center. What did you do?

7 A Admissions director.

8 Q And was that your position the whole three
9 years that you were there?

10 A Yes.

11 Q What were the daily job duties that you
12 had at Calhoun Convalescent Center?

13 A I came in and did reports, went to
14 morning meeting, called the supervisors above us,
15 and did reports on admissions coming in for the
16 day, discharges leaving for the day.

17 I called other
18 hospitals/facilities to bring in new admissions. I
19 did admission paperwork on new admissions. I
20 scanned in all the documents for new admissions.
21 And I did end-of-the-day reports on who came in and
22 who discharged.

23 Q Okay. Did you have any other staff
24 members that worked with you in regards to the
25 admissions process?

1 A Yes, but not daily, only if I was out.

2 Q Okay. And who were those people?

3 A The social worker, Amy Evans, would do
4 my paperwork for me; and the business office
5 manager, Cindy Bozard, would do paperwork for me.

6 Q Now, did you meet with residents and their
7 families when they would come in?

8 A Yes.

9 Q All right. Was that part of the
10 admissions process?

11 A Yes.

12 Q Did you do anything like tours of the
13 facility or anything like that?

14 A Yes.

15 Q What other things would you do with
16 prospective, you know, clients, for lack of a better
17 word?

18 A I would meet with them if they had
19 questions before they came in with a family
20 member. I would give them tours of the facility,
21 of course.

22 I went out in the community and
23 met with people about admissions. I even went to
24 people's houses and did some paperwork for
25 admissions.

1 Q Okay. In this case -- did you review
2 anything in regards to this case in preparation for
3 the deposition?

4 A No.

5 Q Have you seen any documents at all?

6 A No.

7 Q Do you know who Loris Paris is?

8 A Yes.

9 Q Okay. Tell me what you remember about
10 her.

11 A Her daughter called me to see if she was
12 able to be admitted into the facility. I remember
13 that very well. And we talked about admission.
14 She told me she lived up north.
15 She was not able to do paperwork. She had, I
16 believe, I'm not positive, a brother, George Paris,
17 who she assigned to do the documents with me because
18 she couldn't.

19 I offered to fax them to her,
20 email to her. She had no access to be able to do
21 that. So he came in to do paperwork with me.

22 Q Okay. And do you remember this being one
23 phone call or was this several phone calls?

24 A Several phone calls.

25 Q Okay. And do you remember where her

1 mother was before she came to Calhoun Convalescent
2 Center?

3 A No.

4 Q I'm going to share my screen with you.
5 Bear with me for one second.

6 Can you see my screen?

7 A Yes.

8 Q All right. I'm going to mark this as
9 Exhibit 1 to the deposition.

10 (Plaintiff's Exhibit Number 1 was marked
11 for identification.)

12 BY MR. CANTWELL:

13 Q This is the admission agreement for
14 Calhoun Convalescent Center. I'm happy to scroll
15 down if you need me to. But does this look like the
16 typical admission agreement that you would give to
17 prospective clients for the facility?

18 A Yes.

19 Q And up at the top it's got a resident name
20 and number and a date of admission. Are these
21 things that you would fill out as the admissions
22 director?

23 A Yes.

24 Q And how about this, these handwritten
25 notes right here, the Calhoun Convalescent Center

1 under the facility, blank, and then Loris Paris as
2 the resident, and George J. Paris as the resident's
3 durable power of attorney. Would you have inputted
4 that information as well?

5 A Yes.

6 Q And is this your handwriting?

7 A Yes.

8 Q If I scroll down to, I believe it's 12
9 pages, get to the end here. All right. We're on
10 page 12 of 12 of Exhibit Number 1.

11 This has a place for the
12 signature of the representative. It looks like it
13 says George Paris. And then it's printed on the
14 right-hand side, George Paris, as well.

15 Below at the bottom of the page
16 it has your name, Cindy Reck. Is this your
17 signature down here?

18 A Yes.

19 Q And it looks like Mr. Paris signed on
20 April 12th, 2019, is that correct?

21 A Yes.

22 Q And do you know whether the printed
23 portion of this document, whether that's your
24 handwriting or his?

25 A His.

1 Q Okay. And then down here, this is your
2 signature on April 15th, 2019?

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q And you printed that as well?

7 A Yes.

8 Q Okay. Great. So the only areas on this
9 document that you would have written in would be on
10 the top, first page of the document, is that right?

11 A Yes.

12 Q I'm going to show you what I'm going to
13 mark as Exhibit Number 2.

14 (Plaintiff's Exhibit Number 2 was marked
15 for identification.)

16 BY MR. CANTWELL:

17 Q This is an authorization for release of
18 health information that was signed by Beverly
19 Vaughn, Miss Paris's daughter, looks like
20 April 11th, 2019.

21 Is this a document that you
22 would be familiar with as the admissions director?

23 A No. That's the business office.

24 Q Yeah. And it looks like, if I zoom in on
25 this one, it's Cindy, I think Bozard. I think you

1 might have mentioned her name briefly before, is
2 that right?

3 A Yes.

4 Q And so she handled stuff in the business
5 office for Calhoun Convalescent Center?

6 A Yes.

7 Q Okay. But it looks like Miss Vaughn
8 signed this form for Calhoun Convalescent Center on
9 April 11th, 2019, is that right?

10 A I can't answer that. I didn't do that
11 paperwork.

12 Q Okay. But it looks like it says --

13 A It looks like it says that, but I wasn't
14 there.

15 Q Okay. Fair enough.

16 The next page, if I scroll down
17 on Exhibit 2, is a consent form. Is this more stuff
18 from the business office?

19 A Yes.

20 Q Okay. And again, we've got Beverly
21 Vaughn's signature and April 11th, 2019, is that
22 right?

23 A That's what I see.

24 Q Okay. The next form is a choice of
25 location of services. Do you know anything about

1 this form?

2 A No. That's business office.

3 Q Okay. But that comes from Calhoun
4 Convalescent Center as well?

5 A Yes.

6 Q Okay. What about this one here, the
7 protection of resident funds, is that also from the
8 facility?

9 A Yes.

10 Q And it looks like Miss Vaughn signed that
11 as well?

12 A Yes.

13 Q The resident fund account authorization,
14 is that also a business office form?

15 A Yes.

16 Q It looks like Miss Vaughn signed that one
17 as well?

18 A Yes.

19 Q The Medicare screening questionnaire, is
20 that something that's sent from the facility as
21 well?

22 A Yes. It's not sent. She evidently came
23 in and signed. I'm not sure.

24 Q Okay. And she signed that on April 11th,
25 2019, is that right?

1 A That's what I see.

2 Q This document here, the admission
3 signature document, are you familiar with this
4 document?

5 A Yes.

6 Q Okay. Tell me what this document is.

7 A It talks about transferring, to give us
8 a notification if you're going to transfer the
9 patient. It's talking about the patient's
10 diagnosis. Grievances.

11 Resident funds. We have a fund
12 that you can set up for your resident so they have
13 spending ability within the facility for snacks,
14 drinks.

15 And the personal laundry, it's
16 talking about whether they want to do the laundry
17 for the family or we do the laundry for the family.

18 Telephones, you can have a phone
19 privately put into the room for the resident if you
20 wish to. And then the visiting hours.

21 Q Okay. And it looks like Miss Vaughn
22 signed that on April 11th, 2019?

23 A Yes.

24 Q This next document is a DNR.

25 A Yes.

1 Q That came from the hospital?

2 A No. That comes from us. That's our
3 DNR. Our doctor took care of that.

4 Q Oh, okay. And is that Dr. Jesion, is
5 that --

6 A Yes.

7 Q Are you familiar with the attending
8 physician?

9 A Yes.

10 Q And that's something that was done through
11 Calhoun Convalescent, is that right?

12 A Yes.

13 Q What about this document here, a consent
14 for release of medical records. Are you familiar
15 with that?

16 A I'm familiar with it.

17 Q Okay. It looks like Miss Vaughn signed
18 that on April 11th, 2019, is that right?

19 A Yes.

20 Q Here we've got an acknowledgement of
21 mechanical lift policies and procedures, is that
22 correct?

23 A Yes.

24 Q And it looks like Miss Vaughn signed that
25 as well?

1 A Yes.

2 Q I think we talked about this document
3 already so I'm going to move down.

4 You've got an informed consent
5 form for restraints. Is that something that you'd
6 be familiar with?

7 A Yes.

8 Q Okay. It looks like Miss Vaughn signed
9 off on that, correct?

10 A Yes.

11 Q There's a Calhoun Convalescent Center
12 smoking policy. It looks like Miss Vaughn signed
13 that one, is that right?

14 A Yes.

15 Q Do you know what this next form is? Looks
16 like something about photographs?

17 A They take a photo of the resident if it
18 is permitted for the record so that we have a
19 photo of the resident.

20 Q Okay. And it looks like Miss Vaughn
21 signed that on April 11th, 2019?

22 A Yes.

23 Q Here is some sort of other acknowledgement
24 about receiving different forms.

25 A Yes.

1 Q And Miss Vaughn signed that on
2 April 11th, is that correct?

3 A Yes.

4 Q Here's a DNR order that Miss Vaughn has
5 signed April 11th, 2019.

6 This next form looks like a
7 consent for dental or vision treatment that she
8 signed on April 11th, 2019, is that right?

9 A Yes.

10 Q And then the next form, we have a laundry
11 form that Miss Vaughn signed as well, is that
12 correct?

13 A Yes.

14 Q Okay. And so Miss Vaughn signed all these
15 various documents on the day before her mother
16 entered the facility, correct?

17 A I don't remember what day she entered
18 the facility.

19 Q Sure. So we looked -- let me look back at
20 Exhibit Number 1, at the top of this page. It looks
21 like the day of admission is April 12th, 2019.

22 A Okay.

23 Q And you wrote that. Is that your
24 handwriting?

25 A Yes.

1 Q Okay. So this is the day after
2 Miss Vaughn had signed all these other documents
3 listed in Exhibit Number 2, is that correct?

4 A Yes.

5 Q Now, do you recall the circumstances for
6 why Miss Vaughn signed all these other documents but
7 wasn't presented with the admissions agreement or
8 arbitration agreement?

9 A Well, that is the admissions agreement
10 right there.

11 Q Well, she didn't get this document on
12 April 11th, 2019, when she signed all the other
13 documents. If you recall, when we looked at the
14 bottom of this document, George Paris signed this
15 document on April 12th.

16 A I do remember one of them saying they
17 could not stay and they had to leave. I don't
18 remember which one.

19 Q Okay. But it looks like Miss Vaughn
20 signed the, you know, 10 or 12 forms listed in
21 Exhibit Number 2 but she didn't sign the
22 April 12th --

23 A Well, the admission agreement is signed
24 on the day of admission.

25 Q Okay. Was there any reason she couldn't

1 have been sent the admission agreement as well as
2 all these other forms?

3 A She wasn't sent those forms. She signed
4 those -- I can't recall. I'm sorry, I can't
5 recall. It's been a long time.

6 Q Absolutely. And I understand. And that's
7 a fair answer. I'm not trying to be mean or
8 anything.

9 A That's okay.

10 Q I'm just trying to figure out if you
11 remember why different forms were signed by
12 different people.

13 A I remember on day of admission she
14 couldn't be there.

15 Q Okay. If we look at the -- I'm going to
16 mark this as Exhibit Number 3.

17 (Plaintiff's Exhibit Number 3 was marked
18 for identification.)

19 BY MR. CANTWELL:

20 Q This is the facility - resident
21 arbitration agreement. Is this your handwriting up
22 at the top that says Calhoun --

23 A Yes.

24 Q Okay. So Calhoun Convalescent Center is
25 the facility, Loris Paris is the resident, or George

1 Paris, that's all your handwriting that day,
2 correct?

3 A Yes.

4 Q And down here below, is this your
5 signature?

6 A Yes.

7 Q Down on the bottom? Okay.

8 And all this is dated
9 April 15th, 2019, is that correct?

10 A Yes.

11 Q Now, was this signed on April 15th?

12 A Yes.

13 Q 'Cause that's three days after the --

14 A Yes.

15 Q Okay.

16 A And I do remember that.

17 Q Okay. Tell me about what. What do you
18 remember?

19 A He came in to sign the admission
20 agreement and he could not stay. He said he had
21 to leave; he would come back.

22 I called him to come back and
23 sign that paperwork and I could not get in touch
24 with him. So I called her and asked her to please
25 contact him and tell him we had to complete the

1 remaining paperwork.

2 And she called him. And it was
3 three days later he came back and did the remaining
4 paperwork. She could not be there.

5 Q Okay. I understand. So you told him that
6 he had other paperwork that he needed to sign?

7 A Well, I told him that when he was
8 leaving me. He said, I can't stay any longer, I
9 have to go somewhere. And I said, we need to
10 complete the paperwork. And he said, I'll come
11 back tomorrow and complete the paperwork. He did
12 not come back.

13 So I called Beverly and said,
14 please contact him to complete the paperwork because
15 I can't get in touch with him. So she called him;
16 and he came.

17 Q So the admissions agreement was signed on
18 the first day, April 12th, 2019?

19 A Right.

20 Q Is that correct? Okay.

21 And then it looks like you dated
22 it April 15th --

23 A That's when I scanned in all the
24 paperwork.

25 Q Okay. So Miss Paris was a resident

1 starting April 12th, 2019, correct?

2 A Correct.

3 Q And then you said he needed to come in and
4 sign this other paperwork three days later, correct?

5 A Correct, and then I scanned it all in.

6 Q So does Calhoun Convalescent Center make
7 everybody sign the arbitration agreement?

8 A No. That is optional. I read over each
9 document as I have them sign it and give them a
10 brief summary of the document. I ask them to read
11 the document; if they have any questions, to
12 please ask me, I will answer them. I also give
13 them a copy to take home with them.

14 Q Okay. So why was it necessary for
15 Mr. Paris to come back to sign this document?

16 A It was -- he didn't have to sign it. It
17 was an option for him to sign it. But I am asked
18 to have the papers signed if they will be signed.
19 So I asked him to come back to complete the
20 paperwork.

21 Q Okay. Did you tell him that this was
22 optional --

23 A Yes.

24 Q -- before he came back? Before he came
25 back?

1 A I didn't talk to him. Beverly talked to
2 him and he showed up at my office.

3 Q So what did you tell him about the
4 arbitration agreement?

5 A The arbitration agreement is an
6 agreement between the facility and the person
7 signing it that they waive their right to a jury
8 trial; and if they have any grievances, that we
9 can assign an arbitrator from the facility to work
10 between the two parties to come to an agreement.

11 If that cannot be done, the
12 Court will assign an arbitrator to work with the two
13 parties to come to an agreement.

14 Q Okay. So it's your understanding that the
15 facility will assign an arbitrator, and if the
16 parties don't agree, then a Court will pick an
17 arbitrator?

18 A Yes.

19 Q And --

20 A No, the corporate has the arbitrator.
21 If that's not agreed upon, the courts assign an
22 arbitrator.

23 Q Okay. But it's your understanding the
24 corporate -- are you talking about Calhoun
25 Convalescent Center?

1 A Yes.

2 Q They pick the arbitrator, and that's your
3 understanding, right?

4 A Yes, that's what's in the document.

5 Q And then if the parties don't agree, then
6 a Court will pick the arbitrator?

7 A Yes.

8 Q Okay. Now, did Mr. Paris have any
9 questions about this agreement?

10 A No. And I asked him to read over it
11 before he signed it.

12 Q Did he have any other documents that he
13 needed to come back in and sign?

14 A I can't remember.

15 Q Okay. I haven't seen any other documents
16 produced from Calhoun Convalescent Center dated
17 April 15th, 2019. So are you aware of any other
18 documents that he would have had to come back in to
19 sign?

20 A I can't remember.

21 Q Okay.

22 A I'm sure that -- I don't know. I would
23 think there would be but I'm not sure. I don't
24 know.

25 Q All right. Do you know how the arbitrator

1 is paid?

2 A No, I don't.

3 Q Did Mr. Paris ask about if it would cost
4 anything to arbitrate the matter?

5 A No, he did not.

6 Q Okay. Do you know whether the arbitration
7 would take place in South Carolina?

8 A I can't answer that.

9 Q As the admissions director for the
10 facility, have you ever been involved in any
11 arbitrations?

12 A No.

13 Q Have you ever been involved in an
14 arbitration outside of the context of a nursing
15 home?

16 A No.

17 Q It says in this document, the parties
18 shall select an arbitrator from a panel having
19 experience and knowledge of the health care
20 industry. What panel is that?

21 A I can't answer that.

22 Q So if Mr. Paris had asked you about that
23 panel, you wouldn't have an answer for him?

24 A I would get an answer for him. I told
25 everyone that signed paperwork if I had not -- if

1 I did not have the answer, I would get the answer
2 for them. I would call my corporate company to
3 get an answer.

4 Q Okay. Now, did you ever meet with Loris
5 Paris herself?

6 A I can't remember.

7 Q Okay. 'Cause she didn't sign any of these
8 documents, correct?

9 A That George signed?

10 Q Right.

11 A No. He signed them.

12 Q Okay. And do you know whether she was
13 able to make any decisions for herself as far as
14 health care and arbitration, things like that?

15 A I don't know. She asked me to have him
16 sign the paperwork.

17 Q Who is she?

18 A I can't remember her name at the moment,
19 who you just said.

20 Q Are you talking about Miss Paris'
21 daughter?

22 A Yes.

23 Q Okay.

24 A She could not be there to complete
25 paperwork so he did it.

1 Q Did you send a copy of this arbitration
2 agreement to Miss Vaughn?

3 A No. I give a folder to the person who
4 signs the paperwork. And he was there last and I
5 handed him the folder when we completed the
6 paperwork.

7 Q Okay. When someone has a power of
8 attorney, what does that mean to you as the
9 admissions director?

10 A That they have the right to decide who
11 signs paperwork and who does not. And she gave me
12 permission for him to do it.

13 Q And how did she give you that permission?

14 A Verbally.

15 Q Okay. And -- but you didn't give her a
16 copy of the arbitration agreement before she gave
17 him that permission, right?

18 A No.

19 Q You just said that there were still other
20 forms that he needed to sign, right?

21 A Yes.

22 Q Now, you no longer work for Calhoun
23 Convalescent Center, is that correct?

24 A That's correct.

25 Q And I believe you may have mentioned that

1 you retired?

2 A I did.

3 Q Okay. Did you work for anybody else since
4 leaving Calhoun Convalescent Center?

5 A No.

6 Q Was there any reason that you decided to
7 stop working there other than retirement?

8 A Yes. My father passed. My stepmother
9 had dementia. My daughter was in a horrendous car
10 accident; I had her three children and my stepmom
11 and I had to be home.

12 Q I understand. I'm sorry to hear about
13 that. Those certainly are difficult decisions to
14 make and I appreciate that.

15 A Yes.

16 Q Well, thank you very much for your time
17 today. I think that's all the questions that I have
18 for you.

19 Mr. Dotterer may have some
20 questions for you and so I will turn you over to
21 him.

22 A Okay.

23 EXAMINATION

24 BY MR. DOTTERER:

25 Q Miss Reck, I have a couple questions for

1 you.

2 You testified that you had some
3 conversations with Beverly Vaughn concerning
4 admission, correct?

5 A Yes.

6 Q And based on your conversations with
7 Miss Vaughn, was it your understanding that George
8 had the authority to sign the admission paperwork
9 including the arbitration agreement?

10 A Yes.

11 Q No one, George or Beverly or Loris -- or
12 excuse me, Miss Loris Paris, ever explained to you
13 that George was only authorized to sign the
14 admissions agreement, not the arbitration agreement,
15 correct?

16 A No, nobody explained that.

17 Q Fair to say that you would not have
18 presented him with the arbitration agreement had you
19 not known he was -- or had you known he was not
20 authorized to sign?

21 A No.

22 Q In your time as the admissions director at
23 the facility, you know, you mentioned the process a
24 little bit a little while ago, but the arbitration
25 agreement is presented with other admissions

1 documents, right?

2 A Correct.

3 Q What are some of the other documents that
4 it's presented with typically?

5 A The admissions document, the laundry
6 document, the -- there's a lot of documents
7 included. It takes me two hours to do the
8 documents, there are so many.

9 Q The resident's rights?

10 A Yes.

11 Q The admissions handbook?

12 A Yes.

13 Q So while the resident, or their family in
14 this case, George Paris, can decline to sign the
15 arbitration agreement, you still -- it's your job to
16 present it to the person that's signing the person
17 into the nursing home, correct?

18 A Correct.

19 Q Okay. So it is part of the admission
20 paperwork?

21 A Correct.

22 Q Is it possible that the admissions
23 paperwork including the admission agreement and the
24 arbitration agreement was at one point sent to
25 Beverly Vaughn?

1 A No.

2 Q Okay. And why do you say that?

3 A I'm not, I don't want to say a hundred
4 percent positive, but I know I talked to her about
5 signing the paperwork and she had no way of
6 getting the paperwork. I was going to email it or
7 fax it.

8 Q Okay.

9 A And I offer that to everybody.

10 Q Okay. You had no reason to take advantage
11 of Mr. Paris when you were having him sign certain
12 documents, correct?

13 A No.

14 Q And you certainly didn't misrepresent the
15 documents or try to mislead him into signing the
16 arbitration agreement, did you?

17 A No. In fact, I explained to him that I
18 would like for them to read it over prior to
19 signing every document.

20 Q Okay. Miss Reck, I think those are all
21 the questions I have for you. Thank you for your
22 time today.

23 A Okay.

24 MR. CANTWELL: I don't have anything
25 else.

1 Jan, I can send all the exhibits
2 email to everybody, if that works.

3 MR. DOTTERER: Okay.

4 MS. HAYWARD: Read and sign?

5 MR. DOTTERER: Miss Reck, you have
6 the option to get the transcript and
7 review it and make any grammatical changes
8 you think you need to make. I typically
9 tell people not to do it.

10 THE WITNESS: I don't want to make
11 any changes.

12 MR. DOTTERER: Okay. I don't either.

13 MR. CANTWELL: Most people don't.

14 (Signature waived, and the deposition
15 concluded at 10:32 AM.)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) : CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth, and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 14th day of November 2023.

20

21

22

23

24

25



Janice D. Hayward, RMR
Notary Public, South Carolina
My Comm. Expires 10-13-32

Janice D. Hayward, RMR
843.478.6756

ROA 242

ADMISSION AGREEMENT - SOUTH CAROLINARESIDENT NAME: Loris ParisRESIDENT NUMBER: [REDACTED]DATE OF ADMISSION: 4/12/19**EXHIBIT**

D

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among Calhoun Development Center ("Facility"), Loris Paris ("Resident") and/or George J. Paris ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

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

I. GENERAL CONDITIONS

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

2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aides and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.

3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.

4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.

5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

1. Admit Resident upon receipt of a physician's order; assist in obtaining physician services if a personal physician becomes unavailable; obtain emergency physician services when required. *Resident is not deemed admitted until such time as all agreements required by law and Facility have been appropriately executed.* This provision may be waived in writing by Facility, at its sole discretion.
2. Maintain written records of financial transactions with Resident and/or Representative responsible for payment. Resident has the right to have personal funds held in trust in accordance with applicable state and federal law, as may be amended from time-to-time.
3. Furnish room, routine meals, nursing care, personal care, or custodial care to Resident in accordance with applicable State and Federal law. This provision expressly excludes extraordinary services, including but not limited to, physician care, private duty nursing, private sitters, specialty foods and therapies not required by law. Resident will be placed in a semi-private room, absent medical need for a private room as determined by Facility staff. Residents residing in private rooms will be billed accordingly.
4. Assist in applying for private insurance benefits, but not to accept assignment thereof unless otherwise noted as an exception herein.
5. Assist Resident and/or Representative in applying for Medicare or Medicaid benefits where applicable.
6. Provide assistance in daily living and restorative nursing care in accordance with Resident's care plan, where appropriate. Resident and/or Representative reserves the right to refuse said treatment. If said treatment is refused, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
7. Arrange for transfer of Resident to a hospital upon physician's order or in an emergency situation. Expenses of transfer and care of Resident at the hospital are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment of those services.
8. Obtain and administer medication as prescribed. Expenses for the cost of obtaining the medications are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment for the medications. Resident and/or Representative has the right to refuse medication. If Resident refuses medication, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
9. Provide an activities program for Resident, components of which will be at the discretion of Facility.
10. Furnish Resident bed linens and hospital gowns. All personal clothing will be supplied by Resident or Representative and will be properly labeled as outlined in the *Admission Handbook* for identification purposes.

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B. RESIDENT AND/OR REPRESENTATIVE AGREE(S) TO:

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.

2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.

3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative has the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.

4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.

5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.

6. Provide and be responsible for personal items of clothing and property.

7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.

8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.

9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.

11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.

12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.

13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.

14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.

15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.

16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.

17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.

18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.

19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

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20. Resident and/or Representative will be responsible for paying all costs, expenses and reasonable attorneys' fees, whether or not suit is brought, in the event costs, expenses, and/or attorneys' fees are incurred by Facility in the collection of sums due from and owed by Resident or any other party on Resident's behalf to Facility.

III. FINANCIAL AGREEMENT

Resident and/or Representative will be responsible for immediate payment of all charges incurred as follows:

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☐-semi-private) accommodations, for a basic fee of \$ 195.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

- a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
- b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
- c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.

2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.

3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

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state and federal law. Any personal property belonging to Resident in Facility at the time of Resident's discharge or death will be released in accordance Section II-B-13 herein.

4. In the event Resident leaves Facility and has personal funds on account, Facility may deduct any outstanding monies due to Facility from said personal funds. The remainder will be distributed in accordance with applicable state and federal law.

5. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative shall pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

IV. TERMINATION

1. Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.

2. Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.

3. This Agreement may be terminate immediately upon the occurrence of any of the following:

- a. Resident's condition has improved sufficiently so that he/she no longer requires the services provided by Facility.
- b. Resident's physical or mental condition changes and he/she requires a higher level of care which cannot be provided by Facility.
- c. Resident's death
- d. The safety or health of individuals in the Facility is endangered.
- e. Resident and/or his/her legal representative has failed to pay for his/her stay.
- f. Facility ceases to operate or is no longer able to provide services to Resident.
- g. Sanctions or remedies imposed by the Department.

4. In the event Facility terminates this Agreement through an involuntary transfer or Discharge, Facility shall provide appropriate notice and discharge planning as required by State and Federal law.

V. MEDICAID BENEFICIARIES

1. **Eligibility.** Eligibility for Medicaid-sponsored long-term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission. This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The Department may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid-sponsored long-term care services.

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2. **Covered Services.** If Resident is a Medicaid recipient, the Medicaid Program will reimburse Facility for certain skilled services ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to: hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, and basic personal laundry.

3. **Non-Covered Services.**

- a. Medicaid is a cost-sharing program. Resident's monthly income must be contributed to the cost of his or her care. Medicaid determines how much of the Resident's monthly income must be paid to the Facility (also called "patient liability"). To the extent permitted by law, Resident's monthly Social Security and pension funds, minus the personal allowance retained by Resident (or other allowance as set by law), will be paid to Facility.
- b. Resident and/or Representative may purchase from Facility certain miscellaneous products and services that are not covered by Medicaid. An itemized list of fees for these additional products and services is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office.

4. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicaid for services rendered by Facility and authorizes Facility to receive payments from Medicaid pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicaid refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative will remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicaid.

5. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

6. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VI. MEDICARE BENEFICIARIES

1. **Covered Services.** If Resident is a Medicare recipient, the Medicare Program will reimburse Facility for certain skilled services such as nursing services and certain therapies ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream,

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toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, basic personal laundry and medically related social services.

2. **Non-Covered Services.** Resident and/or Representative will be required to pay certain other "Allowable Charges" which include, but are not limited to:

- a. Fees for certain products and services not covered under the Medicare program. Fees for such services will be identical those charged to private pay residents of Facility for the same products and services.
- b. Fees for certain products and services that are more expensive than the products and services covered under the Medicare program (e.g., a private room), as requested by a Resident and/or Representative. Fees charged for the more expensive products and services will be based on the difference between the fees charged to private pay residents of Facility and the customary charge for the same products and services under Medicare. Facility staff will inform Resident and/or Representative requesting additional or more expensive products or services that there will be a specified charge.
- c. Certain deductibles and co-insurance amounts under the Medicare Program.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicare for services rendered by Facility and authorizes Facility to receive direct payments from Medicare pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicare refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicare.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VII. PRIVATE PAY/INSURANCE

1. **Routine Services.** If Resident is paying for his/her stay privately OR if he/she is having his/her stay paid for through a third-party insurance carrier, Resident and/or Representative will reimburse Facility for routine services ("Routine Services") which include: routine nursing services; routine dietary services; routine activities programs; and routine room and bed maintenance services. Beauty shop fees are not included in the daily rate. Resident and/or Representative shall pay a deposit of two months' basic room and board prior to admission. Each subsequent monthly payment is due on or before the 10th day of the month.

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2. **Ancillary Services.** Resident and/or Representative may purchase services and products that are not included in Routine Services from Facility. An itemized list of fees for these additional services and products is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office. Resident and/or Representative shall pay for ancillary services at the end of the month in which such services are rendered.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from any insurance company paying benefits to Resident for services rendered by Facility and authorizes Facility to receive payments from such insurance company pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent such insurance company refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment for these services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from such insurance company.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VIII. NOTICES

All notices, consents, approvals and the like required to be given hereunder shall be given in writing to Facility to the address below or such other address as Facility may designate:

Calhoun Convalescent Center
601 Dantzler Street
St Matthews SC 29135

All notices, consents, approvals and the like required to be given to Resident and/or Representative shall be given in writing to Resident and/or Representative to the address below or at such other address as he/she may designate:

Loris Paris
[REDACTED]
Vance SC
[REDACTED]

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

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IX. GOVERNING LAW

This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located. This Agreement will be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

X. SEVERABILITY

If any provision(s) of this Agreement will be deemed to be illegal or otherwise unenforceable, all other provisions will remain in full force and effect as if the invalid provision had not been part of this Agreement.

XI. CAPTIONS

Captions are for the purpose of reference only and do not govern, limit, modify, enlarge or in any manner affect the scope, meaning and intent of the provisions of this Agreement, nor will such captions be given any legal effect.

XII. MODIFICATIONS

Facility reserves the right to unilaterally modify this Agreement to conform to law and regulations as may be passed from time to time. Reasonable notice, considering all of the circumstances, will be given to Resident and/or Representative when any change is made in accordance with this paragraph. Any other modification, except as otherwise specifically reserved herein, will be made in writing and signed by all relevant parties.

XIII. WAIVER

Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by Facility unless in writing, signed by Facility. Any waiver of any provision of this Agreement will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and/or Representative and this Agreement will remain in full force and effect.

XIV. RESIDENT

Use of the term "Resident" herein includes the Resident and any person with legal authority to handle Resident's funds or property and/or make medical decisions depending on the context in which the term is used.

XV. ASSIGNABILITY

This Agreement is fully assignable by Facility in the event that Facility is sold and/or the license is transferred such that a new licensee operates Facility. This Agreement, at Facility's option and without notice to Resident and/or Representative, may be automatically assigned to the new licensee and will be fully binding upon Resident and the new licensee.

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XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required or permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.

2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.

3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.

4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.

2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.

3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.

4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

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5. In the event that an individual voluntarily agrees to become legally responsible for payment for the care and treatment of Resident, said Representative will be fully bound to the terms of this Agreement. Please note, Facility does not require a third-party guarantor.

6. Facility reserves the right to apply its indigent care policy, as appropriate, in its sole discretion.

XVIII. ENTIRE AGREEMENT

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

By signing below, I/we further acknowledge that I/we have made the above promises and representations in order to induce Facility to enter into this Agreement. The parties further understand that, by signing this Agreement, Facility is relying upon the truthfulness of the promises and representations I/we have made. The parties further agree that if any term or provision of the Agreement is found by a court or agency of competent jurisdiction to be legally unenforceable, the term and provision will be deemed severed from this Agreement and the remaining terms or provisions will be fully enforceable.

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

Signature of Resident

Date

Printed Name of Resident

Resident Social Security Number

Witness Signature

Date

Printed Name of Witness

OR

X George Paris 4/12/19
Signature of Representative, if any Date

X George Paris
Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

Cindy Reed
Signature of Facility Official

Cindy Reed
Printed Name of Facility Official & Title

4/15/19
Date

Original: Business File • Photocopy: Resident/Representative

Please read, review and acknowledge each the following:

Treatment/Health Care Professionals:

Authorization for Treatment

☒ GP

I hereby authorize Facility's professional staff to administer nursing procedures, podiatric procedures, therapies, skin scrapings, nonsurgical dental procedures and laboratory and x-ray procedures on me/Resident. I understand that I may withdraw this consent at any time by notifying Facility in writing. I further understand that an additional consent will be required for any surgical treatment or for any treatment requiring the use of general anesthesia.

Medical Treatment

☒ GP

It is understood and agreed that Resident is under the control of his/her elected physician and/or his/her designee and that Facility is not liable for any act or omission as a result of following instructions of said physician(s)/designee(s). Resident consents to diagnostic imaging procedures, laboratory procedures, or medical treatment rendered to Resident under the general and special instructions of Resident's physician or physician's designee.

General Duty Nursing

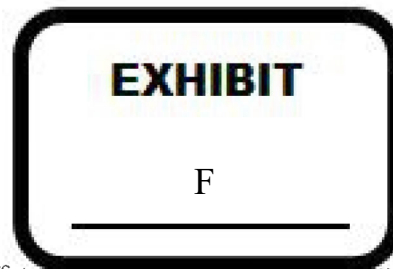
☒ GP

Facility provides general duty nursing care. Under this system, nurses are called to the resident's bedside by a signal system. If Resident is in such condition as to need continuous or special duty nursing care, it is agreed that Resident, Resident's legal representative or Resident's physician(s) will make the necessary arrangements for such care. It is understood and agreed that Facility shall not, in any way, be responsible for the failure to provide such care and is hereby released from any and all liability arising from the fact Resident is not provided with such care.

Independent Status of Health Care Providers and their Agents/Designees

☒ GP

Resident and/or Resident's legal representative acknowledges that any and all health care providers and their agents/designees are not agents or employees of Facility. Resident and/or Resident's legal representative understands and agrees that each health care provider or their agent/designee who renders services to Resident will independently bill and collect fees for these services. Resident and/or Resident's legal representative agrees and understands that the health care provider's bills will be separate and apart from Facility's.



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Selection of Medical Professionals:

You have the right to use your personal health care providers during your stay. In the event you do not have a current provider, the facility has a list of independent providers who are available to provide on-site care. If you have difficulty contacting any of these professionals, please notify our staff. Please indicate your choice of health care providers below, including the provider's phone number and address.

PHYSICIAN:

Name: Dr Leo Jesion

Address: [REDACTED]

Phone: Austin Texas
843-834-6050

DENTAL

☒ Yes

☐ No

Examination Charge \$ _____

I would like to receive dental services at the above charge and have selected the following provider:

Name: Citizens Security

Address: [REDACTED] Louisville Ky [REDACTED]

Phone: _____

VISION

☒ Yes

☐ No

Examination Charge \$ _____

I would like to receive vision services at the above charge and have selected the following provider:

Name: Trident USA

Address: _____

Phone: _____

PODIATRY

☒ Yes

☐ No

Examination Charge \$ _____

I would like to receive podiatry services at the above charge and have selected the following provider:

Name: Richard Burnett, DPM

Address: [REDACTED] Camden SC [REDACTED]

Phone: email: footdocs@gmail.com

FFUS003 (Authorizations, Consents & Acknowledgments)

Self-Administration of Medications

Please indicate whether or not you wish to invoke your right to self-administer medications prescribed by your physician as outlined in the Admission Handbook.

☐ I wish to invoke my right to self-administer medications prescribed by my physician. I authorize and consent to an evaluation by the Interdisciplinary Team in order to determine my ability to carry out this responsibility.

☒ GP

I wish to waive my right to self-administer medications. I request and authorize Facility nursing staff to administer medications prescribed by my physician. **I understand that I am entitled to this right and that I may invoke this right any time in the future by written notification to the facility.**

Personal Property/Valuables/Money:

☒ GP

I acknowledge that I have received, read or had read to me, and understand Facility's policy on personal property, valuables and money. I understand that all personal belongings should be labeled properly and entered on a personal inventory list. I understand that all items removed from or brought into the facility after admission should be documented on the inventory list and that missing items must be reported to appropriate staff as soon as possible.

☒ GP

I acknowledge and understand that Facility is not responsible for damage to or theft/loss of any personal property/valuables/money not kept in compliance with Facility policies.

Deposit of Personal Funds:

Please indicate below whether or not you wish to deposit personal funds with Facility in accordance with the *Protection of Resident's Funds* policy outlined in the Admission Handbook. **Please note that you are not required to deposit any funds with the facility.**

☐

I do not wish to deposit personal funds with the facility at this time.

☒ GP

I authorize Facility to accept, hold and account for my personal funds in accordance with the policies outlined herein. I acknowledge that I have the right to revoke this authorization at any time upon written notice to Facility. I acknowledge that authorized State agencies may audit this account, regardless of my payer source.

Beneficiary Designation: (THIS PORTION TO BE FILLED IN BY RESIDENT ONLY)

In the event of my death, I authorize Facility to transfer all personal funds and property held by Facility to the following person(s): _____ If I have not named a beneficiary or the beneficiary cannot be located, I understand that Facility will hold and protect the funds in line with the State's regulations.

Advance Directive Acknowledgment:

☒ GP I acknowledge that I have received, read or have had read to me, and understand Facility Policy and State Requirements for Advance Directives and have executed the following advance directive measures and **a photocopy has been provided to the facility for inclusion with my Medical Records:**

☐ Living Will

☒ Durable Power of Attorney for Health Care or similar agent designation

☒ "Do-Not-Resuscitate" Identification (CPR)

☐ Other: _____

☐ _____ I acknowledge that I have received, read or have had read to me, and understand Facility Policy and State Requirements for Advance Directives and have elected **NOT** to execute any advance directive at this time, including DNR Identification. **I understand that facility staff will respond to medical emergencies with CPR measures and a full code will be instituted.**

Special Services:

Please indicate whether or not you authorize the following services to be provided. All associated fees will be charged to your account:

Telephone	☐ Yes	☐ No	☐ N/A	Charge \$ _____
Television	☐ Yes	☐ No	☐ N/A	Charge \$ _____
Newspaper	☐ Yes	☐ No	☐ N/A	Charge \$ _____
Laundry	☒ Yes	☐ No	☐ N/A	Charge \$ _____
Beauty Shop	☒ Yes	☐ No	☐ N/A	See charge list

Other(s) (Please Specify Below)

_____	☐ Yes	☐ No	Charge \$ _____
_____	☐ Yes	☐ No	Charge \$ _____

FFUS003 (Authorizations, Consents & Acknowledgments)

Photographs by State/Federal Survey Agencies

I acknowledge and understand that, during my/Resident's stay, Federal and/or State surveyors (investigators) may take my/Resident's photograph as part of their independent survey/investigation process and in line with the conditions of my/Resident's participation in the Medicare and/or Medicaid program. I understand that, in line with CMS guidelines, the surveyors must obtain written consent from Resident or his/her surrogate before any photographs are taken. I understand that the Federal/State Survey Agency is wholly responsible for acquiring and securing any photographs they may take.

☒ GP I acknowledge and understand that neither Facility nor its parent, affiliates, officers, directors, employees, attorneys, assigns or any other person acting on its behalf, has any oversight or responsibility for the surveyors actions or inactions as it relates to taking photographs for their independent investigations.

Photograph/Audiotape/Videotape

☒ GP Yes ☐ No

I hereby authorize Facility to photograph/audiotape/videotape me/Resident for its use in resident identification, infection control, surveillance and/or other medical purposes. I understand that, if the facility wishes to photograph/audiotape/video tape me for any other reason, (activities, marketing, media coverage, etc.), the facility will secure permission from me through a separate written authorization.

Posted Information ☒ GP Yes ☐ No

To better serve you and meet your health care needs, permission is needed to post information regarding your/Resident's health care needs within your room and the facility as needed. The information to be disclosed will be the minimum amount necessary and shall serve as a means of communication, enabling staff to provide service while, at the same time, ensuring your/Resident's rights to privacy. Information to be disclosed may include, but not be limited to, therapy schedules, activities of daily living, ambulation/mobility parameters, swallowing and aspiration precautions, do-not-resuscitate orders.

Authorization to Release and Obtain Information

☒ GP Yes ☐ No

I hereby authorize the facility to release and/or obtain medical information or other necessary data which may be necessary for my/Resident's continued treatment and care at the facility, including but not limited to the filing of insurance claims in my/Resident's/Facility's interest. I further authorize the release of information medical or otherwise, to any government agency without my prior approval or that of my representative, if any.

Authorization to Receive/Open Mail

☐ Yes ☒ GP No

I hereby authorize Facility to open all mail received by me/Resident. Further, I would like this mail to be read to me/Resident upon receipt. You have the right to revoke this authorization at any time upon written notice to the facility.

*** SIGNATURE PAGE FOLLOWS***

FFUS003 (Authorizations, Consents & Acknowledgments)

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Resident Signature

Date

Printed Name of Resident

X George Paris 4/15/19

X George Paris

Legal Representative Signature, if any

Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Cindy Reck 4/15/19

Cindy Reck AD

Facility Representative Signature

Date

Printed Name and Title

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 BEVERLEY VAUGHN AS PERSONAL
4 REPRESENTATIVE OF THE ESTATE
5 OF LORIS PARIS,

Plaintiff,

6 vs.

CASE NO. 2022-CP-38-00525

7 SAINT MATTHEWS HEALTHCARE,
8 LLC; MELISSA KIZER; MELISSA
9 DAVIS; and ANGELA SMITH
10 TELIHA;

Defendants.

EXHIBIT

G

11 DEPOSITION OF: GEORGE JAMAR PARIS

12 DATE: July 11, 2023

13 TIME: 11:42 a.m.

14 LOCATION:

Vance, SC

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: TRISHA M. THOMAS, RPR
17 (Appearing by videoconference)
18
19
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 BEVERLEY VAUGHN AS PERSONAL
4 REPRESENTATIVE OF THE ESTATE OF LORIS
5 PARIS:

6 POULIN WILLEY ANASTOPOULO, LLC
7 BY: JOSHUA P. CANTWELL
8 (Appearing by videoconference)
9 32 Ann Street
10 Charleston, SC 29403
11 (800) 313-2546
12 Josh.cantwell@akimlawfirm.com

13 ATTORNEYS FOR THE DEFENDANTS

14 SAINT MATTHEWS HEALTHCARE, LLC; MELISSA
15 KIZER; and MELISSA DAVIS:

16 CLEMENT RIVERS, LLP
17 BY: GAILLARD T. DOTTERER, III
18 (Appearing by videoconference)
19 25 Calhoun Street, Suite 400
20 Charleston, SC 29401
21 (843) 577-4000
22 Gdotterer@ycrlaw.com

23 (INDEX AT REAR OF TRANSCRIPT)
24
25

1 GEORGE JAMAR PARIS

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. DOTTERER:

5 Q. Mr. Paris, my name is Gilly Dotterer,
6 and as Josh mentioned before we went on the record,
7 I represent Calhoun Convalescent Center in this
8 case. I'm here to ask you a few questions about
9 some admissions paperwork that was signed in
10 connection with your mother's admission to Calhoun
11 Convalescent Center. Is that your understanding?

12 A. Yes.

13 Q. Okay. And I spoke with your sister,
14 Ms. Beverley, before, earlier today, and I went
15 over some rules with her that I'll probably go over
16 with you as well, but have you ever given a
17 deposition?

18 A. No.

19 Q. Okay. Well, like I told her, I don't
20 think we'll take too long today, but if you need to
21 take a break at any time, just let me know, and I'm
22 happy to do that. Okay?

23 A. Got you.

24 Q. It's important that you give verbal
25 responses to my questions rather than head nods and

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1 uh-uhs, and that's for the benefit of the court
2 reporter who is taking down my questions and your
3 answers to my questions. So if you could agree to
4 just give verbal responses, that would be great.

5 A. Got you.

6 Q. You understand that you're under oath
7 today under penalty of perjury, and I just want to
8 make sure that the answers that you give me today
9 would be the same that you would give a judge in a
10 later situation or later setting.

11 That was a bad question. Do you
12 understand that you're under oath today?

13 A. Yes.

14 Q. Okay. And if you answer one of my
15 questions, I'm going to -- I'm going to assume that
16 you understood my question. Is that fair?

17 A. Got you.

18 Q. Have you ever sued somebody?

19 A. No.

20 Q. Have you ever been sued?

21 A. No.

22 Q. Have you ever been convicted of a crime
23 or been arrested?

24 A. Yes.

25 Q. Okay. What crimes have you been

1 convicted for?

2 A. I had a DUI years back, a DUI years
3 ago. Yeah. That's pretty -- little misdemeanor
4 stuff when I was younger.

5 Q. Okay. Other than that DUI, have you
6 been convicted of anything else?

7 A. No.

8 Q. Okay. And before we went on the
9 record, I think you stated you were -- you're in
10 Vance, South Carolina; is that correct?

11 A. Yes.

12 Q. Is that where you live?

13 A. Yes.

14 Q. Is that where you lived in April of
15 2019?

16 A. Yes.

17 Q. Okay. And your mother, Loris Paris,
18 before she was admitted to the nursing facility,
19 where was she living?

20 A. She was here before she went into the
21 hospital, and I think she was in the hospital for
22 about a couple weeks to a month before we were
23 trying to get her into a facility, and then we
24 ended up getting her there I think around that time
25 when I had to sign the paperwork.

1 Q. I got you. And I spoke with your
2 sister earlier, and I believe she mentioned that
3 you were living with her; is that correct?

4 A. Yes.

5 Q. Okay. And was she living at your
6 house, or were you living at her house or --

7 A. I was living here at her estate,
8 helping her.

9 Q. Okay. Where you are right now was her
10 house?

11 A. Yes.

12 Q. Okay. So I understand that Beverley
13 was living in Connecticut around the time that she
14 was admitted to Calhoun Convalescent Center; is
15 that right?

16 A. Yes.

17 Q. So were you her primary -- your
18 mother's primary caregiver, for lack of a better
19 term?

20 A. Well, we had somebody else that was
21 pretty much here coming and -- 'cause I had to
22 work, so --

23 Q. Understood.

24 A. I was taking care of her mostly at
25 night, and then in the daytime, we had two other

1 people come in.

2 Q. Okay. So if she needed -- if she
3 needed errands done, you know, like if she needed
4 to go to the bank or go get groceries, would you be
5 the one that would do that for her?

6 A. During the day, no.

7 Q. Okay. Did you ever go to the bank for
8 her?

9 A. Yes. I have.

10 Q. Okay. And I'm assuming that you -- at
11 some point you would have signed paperwork for her;
12 is that correct?

13 MR. CANTWELL: Object to the form.

14 BY MR. DOTTERER:

15 Q. Your attorney might object to the form
16 of my question from time to time. You still need
17 to answer the question if you can.

18 A. That was the only time that I really
19 signed anything for her --

20 Q. Okay.

21 A. -- probably.

22 Q. So your testimony today is that you
23 never signed any other document for her other than
24 the documents that were signed in connection with
25 the admission?

1 MR. CANTWELL: Object to the form.

2 THE WITNESS: Not -- not to my
3 knowledge. I don't -- I don't -- I don't recall.
4 I can't remember.

5 BY MR. DOTTERER:

6 Q. Is it possible that you did sign
7 documents?

8 A. Like I said, I can't recall. I
9 don't -- I don't remember. This was years ago.

10 Q. Who would -- who would take your mother
11 to the doctor if she needed to go to the doctor?

12 A. Probably the people that were here in
13 the daytime with her, the caregivers.

14 Q. Would you ever take your mother to the
15 doctor?

16 A. Not that I can recall, no.

17 Q. Is it possible that you did?

18 A. I can't recall.

19 Q. I understand your mother was admitted
20 to Orangeburg Regional Medical Center before she
21 eventually was transferred to Calhoun -- or excuse
22 me -- Calhoun Convalescent Center. Is that your
23 understanding?

24 A. Yes.

25 Q. Were you there when she went to the

1 hospital?

2 A. I'm thinking, the night that she went,
3 I might have went that night. I'm not sure. I
4 can't remember, but I know the ambulance took her.

5 Q. Okay. Do you know one way or another
6 if you signed any paperwork in connection with her
7 admission to the hospital?

8 A. No, I don't.

9 Q. I understand you signed some admissions
10 paperwork, including an arbitration agreement and
11 an admission agreement, in connection with your
12 mother's admission to Calhoun Convalescent Center;
13 is that correct?

14 A. Yes.

15 Q. How did you come to be the person that
16 signed these documents?

17 A. My sister told me that I needed to go
18 down there and sign some intake papers for her to
19 be admitted in.

20 Q. So your -- you said your sister
21 mentioned that they needed somebody to sign intake
22 paperwork. Do you remember the details of that
23 conversation beyond what you just described to me?

24 A. No, I don't.

25 Q. You're not aware of your sister saying

1 that -- that you could or could not sign certain
2 paperwork?

3 MR. CANTWELL: Object to the form.

4 THE WITNESS: No. I wasn't aware --
5 all I was supposed to sign was intake papers.
6 That's it. I didn't know anything about anything
7 else.

8 BY MR. DOTTERER:

9 Q. What condition was your mother in when
10 she was admitted to Calhoun Convalescent Center?

11 A. Well, she was -- I think she had, like,
12 a UTI or -- and then it was just -- it was -- I
13 guess it was just to the point to where, like, we
14 couldn't really do too much for her here, but she
15 was -- she was -- she just couldn't get around, you
16 know, was old lady. You couldn't really do a lot
17 for her, so...

18 Q. Right. And how was she mentally? I
19 mean, was she able to -- were you able to hold a
20 conversation with her?

21 A. Yes.

22 Q. Okay.

23 A. Before she got there.

24 Q. Right. Right. And I'm talking about
25 around the time that she got there. You could --

1 A. Right.

2 Q. As far as you know, you could hold a
3 conversation with her?

4 A. Yes. Again, until she got there. Then
5 it was no more speaking or talking or anything like
6 that.

7 Q. Okay. But she -- physically, she
8 wasn't in the best shape?

9 A. She wasn't in the best shape, but she
10 wasn't, like, how she was after going towards into
11 the end.

12 Q. Okay. With Beverley being out of town
13 and your mother being in the condition she was in,
14 you would agree that you were the best person to
15 act on your mother's behalf?

16 MR. CANTWELL: Object to the form.

17 THE WITNESS: I can't say that, but I
18 was around when I could be.

19 BY MR. DOTTERER:

20 Q. Right. But, you know, as far as
21 signing paperwork goes and doing things to take
22 care of your mother, you were the best person to
23 handle that simply because you were there, right?

24 A. Yes.

25 MR. CANTWELL: Object to the form.

1 THE WITNESS: Yes. But still, at the
2 end, I couldn't make those decisions because I
3 wasn't power of attorney.

4 BY MR. DOTTERER:

5 Q. So could you restate that? I couldn't
6 quite hear you. What did you say?

7 A. I said I couldn't -- I couldn't make
8 those decisions. I would probably have to contact
9 her because she was the power of attorney.

10 Q. Right. But you did, in fact, sign
11 paperwork in connection with her admission, right?

12 A. Yes. I signed the intake paper for her
13 to get in because of my sister asking me to sign.

14 Q. So did you receive any of the paperwork
15 before you went to the facility to sign it?

16 A. I got no paperwork. Everything was
17 handled by Beverley.

18 Q. Say that again.

19 A. I said I didn't get any paperwork.
20 Everything was handled by Beverley. All I got was,
21 like, summary bills and things like that that came
22 here. That was it.

23 Q. Right. But we've already established
24 that you did sign some paperwork. And my question
25 was really aimed at, you know, did you get this

1 paperwork before you -- or did you sign this
2 paperwork at the facility, or did you sign it
3 before?

4 A. This was at the facility, at the
5 facility.

6 Q. I see. Okay. Okay. So you were told
7 by your sister that you needed to sign some
8 paperwork, so you went to the facility to sign it,
9 correct?

10 MR. CANTWELL: Object to the form.

11 THE WITNESS: Yes. In front of -- yes.
12 I signed it at the facility.

13 BY MR. DOTTERER:

14 Q. Okay. And who did you meet with at the
15 facility to sign the paperwork?

16 A. Whoever their admittance -- the
17 admittance lady was. I forgot her name. I don't
18 -- I can't recall what her name was, but it was the
19 lady at -- right there at the front, in the front.
20 Her office is right there on the right.

21 Q. Does Cindy Reck ring a bell to you?

22 A. No. But I guess if that's her -- if
23 she's still there, I guess that would be her.

24 Q. Sitting here today, can you picture
25 what she looked like?

1 A. Not right off, but I think, if I was to
2 see her, I'd probably remember her, I think. I
3 don't know.

4 Q. So tell me about your meeting with that
5 person.

6 A. She just told me that she needed me to
7 sign the form for her to be admitted.

8 Q. So you signed -- I'll represent to you
9 that you signed a number of forms relating to the
10 admission. Did you have a conversation about all
11 of the paperwork that you signed?

12 A. No. No. She didn't inform me that I
13 was going to be signing a paper that would say that
14 I would not allow any jury -- I mean, who would
15 sign a paper like that?

16 Q. Okay.

17 A. If I would have known that that was one
18 of the papers being signed, I would have definitely
19 called Beverley --

20 Q. But you did --

21 A. -- 'cause I knew I wasn't supposed --

22 Q. Right. But you did sign that document,
23 did you not?

24 A. I guess, yeah. I think that's one of
25 the papers that was signed on there.

1 Q. So it's your testimony that Ms. Reck
2 didn't explain any of the documents to you?

3 A. Exactly. She did not explain any of
4 that to me.

5 Q. So if we ask her and she says, I
6 explained each and every document and ensured that
7 he had no questions about those documents, you
8 would disagree with that?

9 A. Definitely.

10 Q. Would you agree with me that you had
11 the opportunity to ask any questions about any of
12 the paperwork you signed?

13 MR. CANTWELL: Object to the form.

14 THE WITNESS: No. I really couldn't
15 because I didn't think that I was being taken
16 advantage of, to tell you the truth.

17 BY MR. DOTTERER:

18 Q. Right. And, really, my question was --
19 it's pretty simple. I'm just asking if you agree
20 that you at least had the chance to ask questions
21 relating to any of these documents that you signed?

22 MR. CANTWELL: Object to the form.

23 THE WITNESS: I would have never signed
24 a -- I would have never signed a document like
25 that, sir.

1 BY MR. DOTTERER:

2 Q. Again, I understand what you're telling
3 me, but that's not my question. My question is:
4 Do you agree that you had the -- you had the
5 opportunity to ask questions about the documents
6 that you signed?

7 MR. CANTWELL: Same objection.

8 THE WITNESS: I really -- I can't -- I
9 can't really answer that because, like I said, I
10 don't know -- I thought I was just signing intake
11 papers. I didn't know I had to ask questions about
12 that.

13 BY MR. DOTTERER:

14 Q. Right. Right. I understand that, but
15 you at least had the opportunity to ask Cindy, who
16 was sitting down in the room with you, any
17 questions you may have had?

18 MR. CANTWELL: Object to the form.

19 THE WITNESS: Yeah. Yes. I could've
20 asked her any questions.

21 BY MR. DOTTERER:

22 Q. Okay.

23 A. But, like I said, I didn't think I had
24 to ask her any questions about intake forms.

25 Q. You're not aware of your sister telling

1 any staff member at the facility, including
2 Ms. Reck, that she did not want you executing
3 certain paperwork, are you?

4 A. Say that again.

5 Q. I said you're not aware, sitting here
6 today, of your mother telling -- or excuse me --
7 your sister telling any staff member, including
8 Ms. Reck, at the facility that she did not want you
9 signing certain paperwork, are you?

10 A. Say that question one more time.

11 Q. You're not aware of your sister having
12 a conversation with a staff member at the facility,
13 including Ms. Reck, that she did not want you
14 signing certain paperwork?

15 A. I heard her say it, but I don't know if
16 she said it to any employees. I'm not aware of
17 that.

18 Q. Okay. And you're not aware of your
19 mother telling anybody at the facility that -- that
20 she did not want you signing any paperwork; is that
21 right?

22 A. No. I don't know anything about that.

23 Q. Beverley trusted you to sign paperwork
24 on behalf of your mother, correct?

25 MR. CANTWELL: Object to the form.

1 THE WITNESS: An intake form. An
2 intake form, yes.

3 BY MR. DOTTERER:

4 Q. Right. But in general, you know, you
5 were the one that she asked to go down there and
6 sign the paperwork, so you would agree with me that
7 she trusted you to sign paperwork?

8 MR. CANTWELL: Object to the form.

9 THE WITNESS: She signed -- she
10 entrusted me to sign intake -- she gave me
11 permission to sign intake forms. That's -- I
12 didn't know anything about any other -- anything
13 else.

14 BY MR. DOTTERER:

15 Q. Yeah. And I'm not talking about any
16 specific document. I'm just talking about, in
17 general, you were the person that she trusted to
18 fill out paperwork for your mother; is that
19 correct?

20 A. To fill out -- to sign an intake form,
21 yes.

22 Q. Was Ms. Reck -- do you remember if she
23 was pleasant and easy to deal with?

24 A. I can't recall. I can't remember.

25 Q. You have no reason, sitting here today,

1 to believe that she would mislead you about the
2 paperwork you were signing, do you?

3 A. At this point, kind of, yes.

4 Q. And what reason is that?

5 A. Because I think whatever form, the
6 arbitration form was, I think it should have
7 been --

8 Q. Right.

9 A. -- spoken upon better.

10 Q. And I don't mean to interrupt you, but
11 I understand that, you know, this lawsuit is now
12 pending, but I'm talking about at the time you were
13 signing those documents, did you have any reason to
14 believe that Ms. Reck would have misrepresented
15 something to you or misled you in any way when you
16 were signing the paperwork?

17 A. Like I said, now that I'm looking back
18 on it, yes, I would think so.

19 Q. I'm not asking about now. I'm just
20 asking about at the time you signed the documents.

21 A. I mean, like -- like I said, I came in
22 there just -- I came in there to sign intake
23 papers, so I wasn't in there for -- I didn't -- I
24 wasn't even in there probably 30 minutes, 20
25 minutes. I don't know.

1 Q. And you say that now -- thinking back
2 on it now, you think she would have misled you.
3 Why is it that you say that?

4 A. Because why was that paperwork that I
5 signed not something that you tell someone about --

6 Q. I can't answer any questions. You have
7 to answer my questions.

8 A. -- or bring -- or bring that -- well,
9 because she didn't bring it to my attention.

10 Q. Okay. So sitting here today, you're
11 claiming -- or your testimony is that Ms. Reck
12 never brought the arbitration agreement that you
13 signed to your attention?

14 A. Not that I recall of.

15 Q. So is that no or you don't remember?

16 A. I don't -- I don't remember, but I -- I
17 definitely doubt it. No. I don't think she did at
18 all. I'm not sure.

19 Q. But it is -- it's possible that she
20 brought -- she at least brought the arbitration
21 agreement to your attention?

22 A. No. No, she did not bring that to my
23 attention.

24 MR. CANTWELL: Object to the form.

25 BY MR. DOTTERER:

1 Q. Well, you just told me you don't
2 recall, and now you're saying, no, she didn't.

3 A. But you're saying it different ways.

4 Q. So what's the correct answer?

5 A. I mean, you're saying it different,
6 sir. You didn't say it that way the first time. I
7 mean, 'cause now you're saying it -- she did not
8 bring anything to my attention about an arbitration
9 form.

10 Q. Okay.

11 A. I'm answering that. That's my final
12 answer.

13 Q. Okay. So if we get Ms. Reck -- if we
14 talk to Ms. Reck and we ask her did you explain the
15 arbitration agreement to Mr. Paris and she says,
16 yes, I explained it to him, you would disagree with
17 that?

18 A. I would definitely disagree with that.

19 Q. Okay. Did you ever ask Ms. Reck any
20 questions when you were filling out the documents?

21 A. No.

22 Q. You did not ask any questions?

23 A. Like I said, I can't -- I can't
24 remember. This was four years ago, sir, five, six,
25 seven years ago. I don't -- I can't remember.

1 Q. So if I'm hearing you correctly, you
2 can't remember if you asked any questions?

3 A. Asked -- yeah. If I asked her any
4 questions, no.

5 Q. Okay. And I'm not trying to play
6 games, but, you know, if you don't remember
7 something, please tell me that, and if you -- if
8 your answer is no, then that's fine, but I just
9 need to know one way or another if you don't
10 remember something or you do remember something.
11 Okay?

12 A. Got you.

13 Q. I mean, do you -- do you at least agree
14 with me that you had the chance to ask any
15 questions if you had any?

16 A. Yes.

17 MR. CANTWELL: Object to the form.

18 BY MR. DOTTERER:

19 Q. And you have no reason to believe that
20 if you asked a question that Ms. Reck could not
21 have explained the answer to you?

22 MR. CANTWELL: Object to the form.

23 THE WITNESS: I -- I wouldn't know.
24 Like I said, I didn't have questions for an intake
25 form, sir. I wouldn't have questions about that,

1 so, I mean, it's -- it was just supposed to be an
2 intake form. That was it.

3 BY MR. DOTTERER:

4 Q. Well, you signed more than -- than one
5 document. Would you agree with me?

6 A. I've -- I've only seen -- yeah. I've
7 only seen that I signed one document, so I don't
8 see where my signing was on any other documents. I
9 don't know. I can't, like I said --

10 Q. I'll represent you signed more than one
11 document, so --

12 A. Well, I have to see that because I
13 don't --

14 Q. Sure.

15 A. Like I said, I thought that was all
16 intake stuff. I don't...

17 Q. You would agree with me that you had
18 the opportunity to read any document that you
19 signed before you signed it?

20 A. Yeah, I agree.

21 Q. And if you wanted to read the document,
22 you could have done that, right?

23 A. Like I said, I -- I could have read it,
24 I guess, but, like, at the same time, I was not
25 informed of what I was supposed to be signing.

1 These were supposed to be intake forms, not any
2 other forms, not any other documents, because I
3 didn't have the right to sign that kind of
4 paperwork.

5 Q. Right. But my question was: Any
6 document that you signed, you agree that you
7 could -- you had the opportunity to read the
8 document before you signed it?

9 A. Yes, I could have read it. But, like I
10 said, I didn't think that I was being taken
11 advantage of. Like, why would I read -- well, yes,
12 I could have read it, but, like I said, I just
13 didn't think -- that's what I said. It was just
14 supposed to be admission papers. That was it.

15 Q. And Ms. Reck was available to answer
16 any questions you may have had, right?

17 A. Yes.

18 Q. About any of the documents you signed
19 in connection with admission; is that correct?

20 A. Like I said, I -- I remember signing
21 one. I don't know about more than that.

22 Q. Right. But Ms. Reck was available to
23 answer any questions you had about any of the
24 paperwork that you signed, right?

25 A. She was -- she was definitely present,

1 yes.

2 Q. Okay. And nobody forced you to sign
3 any documents; is that right?

4 A. No.

5 MR. CANTWELL: Object to the form.

6 BY MR. DOTTERER:

7 Q. And if at any time you were
8 dissatisfied with -- with the facility, you could
9 have taken your mother somewhere else; is that
10 right?

11 A. No, I could not.

12 Q. Or Beverley could have?

13 A. I -- I'm thinking that probably would
14 have been the person that could.

15 Q. And if you didn't read any of these
16 documents that you signed, it's your own fault; is
17 that right?

18 MR. CANTWELL: Object to the form.

19 THE WITNESS: Like I said, I
20 couldn't -- I don't know how to answer that
21 question, sir.

22 BY MR. DOTTERER:

23 Q. Well, it's -- if it's not your fault,
24 whose fault is it that you -- if you didn't read a
25 document?

1 MR. CANTWELL: Object to the form.

2 THE WITNESS: She presented the
3 documents, so she was definitely supposed to
4 explain them to me being that I was definitely not
5 the power of attorney.

6 BY MR. DOTTERER:

7 Q. Sure. But if you didn't read a
8 document that you signed, that's your own fault.

9 A. She didn't present -- she didn't
10 present the document.

11 Q. What document are you talking about?

12 A. The -- like I said, the intake form.
13 That's what I -- that's what I signed, the intake
14 form. This other -- all this other stuff is
15 something new to me because that was -- all I was
16 supposed to sign was the intake form.

17 Q. I want to backtrack and talk for a
18 little bit about the lead-up to you going to the
19 facility to sign paperwork. Did you have a
20 conversation with anybody at the facility about the
21 process before you got there or --

22 A. I -- I -- no. I don't -- I don't
23 remember, sir.

24 Q. So correct me if I'm wrong, but --

25 A. I just -- I got -- I got a sister -- I

1 got a call from my sister telling me that I need to
2 get to the facility to sign intake forms.

3 Q. And then you proceeded to go to the
4 facility and sign paperwork, right?

5 A. Yes. That was -- that was it.

6 Q. Was your mother present when you were
7 signing the paperwork?

8 A. No, she wasn't.

9 Q. Was anybody else present?

10 A. No.

11 Q. And did you call Beverley after you
12 finished signing the paperwork?

13 A. I let her know that I filled out the
14 paperwork.

15 Q. Okay. And what was the extent of that
16 conversation beyond what you just told me?

17 A. I can't recall. I don't remember, sir.

18 Q. I've shared my screen with you. Are
19 you able to see the document that I've just shared?

20 A. Yeah. I'm seeing it. Not all of it,
21 but I see -- okay. Yeah. I see --

22 Q. You see the first page, at least?

23 A. Okay. Yeah. I see that.

24 Q. What is this document?

25 A. Admission agreement.

1 Q. Okay. And reading down to the
2 paragraph that says this admission agreement in
3 bold, is that your name down there?

4 A. Yes.

5 Q. And I've just scrolled down to page 12
6 of the document. Do you see that, the bottom right
7 corner?

8 A. Yeah. You talking about where it says
9 Cindy?

10 Q. It says page 12 of 12. Do you see
11 that?

12 A. Okay. No, I don't see 12 of 12. Let
13 me see.

14 Q. The bottom right-hand corner.

15 A. No. Oh, yeah, yeah. I see it.

16 Q. Okay. Scrolling up a little bit where
17 it says signature of representative, if any, is
18 that your name right there and your signature?

19 A. Yes.

20 Q. And it's dated 4/12/2019. Do you see
21 that?

22 A. Yes.

23 Q. I've just scrolled back to the first
24 page. Do you see the paragraph that says
25 inducement?

1 A. Yes.

2 Q. Will you read what follows inducement
3 for me, please?

4 A. Resident or representative verifies
5 that all information submitted to facility,
6 including without limitation, financial
7 information, medical history and medical diagnosis,
8 is true and correct, acknowledges that providing
9 false information continues -- what does that say?
10 -- and breach of this agreement.

11 Q. Sure. And we've established that you
12 signed this agreement. You were representing to
13 the facility that you had the authority to sign all
14 admission paperwork for your mother; is that right?

15 MR. CANTWELL: Object to the form.

16 THE WITNESS: I was told that I was
17 supposed to sign an intake form. I was never told
18 to sign all of her admission papers, no.

19 BY MR. DOTTERER:

20 Q. But you did sign several documents; is
21 that right?

22 A. I signed one document. My signature is
23 on those 12 pages one time.

24 Q. Right. But you agree that -- that the
25 information you were providing to the facility,

1 including your authority to act on your mother's
2 behalf, was correct, right?

3 A. This was --

4 MR. CANTWELL: Object to the form.

5 THE WITNESS: To my acknowledgement,
6 this was intake papers.

7 THE REPORTER: I'm sorry. Was there an
8 objection there?

9 MR. CANTWELL: Yes.

10 THE REPORTER: Okay. Thank you.

11 MR. CANTWELL: Sorry.

12 BY MR. DOTTERER:

13 Q. I have just shared another document
14 with you. Can you see that document?

15 A. Yeah, I see that.

16 Q. Will you read the first phrase at the
17 top of the document?

18 A. This is agreement between Orangeburg
19 Convalescent Center, its agents, employees and
20 servants, Loris Paris, resident, or George Paris,
21 resident power of attorney for health care, legal
22 guardian, resident's responsible party,
23 therefore -- which I was pretty much none of
24 that -- only themselves, but also their successors,
25 assigns, heirs, personal representatives, guardians

1 or any persons deriving their claims through or on
2 behalf of resident.

3 Q. Okay. And do you see at the top where
4 it says please read carefully in bold?

5 A. Okay. Yeah.

6 Q. Okay. Does this appear to be the
7 arbitration agreement that you signed?

8 A. Yeah, that's what it looks like.

9 Q. Okay. And is that your signature on
10 the --

11 A. Yes.

12 Q. -- bottom left-hand side of this page?

13 A. Yes.

14 Q. Okay. Do you see in the last paragraph
15 down there where it says by?

16 A. By? What do you mean?

17 Q. So the final paragraph of the document,
18 the second sentence starts with the word by. Do
19 you see that?

20 A. By, yes.

21 Q. Can you read that sentence for me?

22 A. I'm going to make that a little bigger.

23 By his or her signature below, the
24 executing party represents that he or she has the
25 authority to sign on resident's behalf so as to the

1 bind.

2 Q. Right. Based on what that says, you
3 were representing -- by signing this document, you
4 were representing to the facility that you had the
5 authority to sign this document, were you not?

6 MR. CANTWELL: Object to the form.

7 THE WITNESS: I was not informed that
8 that's what I was signing.

9 BY MR. DOTTERER:

10 Q. Sure. But that's what that sentence
11 says, does it not?

12 MR. CANTWELL: Object to the form.

13 THE WITNESS: It definitely says that,
14 but I -- I didn't read that. I was not presented
15 with that. Nobody told me that. They told me to
16 sign intake papers, sir.

17 BY MR. DOTTERER:

18 Q. You could have read it if you wanted
19 to; isn't that right?

20 MR. CANTWELL: Object to the form.

21 THE WITNESS: I was -- I was -- I was
22 supposed to be signing intake papers, sir.

23 BY MR. DOTTERER:

24 Q. But you did sign this document?

25 A. I definitely signed that document, sir.

1 Q. And did you tell anybody at the
2 facility, including Ms. Reck, or do anything that
3 would indicate that you did not have the authority
4 to sign this document and any of the other
5 documents that you signed?

6 MR. CANTWELL: Object to the form.

7 THE WITNESS: I can't remember that. I
8 know that all I was supposed to sign was intake
9 papers. That was it. I never knew about anything
10 else. Yeah.

11 BY MR. DOTTERER:

12 Q. So you say you can't remember. It's
13 possible that you never said anything or did
14 anything to indicate to Ms. Reck or anybody else at
15 the facility that you did not have the authority to
16 sign this document or any other documents that you
17 signed?

18 MR. CANTWELL: Object to the form.

19 THE WITNESS: I can't recall.

20 BY MR. DOTTERER:

21 Q. If there was anything in this document
22 or the admission agreement that we just discussed
23 that gave you pause, what would you have done?

24 A. I probably would have asked about it.
25 I would've asked about it and then I would have

1 called my sister.

2 Q. As far as you knew, Beverley gave the
3 folks at the facility the impression that you would
4 be the one to sign documents for your mother; is
5 that right?

6 MR. CANTWELL: Object to the form.

7 THE WITNESS: I was supposed to sign
8 intake papers. That was it, sir.

9 BY MR. DOTTERER:

10 Q. That wasn't my question. My question
11 was: Far as you know --

12 A. You said -- you said -- you said
13 documents.

14 Q. Right. That was my question.

15 A. Yeah. And I said all I was supposed to
16 sign was intake papers. That was all her job to do
17 everything else.

18 Q. So did you and Beverley have a
19 conversation -- and I think you've already
20 established this, but do you remember one way or
21 another if you and Beverley had any conversations
22 about what type of documents you would be signing
23 and whether or not you could sign certain documents
24 and not others?

25 A. All I was told was to fill out some

1 intake papers, sir. Get down there to fill out the
2 intake -- the intake papers so they could admit
3 Mom. That was it.

4 Q. Okay. Mr. Paris, those are all the
5 questions I have for you right now. Your attorney
6 might have some questions for you.

7 A. Okay.

8 EXAMINATION

9 BY MR. CANTWELL:

10 Q. Hey, George. Can you hear me okay?

11 A. Oh, yeah. I got you.

12 Q. All right. Great. I do have a
13 couple of questions for you.

14 MR. CANTWELL: Gilly, I'm going to
15 share my screen, if you don't mind.

16 MR. DOTTERER: Okay. Yeah.

17 MR. CANTWELL: Thank you.

18 MR. DOTTERER: Oh, yeah. Sorry.

19 MR. CANTWELL: Thanks so much.

20 Appreciate it.

21 BY MR. CANTWELL:

22 Q. All right, George. I think Counsel was
23 talking with you about this document. Can you see
24 my screen okay?

25 A. I can't stretch it out, no.

1 Q. Okay. Let me see if I can get it
2 better for you. Can you see the top of the
3 document?

4 A. No, I can't. It's like it's real
5 small. See, I could've stretched his out. I
6 can't -- okay. Yeah. I see yours. I see it.
7 Stretch it out --

8 Q. Can you see the part where --

9 A. Can you stretch it out a little bit
10 more?

11 Q. Can you see the part where it says your
12 name?

13 A. Yes. I -- okay. Right there. Yeah.
14 I see my name good.

15 Q. You see your name? Okay.

16 A. Yes.

17 Q. Do you know whether you wrote you name
18 there? Is that your handwriting?

19 A. That does not look like my handwriting
20 but --

21 Q. Okay. So you don't think you wrote
22 that part where it says George Paris is being
23 whoever -- resident's durable power of attorney,
24 resident's legal guardian, or resident's
25 responsible party right there; is that correct?

1 A. Can you -- can you up -- can you make
2 that bigger? Yeah. See, I don't -- I don't write
3 -- I don't write my Ps or my Ss like that, but, I
4 mean, it does not look like...

5 Q. Okay. What if we go down to the bottom
6 and look at your name down here? Let's look first
7 at the signature part. Do you see the cursive
8 signature? Is that your signature?

9 A. Yeah. Yeah, that's -- that's my
10 signature.

11 Q. All right. On the printed section, is
12 that how you write your name there?

13 A. Yeah. That looks like -- that's my --
14 I mean, my print right there.

15 Q. All right.

16 A. But the one up top definitely looks
17 totally different from that one.

18 Q. The one up top looks like it was
19 written by someone else; is that correct?

20 A. Yeah, yeah. That -- that spot
21 definitely by somebody else 'cause that doesn't
22 look like mines at all. On the same exact form,
23 no.

24 Q. Counsel was showing you the admissions
25 agreement earlier, and the date on that admissions

1 agreement was April 12, 2019. That was three days
2 before this arbitration agreement was purportedly
3 signed. Did you go in there multiple times to sign
4 documents?

5 A. No.

6 Q. Okay.

7 A. No, I didn't go in to sign.

8 Q. So when you went in, you signed the
9 admissions agreement on April 12, 2019. Did you
10 sign this document on April 15, 2019, or did
11 someone else put that date on there?

12 A. They must have put that -- it looks
13 like that date was put on there because, like I
14 said, I only came in there and signed paperwork
15 that one time.

16 Q. Okay. And so we've got the admissions
17 agreement that says one date, and this arbitration
18 agreement says three days later, and you didn't --

19 A. Right.

20 Q. -- go in there more than one time to
21 sign documents, right?

22 A. No.

23 Q. Okay. And you were not the power of
24 attorney for your mother; is that right?

25 A. Exactly.

1 Q. And I believe you testified earlier
2 that no one at Calhoun Convalescent Center talked
3 to you about arbitration; is that right?

4 George, can you hear me? I think your
5 sound went out.

6 MR. CANTWELL: Can y'all hear him?

7 THE REPORTER: No.

8 MR. DOTTERER: I can't hear him. You
9 might be muted, George.

10 THE WITNESS: Okay, okay. You got me
11 now?

12 BY MR. CANTWELL:

13 Q. Yeah, I got you now.

14 A. All right.

15 Q. Let me ask that again. So no one at
16 the Calhoun Convalescent Center talked with you
17 about the issue of arbitration; is that correct?

18 A. No, sir.

19 Q. And they didn't explain to you what an
20 arbitration agreement was?

21 A. I never even knew what an arbitration
22 agreement was until you guys brought it up today.

23 Q. All right. And you didn't have any
24 authority to sign any legal documents according to
25 the power of attorney for your mother; is that

1 correct?

2 MR. DOTTERER: Object to the form.

3 THE WITNESS: Not at all. No. Not at
4 all.

5 MR. CANTWELL: All right, George.
6 That's all the questions that I have for you today.
7 I appreciate it.

8 THE WITNESS: Okay.

9 EXAMINATION

10 BY MR. DOTTERER:

11 Q. George, I just have one quick
12 follow-up. Mr. Cantwell showed you the date of the
13 arbitration agreement, which I believe you
14 testified says April 15, 2019; is that right?

15 A. Yeah.

16 Q. Okay. Is it possible that you came
17 back to the facility to fill that document out?

18 A. No. I'm not -- I only filled out that
19 paperwork one time.

20 Q. Your testimony sitting here today is
21 that you were only at the facility one time?

22 A. No. I been at the facility a couple
23 times, but I was only called in one time to do
24 intake -- for that intake form.

25 Q. Sure. Yeah. Right. Right. And I

1 think you answered the question, but my question
2 was going to be: As far as filling out paperwork
3 goes, you were only at the facility one time; is
4 that right?

5 A. Yes. To my recollection, yes.

6 Q. Okay. Those are all the questions I
7 have. Thank you, sir. I appreciate you -- you
8 taking the time out of your day to answer these
9 questions.

10 A. Okay.

11 MR. CANTWELL: All right. We're done.

12 THE REPORTER: How about reading and
13 signing?

14 MR. CANTWELL: He'll waive it.

15 THE REPORTER: Okay. Do you need
16 copies, Mr. Cantwell?

17 MR. CANTWELL: Yes, please. Copies of
18 both.

19 THE REPORTER: Okay. Mr. Dotterer, do
20 you want the originals on both?

21 MR. DOTTERER: Yes, ma'am. That would
22 be great.

23 (EXHIBIT 1, Admission Agreement, was
24 marked for identification.)

25 (EXHIBIT 2, Arbitration Agreement, was

1 marked for identification.)

2 (The witness, after having been advised
3 of his right to read and sign this transcript,
4 waives that right.)

5 (The deposition was concluded at
6 12:32 p.m.)

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CERTIFICATE OF REPORTER

I, Trisha M. Thomas, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 19th day of July,
2023, at Hardeeville, Jasper County, South
Carolina.



T Thomas

Trisha M. Thomas, RPR
My Commission expires
December 2027

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I N D E X

Page/Line

WITNESS/EXAMINATION

GEORGE JAMAR PARIS 3 1

EXAMINATION 3 3

BY MR. DOTTERER

EXAMINATION 35 8

BY MR. CANTWELL

EXAMINATION 40 9

BY MR. DOTTERER

CERTIFICATE OF REPORTER 43 1

REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

Page/Line

EXHIBIT 1, Admission Agreement 41 23

EXHIBIT 2, Arbitration 41 25

Agreement

EXHIBIT

M

Evaluation Date:

NURSING DATA COLLECTION TOOL

☒ **Admission/Readmission** – Entire form must be completed by Licensed Nurse within 24 hours of Admission. Complete based on items that are evident on Admission.

Admission Date: 4/12/2019
mm dd yyyy

Time of Arrival: 12:35 ☐ am ☒ pm

☐ **Quarterly** – Entire form must be completed by Licensed Nurse (Start with Section 2: Identified Prior Risks)

☐ **Annual** – Entire form must be completed by Licensed Nurse (Start with Section 2: Identified Prior Risks)

SECTION 1: FACILITY ORIENTATION

(Check all that apply)

☒ Staff	☐ Room	☐ Roommate
☐ Call System	☐ Bathroom	☐ Shower
☐ Meals/Time	☐ Dining Room	☐ Smoking Policy
☐ Common Areas	☐ Activity Calendar	☐ Telephone
☐ Visiting Hours	☐ Resident Rights	

SECTION 2: IDENTIFIED PRIOR RISKS

(Check all that apply)

☐ Swallowing Problems	☐ Smoker	☐ Unplanned Wt. Change
☐ Fluid Restriction	☐ Chewing Problems	☐ Palliative Care
☐ Wanderer/Exit Seeker	☐ Seizure Precautions	☐ Behavior Problems
☒ Crush Medications	☐ Falls	

SECTION 3: VITAL SIGNS

Temp: 98.2 Pulse: 89 Respirations: 18

B/P Sitting: 145/85 B/P Standing:

SECTION 4: ACTIVE DIAGNOSIS IN LAST 7 DAYS

(Check all that apply)

- ☐ Cancer (with or without metastasis)
- ☒ Anemia (e.g., aplastic, iron deficiency, pernicious, and sickle cell)
- ☒ Atrial Fibrillation or Other Dysrhythmias (e.g., bradycardias and tachycardias)
- ☒ Coronary Artery Disease (CAD) (e.g., angina, myocardial infarction, and atherosclerotic heart disease (ASHD))
- ☐ Deep Venous Thrombosis (DVT), Pulmonary Embolus (PE), or Pulmonary Thrombo-Embolism (PTE)
- ☐ Heart Failure (e.g., congestive heart failure (CHF) and pulmonary edema)
- ☒ Hypertension
- ☐ Orthostatic Hypotension
- ☐ Peripheral Vascular Disease (PVD) or Peripheral Arterial Disease (PAD)
- ☐ Cirrhosis
- ☒ Gastroesophageal Reflux Disease (GERD) or Ulcer (e.g., esophageal, gastric, and peptic ulcers)
- ☐ Ulcerative Colitis, Crohn's Disease, or Inflammatory Bowel Disease
- ☐ Benign Prostatic Hyperplasia (BPH)
- ☐ Renal Insufficiency, Renal Failure, or End-Stage Renal Disease (ESRD)
- ☒ Neurogenic Bladder
- ☐ Obstructive Uropathy
- ☐ Multidrug-Resistant Organism (MDRO)
- ☐ Pneumonia
- ☒ Septicemia
- ☐ Tuberculosis
- ☒ Urinary Tract Infection (UTI) (LAST 30 DAYS)
- ☐ Viral Hepatitis
- ☐ Wound Infection (other than foot)
- ☒ Diabetes Mellitus (DM)
- ☐ Hyponatremia
- ☐ Hyperkalemia
- ☐ Hyperlipidemia (e.g., hypercholesterolemia)
- ☐ Thyroid Disorder
- ☐ Arthritis
- ☐ Osteoporosis
- ☐ Hip Fracture
- ☒ Other fracture fx ribs 34
- ☐ Alzheimer's Disease
- ☐ Aphasia
- ☐ Cerebral Palsy

SECTION 4: ACTIVE DIAGNOSIS IN LAST 7 DAYS (continued)

- ☐ Cerebrovascular Accident (CVA), Transient Ischemic Attack (TIA), or Stroke
- ☒ Dementia
- ☐ Hemiplegia/hemiparesis
- ☐ Paraplegia
- ☐ Quadriplegia
- ☐ Multiple Sclerosis (MS)
- ☐ Huntington's Disease
- ☐ Parkinson's disease
- ☐ Tourette's Syndrome
- ☐ Seizure Disorder or Epilepsy
- ☐ Traumatic Brain Injury (TBI)
- ☒ Malnutrition (protein, calorie)
- ☐ Anxiety Disorder
- ☐ Depression (other than bipolar)
- ☐ Manic depression (bipolar disease)
- ☐ Psychotic Disorder (other than schizophrenia)
- ☐ Schizophrenia (e.g., schizoaffective and schizophreniform disorders)
- ☐ Post Traumatic Stress Disorder (PTSD)
- ☐ Asthma, Chronic Obstructive Pulmonary Disease (COPD), or Chronic Lung Disease
- ☐ Respiratory Failure
- ☐ Cataracts, Glaucoma, or Macular Degeneration
- ☐ None of the above active diagnoses within the last 7 days

Comments:

SECTION 5: ALLERGIES

(Check all that apply)

- ☐ Drugs: _____ ☐ Food: _____
- ☐ Other: _____
- ☐ Allergy sticker on chart ☐ Allergy identification on Patient/Resident
- ☒ No known allergies

SECTION 6: PATIENT/RESIDENT/FAMILY EDUCATION NEEDS

(Check all that apply)

Specific barriers to learning:

☐ Physical	☐ Motivation	☐ Reading
☐ Emotional	☐ Language	☐ Cultural
☐ Age-related issues	☐ Religious	☐ Sensory (visual)
☐ Cognitive	☐ Sensory (auditory)	☐ Financial

Comments:

SECTION 7: DISCHARGE POTENTIAL

What is the resident's goal toward discharge?

- ☐ Expects to be discharged to the community
- ☐ Expects to remain in this facility
- ☐ Expects to be discharged to another facility/institution
- ☐ Unknown or uncertain

What is the source of discharge information?

- ☐ Resident
- ☐ If not resident, then family or significant other
- ☐ If not resident, family, or significant other, then guardian or legally authorized representative
- ☐ None of the above

Comments:

Resident Name: Loris Paris

Attending Physician: EPS

Record #:

Room/Bed: F81

NURSING DATA COLLECTION TOOL

ROA 305 PARIS, LORIS_ST. MATTHEWS 001392

SECTION 8: PHYSICAL EVALUATION

NEUROLOGICAL/COGNITION

(Check all that apply, in last 7 days or since admission)

- 1) **Comatose**
☐ Persistent vegetative state/no discernible consciousness (If checked, skip to Musculoskeletal)
- 2) **Memory**
☐ Short-term memory problem ☐ Long-term memory problem
- 3) **Memory/Recall** – Patient/Resident can normally recall
☐ Current season ☐ That he/she is in a nursing home
☐ Staff name/faces ☒ None of the above are recalled
☐ Location of room
- 4) **Decision Making**
☐ Independent – decisions consistent/reasonable
☐ Modified independent – some difficulty in new situations
☐ Moderately impaired – decisions poor, cues/supervision required
☐ Severely impaired – never rarely made decisions
- 5) **Comments:** AMS

HEARING/COMMUNICATION, SPEECH, VISION

(Check all that apply, in last 7 days or since admission)

- 1) **Hearing** (with hearing aid or hearing appliances if normally used)
☒ Adequate-no difficulty in normal conversation, social interaction, listening to TV
☐ Minimal difficulty-difficulty in some environments (e.g., when person speaks softly or setting is noisy)
☐ Moderate difficulty-speaker has to increase volume and speak distinctly
☐ Highly impaired-absence of useful hearing
- 2) **Communication Devices**
☐ Hearing aid, present and used: ☐ R ☐ L
☐ Hearing aid, present and not used regularly ☐ R ☐ L
 Why? _____
☐ Hearing amplifier: ☐ Yes ☐ No
- 3) **Speech Pattern**
☐ Clear speech-distinct intelligible words
☒ Unclear speech-slurred or mumbled words
☐ No speech-absence of spoken words
- 4) **Modes of Expression**
☒ Speech ☐ Signs/gestures/sounds
☐ Communication board ☐ Other: _____
☐ Writing messages ☐ None of the above
☐ American sign language/Braille
- 5) **Makes Self Understood**
☐ Understood
☐ Usually understood-difficulty communicating some words or finishing thoughts but is able if prompted or given time.
☒ Sometimes understood-ability is limited to making concrete requests.
☐ Rarely/never understood
- 6) **Ability to Understand Others**
☐ Understands-clear comprehension
☐ Usually understands-misses some part/intent of message but comprehends most conversation
☒ Sometimes understands-responds adequately to simple, direct communication only
☐ Rarely/never understands
- 7) **Vision** (with glasses or other visual appliances)
☐ Adequate-sees fine detail, including regular print in newspapers/books
☐ Impaired-sees large print, but not regular print in newspapers/books
☐ Moderately impaired-limited vision; not able to see newspaper headlines but can identify objects
☐ Highly impaired-object identification in question, but eyes appear to follow objects
☐ Severely impaired-no vision or sees only light, colors or shapes; eyes do not appear to follow objects
- 8) **Pupils**
☐ Equal ☐ Eye drainage ☐ R ☐ L
☐ React to light Describe: _____

HEARING/COMMUNICATION, SPEECH, VISION (continued)

9) Visual Appliances

- ☐ Glasses/Magnifying glass
- ☐ Contact lenses
- ☐ Eye prosthesis ☐ R ☐ L
- ☐ Eye appliance(s) present and not used regularly
 Why: _____
- ☐ None of the above

10) Last Eye Exam, if known

11) Comments:

MOOD

(Check all that apply, in the last 7 days or since admission)

- 1) **Indicators of Depression** – Check all that apply from resident observation, staff, and/or family interview
☐ Little interest or pleasure in doing things
☐ Feeling or appearing down, depressed or hopeless
☐ Trouble falling or staying asleep
☐ Sleeping too much
☐ Feeling tired or having little energy
☐ Poor appetite or overeating
☐ Feeling bad about self, is a failure, or has let family/self down
☐ Trouble concentrating on things, such as reading the newspaper or watching television
☐ Moving or speaking so slowly that other people have noticed
☐ Being so fidgety or restless that resident has been moving around a lot more than usual
☐ Being short-tempered, easily annoyed
☐ States that life isn't worth living, wishes for death, or attempts to harm self
☒ None of the above
- 2) **Safety Notification**
 Was responsible staff or provider informed that there is a potential for resident self harm?
☐ No ☐ Yes ☐ NA
 NAME: _____
- 3) **Comments:** _____

BEHAVIOR

(Check all that apply, in the last 7 days or since admission)

(Monitor using Behavior/Side Effect Tracking Record)

1) Behavioral Symptoms

- ☐ WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety) (Proceed to Care Plan for elopement prevention management) (Complete Fall Risk Evaluation)
 - ☐ Places resident at significant risk of getting to a potentially dangerous place? (e.g., stairs, outside of the facility)
 - ☐ Significantly intrudes on the privacy or activities of others?
- ☐ PHYSICAL BEHAVIOR SYMPTOMS were directed toward others? (e.g., hitting, kicking, pushing, scratching, grabbing, abusing others sexually)
- ☐ VERBAL BEHAVIOR SYMPTOMS were directed toward others? (e.g., threatening others, screaming at others, cursing at others)
- ☐ BEHAVIORAL SYMPTOMS NOT directed toward others? (e.g., physical symptoms such as hitting or scratching self, pacing, rummaging, public sexual acts, disrobing in public, throwing or smearing food or bodily wastes, or verbal/vocal symptoms like screaming, disruptive sounds)
- ☐ REJECTION OF CARE or evaluation (e.g., bloodwork, taking medications, ADL assistance) that is necessary to achieve the resident's goals for health and well-being?
- ☐ HALLUCINATIONS
- ☐ DELUSIONS
- ☒ None of the above per history and/or observation

Form # NFF-NP041

Reorder From: DSSI / MED-PASS

INH 04/009

Resident Name:

LORIS PARIS

Attending Physician:

Record #:

EPS

Room/Bed:

NURSING DATA COLLECTION TOOL

ROA 306 PARIS, LORIS_ST. MATTHEWS 001393

SECTION 8: PHYSICAL EVALUATION (continued)

BEHAVIOR (continued)

2) Psychotropic Medications (Check all that are used and document supporting diagnosis) (Complete Fall Risk Evaluation if new medication)

- ☐ Antidepressant Diagnosis: _____
☐ Antipsychotic Diagnosis: _____
☐ Hypnotic Diagnosis: _____
☐ Antianxiety Diagnosis: _____
☐ None of the above

3) Comments:

MUSCULOSKELETAL

(Check all that apply)

1) Modes of Locomotion

- ☐ Wheeled self ☐ Walker/Cane/Crutch
☒ Wheelchair ☐ Cane/Quad cane
☐ Other person wheeled

2) Functional Limitation in ROM

Does the resident have any limitation that interferes with daily functions or places resident at risk of injury?

- ☒ Upper Extremity (shoulder, elbow, wrist, hand)
☐ No ☐ Impairment One Side - ☐ L ☐ R
☒ Impairment Both Sides
☒ Lower Extremity (hip, knee, ankle, foot)
☐ No ☐ Impairment One Side - ☐ L ☐ R
☒ Impairment Both Sides

3) Prior Falls

- ☐ Fell in the past 30 days (Complete Fall Risk Evaluation)
☐ Fell in the past 31-180 days (Complete Fall Risk Evaluation)
☐ Fracture related to a fall in the past 30-180 days?

4) Balance (If not steady, complete Fall Risk Evaluation)

How does the resident move from a seated to a standing position?

- ☐ Steady at all times ☒ Not observed
☐ Not steady, but able to stabilize without human assistance
☐ Not steady, only able to stabilize with human assistance

How does the resident walk? (with assistive device if used)

- ☐ Steady at all times ☒ Not observed
☐ Not steady, but able to stabilize without human assistance
☐ Not steady, only able to stabilize with human assistance

How does the resident turn around and face the opposite direction while walking?

- ☐ Steady at all times ☒ Not observed
☐ Not steady, but able to stabilize without human assistance
☐ Not steady, only able to stabilize with human assistance

How does the resident move on and off toilet?

- ☐ Steady at all times ☒ Not observed
☐ Not steady, but able to stabilize without human assistance
☐ Not steady, only able to stabilize with human assistance

How does the resident transfer between bed and chair or wheelchair?

- ☐ Steady at all times ☒ Not observed
☐ Not steady, but able to stabilize without human assistance
☐ Not steady, only able to stabilize with human assistance

5) Devices and Restraints (Complete Siderail/Restraint Evaluation as needed)

- ☒ Bed rails per patient/resident request
☐ Full bed rails on all open sides of bed
☐ Other types of side rails used (e.g., half rail, one side)
☐ Trunk restraint (Complete Fall Risk Evaluation)
☐ Limb restraint (e.g., mitts, wrists)
☐ Chair prevents rising (e.g., merrywalker)
 Explain: _____

6) Comments:

GASTROINTESTINAL

1) Height/Weight

Measured height: 5' 9"
 Measured weight: 191.2 Usual weight: _____

2) Weight Change

- ☐ Weight loss in last 30 days, amount: _____
☐ Weight gain in last 30 days, amount: _____
☐ No weight change per history

3) Appetite

- ☐ Good ☐ Fair ☐ Poor ☐ Unknown

4) Nutritional Approaches

- ☐ Parenteral feeding/TPN
☒ Peg ☐ GT ☐ G ☐ JT
 Size: _____ ☐ Placement verified

- ☐ Mechanically altered diet
☐ Therapeutic diet
☐ Dietary supplement between meals
☐ Plate guard, stabilized/built-up utensil
☐ On a planned weight change program
☐ Fluid restriction, specify: _____
☐ Vegetarian diet
☐ Ethnic diet
☐ None of above

5) Oral Problems

- ☐ Loss of liquids/solids from mouth when eating or drinking
☐ Holding food in mouth/cheeks or residual food in mouth after meals
☐ Coughing or choking during meals or when swallowing medications
☐ Complaints of difficulty or pain with swallowing
☐ None of the above

6) Conditions of Mouth/Gums

- ☒ Tissues pink & moist (normal) ☐ Open area: _____
☐ Reddened gums ☐ Swollen/Bleeding gums
☐ Reddened lips ☐ Odorous
☐ Darkened gums ☐ Tongue coated
☐ Drainage from mouth/gums ☐ Tissue sticky/no saliva

7) Teeth/Dentures

- ☐ All teeth present ☐ Partial dentures
☐ Jagged ☐ Upper dentures
☐ Carious ☐ Lower dentures
☒ Some missing ☐ Ill-fitting dentures
☐ All missing ☐ Able to function with or without natural teeth or dentures
☐ No dentures
☐ Full dentures
☐ Dentures present but does not wear, why: _____

8) Last dental exam, if known:

9) Bowel Elimination Pattern

- ☐ Bowel elimination pattern regular - at least once every 3 days
☐ Constipation ☐ Enema
☐ Diarrhea ☐ Ostomy present
☐ Fecal impaction ☐ Fissures/Fistula
☐ Hemorrhoids ☒ None of above per history and/or observation

10) Bowel Continuity Program (i.e., suppository, prune juice)

- Specify: _____
☐ Not used

11) Bowel Continence

- ☐ Always continent
☐ Occasionally incontinent (one episode of bowel incontinence)
☐ Frequently incontinent (two or more episodes of bowel incontinence, but at least one continent bowel movement)
☒ Always incontinent (no episodes of continent bowel movements)
☐ Not rated (resident had an ostomy or did not have a bowel movement for entire 7 days)

12) Comments:

Resident Name: LORIS PARIS

Attending Physician:

Report #: ERS

Room/Bed:

NURSING DATA COLLECTION TOOL

Date: 7/1/09

ROA 307 PARIS, LORIS_ST. MATTHEWS 001394

SECTION 8: PHYSICAL EVALUATION (continued)

GENITOURINARY

(Check all that apply)

- 1) Urinary Continence (Complete Bowel & Bladder Evaluation if resident has episodes of incontinence)
- ☐ Always continent
 - ☐ Occasionally incontinent (less than 7 episodes of incontinence)
 - ☐ Frequently incontinent (7 or more episodes of urinary incontinence, but at least one episode of continent voiding)
 - ☐ Always incontinent (no episodes of continent voiding)
 - ☒ Not rated, resident had a catheter (indwelling, condom), urinary ostomy

2) Bladder Symptoms

- ☐ Urgency to void
- ☐ Pain
- ☐ Burning
- ☐ Hematuria
- ☐ Nocturia
- ☒ None of above per history and/or observation

3) Bladder Appliances/Programs

- ☐ 3-day bladder diary
- ☐ Bladder retraining (prompted voiding)
- ☐ Scheduled toileting (habit training)
- ☐ Routine toileting (ADL schedule)
- ☐ Check and change (perineal care)
- ☐ External (Condom) catheter
- ☒ Internal catheter

Size: _____ Date: _____

Diagnosis: _____

- ☐ Intermittent catheter

Diagnosis: _____

- ☐ None of above

4) Urinary Incontinence management response?

- ☐ No change
- ☐ Decreased wetness
- ☐ Completely dry (continent)
- ☐ Unable to determine or trial in progress

5) Date of last menstrual cycle (if applicable): _____

6) Vaginal Discharge ☐

7) Penile Discharge ☐

8) Comments: _____

PAIN EVALUATION

Resident Record Review (Complete for all residents, regardless of current pain level)

1) At any time in the last 5 days has:

- ☐ The resident been on a scheduled pain medication regimen
- ☐ The resident received PRN pain medications
- ☐ The resident received non-medication intervention for pain

2) Does the resident have a current diagnosis/condition which may indicate pain? (i.e., wounds, end-stage disease)

Diagnosis/Condition Wounds

3) Resident Interview (If resident unable to be interviewed, then complete Resident Pain Observation)

Have you had pain or hurting at any time in the last 5 days?

☐ No ☐ Yes

How much of the time have you experienced pain or hurting over the last 5 days?

- ☐ Almost constantly ☐ Occasionally ☐ NA
- ☐ Frequently ☐ Rarely

Over the past 5 days, has pain made it hard for you to sleep at night?

☐ No ☐ Yes

Over the past 5 days, have you limited your day-to-day activities because of pain?

☐ No ☐ Yes

Rate your worst pain over the last 5 days on a zero to ten scale, with zero being no pain and ten as the worst pain you can imagine: _____

Using the above scale, please rate the level at which your pain/discomfort interferes with your quality of life, (i.e., ambulation, bathing, sleeping, activities, mood): _____

PAIN EVALUATION (continued)

(Check all that apply)

4) Resident Pain Observation (Complete for all residents)

- ☒ Non-verbal sounds (crying, whining, gasping, moaning, or groaning)
- ☒ Vocal complaints of pain (that hurts, ouch, stop)
- ☒ Facial expressions (grimaces, winces, wrinkled forehead, furrowed brow, clenched teeth or jaw)
- ☐ Protective body movements or postures (bracing, guarding, rubbing or massaging a body part/area, clutching or holding a body part during movement)
- ☐ None of these signs observed or documented

If pain is present, check all sites that apply:

- ☐ Back pain
- ☐ Bone pain
- ☐ Chest pain while doing usual activities
- ☐ Headache
- ☐ Hip pain
- ☐ Incisional pain
- ☒ Joint pain (other than hip/leg)
- ☐ Soft tissue pain (e.g., lesion, muscle)
- ☐ Stomach pain
- ☐ Other: _____

5) Comments: _____

Proceed to care plan for pain management if resident currently receiving pain medication, reports pain and/or pain symptoms observed.

CARDIOVASCULAR

(Check all that apply)

1) Dizziness ☐ (Complete Fall Risk Evaluation)

- 2) Pulses ☒ Present ☐ Not Present
- | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| R | L | R | L |
| ☒ | ☒ | ☐ | ☐ |
| Radial | Radial | Radial | Radial |
| Pedal | Pedal | Pedal | Pedal |

3) Edema ☐ No ☐ If yes: ☐ Pitting ☐ Non-Pitting

Location: _____

4) Pacemaker ☐ If yes, last pacemaker check date: _____

5) Comments: _____

RESPIRATORY

(Check all that apply)

1) Respirations

- ☒ Even unlabored
- ☐ Labored
- ☐ Pursed lip breather
- ☐ Shortness of breath or trouble breathing with exertion (e.g., walking, bathing, transferring)
- ☐ Shortness of breath or trouble breathing when sitting at rest
- ☐ Shortness of breath or trouble breathing when lying flat

2) Breath Sounds

R	L
☒	☐
Clear	Rales/Crackles
	Wheezes

3) Cough

- ☐ Dry cough
- ☒ No cough observed
- ☐ Productive cough, describe: _____

4) Tuberculosis Risk/Screen

- ☐ Fatigue
- ☐ Anorexia
- ☐ Night sweats
- ☐ Low grade fever
- ☒ None of above per history and/or observation
- ☐ Persistent cough (> 2 weeks)
- ☐ Chest X-Ray, Date: _____
- ☐ Mantoux, Date: _____

5) Smoking History

- ☐ Never
- ☐ Formerly, date stopped: _____
- ☐ Currently, packs per day: _____

(Complete Smoking Evaluation)

- ☒ Information not available

6) Special Treatments and Procedures

- ☐ Oxygen therapy
- ☐ Suctioning
- ☐ Respiratory trmts.
- ☐ Other: _____
- ☐ Tracheostomy
- ☐ Ventilator
- ☐ O₂ Sat: _____
- ☐ CPAP/BIPAP
- ☐ None of above per history and/or observation

7) Comments: _____

Resident Name: LORIS PARIS

Attending Physician: EPS

Record #:

Room/Bed:

NURSING DATA COLLECTION TOOL

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ROA 308 PARIS, LORIS_ST. MATTHEWS 001395

Form # NFF-NP041

Reorder From: DSSI / MED-PASS

INH 041009

SECTION 8: PHYSICAL EVALUATION (continued)

SKIN CONDITION

(Check all that apply)

1) Wounds

☒ Wound(s) present (If checked, complete Wound Treatment & Progress for each wound)

- ☐ Previous pressure ulcer that has been resolved or cured in last 90 days per history
- ☐ Suspected deep tissue injury; location: _____

2) Other Skin Conditions

- ☐ Lesions ☐ Scabies ☐ Lice ☐ Rash
- ☐ Incision – free of redness/swelling/drainage
- ☐ Staples/Sutures intact
- ☐ Reddened area/Blanchable
- ☐ Reddened area/Non-blanchable (If checked, complete Wound Treatment & Progress)
- ☐ Bruising
- ☐ Skin tear: _____
- ☐ Infection of the foot (e.g., cellulitis, purulent drainage)
- ☐ Diabetic foot ulcer(s)
- ☐ Other open lesion(s) on the foot
- ☐ Open lesion(s) other than ulcers, rashes, cuts (e.g., cancer lesion)
- ☒ Surgical wound(s) - Describe site: wrist/hand old
- ☐ Burn(s) (second or third degree)
- ☐ Scar over bony prominence; location: _____
- ☐ Non-removable dressing/device; location: _____
- ☐ None of the above were present

3) Skin Color/Condition

- ☐ Cool ☒ Dry ☐ Cyanotic ☐ Pruritus ☐ Diaphoretic
- ☒ Warm ☐ Clammy ☐ Pale ☐ Jaundiced ☐ Flushed
- ☐ Other: _____

4) Comments:

HEMATOLOGICAL/ENDOCRINE

(Check all that apply)

1) Bleeding/Transfusion

- ☐ History of bleeding problems
- ☐ History of transfusions
- ☐ History of transfusion reactions
- Type: _____
- ☐ Anticoagulant therapy – Lab orders verified? ☐ Yes ☐ No
- ☐ None of above

2) Endocrine

- ☐ Type 1 Diabetes
- ☒ Type 2 Diabetes
- ☐ Oral hypoglycemic
- ☐ Diet controlled
- ☒ Insulin
- ☐ None of above

3) Comments:

PARTICIPATION IN EVALUATION

- ☐ Patient/Resident able to participate
- ☐ Family able to participate
- ☐ Significant other able to participate

MEDICAL NECESSITY DOCUMENTATION

Please summarize any medical condition that would exceed routine care and require the skills of a licensed nurse. Documentation should include assessment, planning and any interventions required to administer care:

Due to the resident having a knowledge deficit related to the tasks below or being unable to complete these tasks safely on their own, the following must occur in the nursing facility and the nurse must use empiric knowledge and specific nurse training to complete the following.

Check the boxes for the following:

- ☒ Nurse must administer medications
- ☒ Nurse must monitor for side effects and adverse reactions related to medications
- ☒ Nurse must monitor B/P and other vital signs
- ☒ Nurse must monitor blood sugar and assess for signs of hyper and hypoglycemia
- ☒ Nurse must administer injections
- ☒ Nurse must provide wound care and skin monitoring and assessment
- ☐ Nurse must monitor O₂ administration and/or sats and assess for signs of hypoxia
- ☒ Nurse must monitor labs for abnormal values and notify physician
- ☐ Nurse must ensure correct splint, brace, orthotic and prosthetic compliance
- ☒ Nurse must monitor for dementia, anxiety or depression

NURSES COMMENTS/DOCUMENTATION

Resident Name:

LORIS PARIS

Attending Physician:

EPS

Record #:

Room/Bed:

NURSING DATA COLLECTION TOOL

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ROA 309 PARIS, LORIS_ST. MATTHEWS 001396

EXHIBIT

N

SIDE ONE

Date: 4-12-19

DAILY SKILLED NURSE'S NOTE

VITAL SIGNS

D:		N:	
Temp: 98.2	Pulse: 89	Temp: _____	Pulse: _____
Resp: 16	B/P: 145/85	Resp: _____	B/P: _____
Pain: ☐ No ☐ Yes	Describe on Side Two	Pain: ☐ No ☐ Yes	Describe on Side Two

DIRECTIONS: For each shift, check (✓) all applicable boxes. Document specifics regarding Other Concerns and changes in condition on Side Two or per facility policy. After completion, sign under appropriate shift. Identify Services Provided on Side Two.

COGNITIVE	D	E	N	SKIN	D	E	N	GI	D	E	N	RESPIRATORY	D	E	N
Alert				Skin WNL				GI WNL				Normal breathing			
Comatose				Skin Concerns				GI Concerns				Respiratory Concerns			
Memory problems				Itching				Poor Appetite				Labored breathing			
Short-term (unable to recall after 5 minutes)				Rash				Poor or restricted fluid intake				Shallow respirations			
Long-term				Abnormal turgor				Nausea/vomiting				Orthopnea			
Memory/Recall problems				Abnormal skin color				Difficulty chewing				SOB:			
Current season				Unusual temperature				Difficulty swallowing				On exertion			
Location of own room				colder/warmer than adjacent skin				Abdominal distention				At rest			
Staff names and faces				Desensitized to pain or pressure				Bowel Sounds				Lying flat			
That he/she is in nursing home				Pressure Ulcer x3				Active				Lung sounds			
Impaired decision making				Skin Tear/Cut				Absent				Rales/rhonchi			
Exhibiting signs/symptoms of delirium				Surgical Wound				Hypoactive				Wheezing			
Inattention				Bruise				Hyperactive				Cough (if ✓, describe)			
Disorganized thinking				Venous or arterial ulcer				Diarrhea				D: _____			
Altered level of consciousness				Other open lesion				Constipation				E: _____			
Psychomotor retardation				Diabetic foot ulcer				Bowel Control				N: _____			
Other Concern(s) - note on Side Two				Infection of foot				Continent				O2 needed			
SENSORY/SPEECH				Other open lesions on foot				Incontinent				D: O2 sats _____			
Unable to hear				Other Concern(s) - note on Side Two				Toileting program for bowel continence				E: O2 sats _____			
Difficulty seeing				GU				Ostomy device				N: O2 sats _____			
Difficulty in speaking				GU WNL				Other Concern(s) - note on Side Two				Nebulizer Treatment			
Other Concern(s) - note on Side Two				GU Concerns				CARDIOVASCULAR				Suctioning			
MOOD PROBLEMS				Bladder distention/retention				Regular rhythm/WNL				BiPAP/CPAP			
Little interest/pleasure in doing things				Frequency/urgency				Radial/Apical irregular				Tracheotomy			
Feeling down, depressed, hopeless				Burning				Capillary refill sluggish				Ventilator/respirator			
Trouble falling/staying asleep/sleeping too much				Discharge				Neck vein distention				Other Concern(s) - note on Side Two			
Tired/has little energy				Urine Color				Chest pain				NEURO/MUSCULAR			
Poor appetite or overeating				D: yellow				Abnormal peripheral pulses				Gait steady			
Feeling bad about self				E: _____				Other Concern(s) - note on Side Two				Gait unsteady			
Trouble concentrating				N: _____				Edema (if ✓, complete below)				Balance problem			
Moving/speaking slowly or fidgety				Urine Consistency				Location 1: _____				Paralysis weakness			
Thoughts of hurting self				D: clear				Dependent				Syncope			
Other Concern(s) - note on Side Two				E: _____				Pulmonary				Decreased grasp			
BEHAVIOR PROBLEMS				N: _____				Pitting: 1+				Right			
Hallucinations				Urine Odor				2+				Left			
Delusions				D: ✓				3+				Decreased movement			
Physical behaviors (hitting, kicking, etc.)				E: _____				4+				RUE			
Verbal behaviors (screaming, cursing, etc.)				N: _____				Location 2: _____				LUE			
Other behaviors (socially inappropriate)				Catheter, type: Foley				Dependent				LLE			
Rejects evaluation or care				Bladder Control				Pulmonary				Abnormal pupil reaction			
Wanders				Continent				Pitting: 1+				Right			
Other Concern(s) - note on Side Two				Incontinent				2+				Left			
PHYSICAL FUNCTIONING				Pads/Briefs used				3+				Tremors			
Code SP: Self Performance				Bladder training or Toileting program				4+				Vertigo			
0 = Independent				Dialysis				Other Concern(s) - note on Side Two							
1 = Supervision				Other Concern(s) - note on Side Two											
2 = Limited assistance															
3 = Extensive assistance															
4 = Total dependence															
8 = ADL did not occur															
Code SU: Support Provided															
0 = No set-up or physical help															
1 = Set-up help only															
2 = One person physical assist															
3 = Two+ person physical assist															
8 = ADL Did Not Occur															

D: Assessor's Signature/Title E: Assessor's Signature/Title N: Assessor's Signature/Title

Resident's Name Last Paris First Louis Initial ID # Room # F81 Attending Physician EPS

ROA 310 PARIS, LORIS_ST. MATTHEWS 001454

EXHIBIT

O

PHYSICIAN CERTIFICATION
REGARDING ABILITY TO CONSENT

A resident's inability to consent must be certified by two licensed physicians (Code of Laws of South Carolina, Title 44, Chapter 66 – Adult Health Care Consent Act – §44-66-20). "Unable to consent" means unable to appreciate the nature and implications of the resident's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. "Health Care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin. Health Care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled or sick persons; and the placement in or removal from a facility that provides these forms of care.

PHYSICIAN STATEMENT

I, Claretta Corcoran FNRC (attending physician), do hereby certify that Loris Paris (Resident) is able unable to provide consent regarding health care decisions as defined by South Carolina Adult Health Care Consent Act.

My decision is based upon the following cause and nature: *(condition that is responsible for inability to consent & degree of intellectual or related disability; i.e. non-verbal, unable to follow commands)*

Dementia

I believe the extent of this inability is: *(specific areas where resident cannot make informed decisions.)*

Permanent

I believe that the probable duration of this inability is:

☒ Permanent ☐ Temporary

This declaration is made following examination of this resident and review of the medical record.

Claretta Corcoran FNRC
Attending Physician

4-16-19
Date

CONSULTING PHYSICIAN STATEMENT

I, Leo Tesion DO (attending physician), do hereby certify that Loris Paris (Resident) is able unable to provide consent regarding health care decisions as defined by South Carolina Adult Health Care Consent Act.

My decision is based upon the following cause and nature: *(condition that is responsible for inability to consent & degree of intellectual or related disability; i.e. non-verbal, unable to follow commands)*

Dementia

I believe the extent of this inability is: *(specific areas where resident cannot make informed decisions.)*

Severe

I believe that the probable duration of this inability is:

☒ Permanent ☐ Temporary

This declaration is made following examination of this resident and review of the medical record.

Leo Tesion DO
Consulting Physician

4-16-19
Date

From: [Hines, Russell](#)
To: mmurphysc@sccourts.org; mmurphyjc@sccourts.org;
Cc: [Josh Cantwell](#); teamcantwell@poulinwilley.com; [Davis, Jay](#); [Gandy, III, James D. \(Tripp\)](#); [Peterson, Susan](#); Preiser, Skyla; [Eversole, Amy R.](#);
Subject: Vaughn v. St. Matthews Healthcare (Case No. 2022-CP-38-00525) -- Memo/Exhibits for Hearing Tomorrow (6-6-24) on Motion to Compel Arbitration

Vaughn v. St. Matthews -- 2d Am. Mem. in Supp. of Mot. to Compel Arbitration.pdf;A -- Durable POA_Redacted.pdf;J -- McCutcheon Order.pdf;K -- Abrams Order.pdf;L -- Campsen Order.pdf;M -- Paris, Loris_St. Matthews 001392 -- Nursing Data Collection Tool.pdf;N -- Paris, Loris_St. Matthews 001454 -- Daily Skilled Nurse's Note (4-12-19).pdf;O -- Paris, Loris_St. Matthews 000065 -- Physician Certification Regarding Ability to Consent.pdf;B -- Tr. of Dep. of Beverly Vaughn (without exhibits)_Redacted.pdf;C -- Tr. of Dep. of Cindy Reck (without exhibits)_Redacted.pdf;D -- Admission Agreement_Redacted.pdf;E -- Arbitration Agreement.pdf;F -- Authorizations, Consents & Acknowledgments_Redacted.pdf;G -- Tr. of Dep. of George Paris (without exhibits)_Redacted.pdf;H -- Price Order.pdf;I -- Spears Order.pdf;
Attachments:

Sent: 6/5/2024 5:41:33 PM

Judge Murphy:

Attached please find **Defendant Saint Matthews Healthcare, LLC's Second Amended Memo in Support of its Motion to Compel Arbitration** and the exhibits thereto, all of which, except for Exhibits M, N, and O, which are only being submitted to the Court via email and not via filing, have been submitted to the E-Filing System.

Thank you very much for your attention to this matter.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO. 2022-CP-38-00525
BEVERLY VAUGHN	)	
as Personal Representative of	)	
the Estate of Loris Paris,	)	
	)	MOTION TO ALTER, AMEND, AND/OR
Plaintiff,	)	RECONSIDER ORDER
	)	DENYING DEFENDANTS' MOTION
vs.	)	TO COMPEL ARBITRATION
	)	
ST. MATTHEWS HEALTHCARE, LLC;	)	
MELISSA KIZER; MELISSA DAVIS; and	)	
ANGELA SMITH TELIHA,	)	
	)	
Defendants.	)	
	)	

TO: THE HONORABLE MAITE MURPHY, Presiding Judge, and PLAINTIFF'S COUNSEL OF RECORD

NOW COME Defendant Saint Matthews Healthcare, LLC, incorrectly identified in this action as "St. Matthews Healthcare, LLC" (the "Facility") and Defendants Melissa Kizer ("Kizer") and Melissa Davis ("Davis") (collectively, Kizer and Davis are the "Other Defendants") (collectively, the Facility and the Other Defendants are the "Movants"), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCF, and, on the grounds set forth below, hereby most respectfully move this Honorable Court to alter, amend, and/or reconsider its order filed November 13, 2024 (the "Subject Order"), denying the Facility's motion, filed August 9, 2022, to compel Plaintiff's¹ claims to arbitration (the "Motion to Compel Arbitration") and the Other Defendants' companion motions, also filed August 9, 2022, to stay this litigation as to them

¹ "Plaintiff" refers to Beverly Vaughn ("Ms. Vaughn"), as Personal Representative of the Estate of Loris Paris ("Ms. Paris"). "Mr. Paris" refers to George Paris, Ms. Paris's son who executed the Admission Agreement and Arbitration Agreement on Ms. Paris's behalf

pending the outcome of the arbitration the Facility sought to compel (the “Motions to Stay”) (collectively, the “Underlying Motions”).²

- I. Contending, most respectfully, that the Underlying Motions should have been (and should now be) granted, the Movants ask the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Underlying Motions, i.e., each and every distinct issue/argument set forth in the Underlying Motion themselves; in the Movants’ memos in support of the Underlying Motions; and via oral argument, all of which is/are hereby incorporated herein by reference.**

See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

² Given the relationship between the Underlying Motions, the fact that they were all before the Court and argued together, the fact that the Subject Order refers to “Defendants’ [(plural)] Motion to Compel Arbitration and Motion to Stay Proceedings” and the denial of “Defendants’ [(plural)] Motions” (Subject Order p. 1), it is the Movants’ understanding that the Subject Order denied all of the Underlying Motions, i.e., that it not only denied the Motion to Compel Arbitration but also denied the Motions to Stay. Out of an abundance of caution, however, to the extent that the Subject Order does not dispose of the Motions to Stay, the grounds for the instant motion include that the Court should rule on the Motion to Stay.

II. Without waiving or otherwise lessening the all-encompassing scope of the foregoing (i.e., I. above), the Movants most respectfully ask the Court to (re)consider and expressly rule on/address the following particular points.

A. The Court should have found (and should now find) that the Admission Agreement and the Arbitration Agreement merged and that, because Ms. Paris effectively embraced and directly benefitted from the Admission Agreement, she and, in turn, Plaintiff (her estate) is estopped to deny the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith.

1. Merger

In *Coleman v. Mariner Health Care, Inc.*, even though our Supreme Court found against merger on the particular *facts* of the case, it nonetheless confirmed the validity of the general proposition of *law* on which the *Coleman* appellants based their merger/equitable estoppel argument:

Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is nevertheless equitably estopped to deny the [arbitration agreement's] enforceability. The circuit court held there was no estoppel here, and we agree.

Appellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. In South Carolina,

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

Klutts Resort Realty, Inc. v. Down 'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

Here, *the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same*

transaction. Unless there is a contrary intention, appellants are correct that there was a merger.

407 S.C. 346, 354–55, 755 S.E.2d 450, 455 (2014) (emphasis added).

Here, the Court has erred in not finding in favor of the Facility’s merger argument and not recognizing material differences between the facts and arguments involved in the instant case and those that controlled (or were simply not addressed in) *Coleman* and its progeny *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), and, as addressed separately below, in *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

The Court should have concluded that the Admission Agreement and the Arbitration Agreement merged. The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”³ as undoubtedly the Admission Agreement and the Arbitration Agreement were here,⁴ there is evidence to upset the *presumption in favor of merger*, i.e., the presumption that the instruments were intended to be construed together as effectively one contract. This is a question of intention. *Id.* at 355, 755 S.E.2d at 455 (“in the absence of anything indicating a contrary intention . . .”) (emphasis added). And “in attempting to ascertain th[e] [parties’] intention,” our

³ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

⁴ To be clear, *Coleman* unequivocally answers the question of whether the instant Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

courts “endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into.” *Klutts*, 268 S.C. at 89, 232 S.E.2d at 25.

It must be remembered that, where, as here, the instruments in question were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, merger is *presumed*. For the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only by actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. Indeed, under the circumstances, the idea that there would have been an intention contrary to merger does not make sense.

Unlike the arbitration agreement at issue in *Coleman*—and, for that matter, the arbitration agreements at issue in *Coleman*’s progeny *Thompson* and *Hodge*, all of which cases involved arbitration agreements that contained a provision allowing them to be disclaimed or revoked within 30 days of signing while the corresponding admission agreements did not—the instant Arbitration Agreement has no disclaimer/revocation provision. (Arbitration Agreement.) Moreover, while the instant Admission Agreement does contain an “Entire Agreement” clause, it does not reference the Arbitration Agreement as a separate contract. (Admission Agreement p. 12.) Indeed, directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court⁵), the “Entire

⁵ 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the “Entire Agreement” clause expressly referred to a separate arbitration agreement and,

Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” (Admission Agreement p. 12.) Without question, the Arbitration Agreement is among these other materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission documentation—including the Arbitration Agreement.”) (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295 (“Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement.*”) (emphasis added)).⁶

To be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required as a precondition of Ms. Paris’s residency at the Facility.⁷ But all this means is that the

thus, “recognize[d] the ‘*separatedness*’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.”) (emphasis added).

⁶ To be clear, the Facility’s point here is not that the holding of either *Stott* or *Hodge* established a legal standard for what counts as admission paperwork, but rather that the very fact that the language that the *Stott* and *Hodge* Courts used in discussing the facts of the cases so readily made the natural and logical connection between arbitration agreements signed in conjunction with admission and “admission documentation” / “documents related to . . . admission” that it illustrates that, in its plain, ordinary, and popular sense, “Admissions materials” plainly includes the Arbitration Agreement. *See Beaufort Cnty. Sch. Dist. v. United Nat’l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) (“If the contract’s language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract’s force and effect.”). Moreover, this connection between the Admission Agreement and the Arbitration Agreement (with the Arbitration Agreement being understood in the plain, ordinary, and popular sense as included in the term “Admissions materials”) is underscored by the *Coleman* Court’s recognition that an admission agreement and arbitration agreement signed in conjunction with resident’s admission to a nursing facility are indeed “executed at the same time, by the same parties, *for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

⁷ The statement in the Subject Order that “the Defendant’s staff *made* [Mr. Paris] sign the facility’s arbitration agreement” (Subject Order p. 5 (emphasis added)) is erroneous. The Facility’s admissions director, Cindy Reck, expressly testified that the Arbitration Agreement was

Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become part of the admissions materials once it was in fact executed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

Moreover, while it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: The Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement’s) sole reason for being. (Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or relating to [the] Facility’s Admission Agreement, or breach thereof, or relating in any way to [Ms. Paris’s] stay at [the] Facility, or to the provisions of care or services to [Ms. Paris]”); *id.*

optional, i.e., that Mr. Paris was not required to sign it, and that she told Mr. Paris so. (Ex. C to Facility’s 2d Am. Mem. in Support [Dep. of Cindy Reck] p. 22:6–22.) In fact, he agreed he was not “forced” into signing anything at the facility. (Ex. G to the Facility’s 2d Am. Mem. in Support [Dep. of George Paris] p. 25:2–4.)

(“This [Arbitration] Agreement shall remain in effect for all care rendered at [the] Facility”).⁸

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission; whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of Ms. Paris’s relationship with the Facility, the Admission Agreement setting forth the terms of her admission, the Arbitration Agreement providing for arbitration of disputes arising out of her admission. (*Compare* Admission Agreement (setting forth the terms of Ms. Paris’s admission to the Facility) *with* Arbitration Agreement (providing for arbitration of disputes arising out of Ms. Paris’s admission in the Facility).)

Also absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (“This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration Agreements (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal

⁸ Without question, Plaintiff’s claims against the Facility are within the scope of the Arbitration Agreement, the plain language of which calls for arbitration of “any controversy or dispute between the parties arising out of or relating to [the] Facility’s Admission Agreement, or breach thereof, or relating in any way to [Ms. Paris’s] stay at [the] Facility, or to the provisions of care or services to [Ms. Paris]” (Arbitration Agreement.) But even if there were “any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

Arbitration Action,” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules”).) Essentially, both instruments provide that South Carolina law applies except where displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

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

The fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intention contrary to merger. To point to such things, is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about whether they are intended to be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary

factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of *merger* is to *merge* separate documents.

And—besides the fact that there is indeed no ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement—to fall back on the idea that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context. It must be remembered that *merger is the default position*, i.e., it is presumed, and that this presumption arises only upon the occurrence of a specific set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these align—same time, same parties, same purpose, same transaction—our courts will consider and construe the documents together *unless* there is evidence of a contrary intention.

The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter, (a) it did so in dicta⁹ and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this case¹⁰—in recognizing a rule of law creating a presumption in favor of merger (i.e., in recognizing the occurrence of a set of circumstances (same time, parties, purpose, and transaction) as sufficiently probative to

⁹ *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455 (“By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. *Even if* the ‘Entirety’ clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants.”) (emphasis added) (internal citation omitted); see *Nash v. Tindall Corp.*, 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007) (“Judicial dicta is not essential to the decision. Dicta . . . is a statement on a matter not necessarily involved in the case, and is not binding as authority.”) (internal citations and quotations marks omitted).

¹⁰ To be clear, none of *Coleman*’s progeny has addressed this either.

affirmatively tip the scales in favor of merger) while at the same time allowing that presumption to be completely overturned by evidence that is merely ambiguous, i.e., evidence that does not even go so far as to clearly indicate a contrary intention and, indeed, is actually still susceptible to a reasonable conclusion in favor of merger. *See S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are *reasonably* susceptible of more than one interpretation.”) (emphasis added).

Respectfully, any finding against merger relies on improper speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent. The presumption of merger arises from the concurrence of the four elements of time, parties, purpose, and transaction. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. This is why for the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). The merger presumption is “earned,” so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

The Court should have found that the Arbitration Agreement merged with the Admission Agreement. The instruments were executed at the same time, by the same parties, for the same

purposes, and in the course of the same transaction, the whole of which related to Ms. Paris's admission to the Facility and would not have been done at all but for her admission to the Facility. Any finding against merger improperly relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding the contracting parties' intent.

(a) Most respectfully, the merger analysis in *Solesbee* is erroneous and incomplete, and it should not control the disposition of this case.

In *Solesbee*, 438 S.C. 638, 885 S.E.2d 144, our Court of Appeals affirmed the circuit court's denial of a motion to compel arbitration in the face of a merger/equitable estoppel argument substantially the same as at present. Indeed, the Arbitration Agreement and Admission Agreement in issue in the instant case are the same form documents as in *Solesbee*.

In affirming the circuit court's denial of the motion to compel arbitration, the *Solesbee* Court likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no merger of the Admission Agreement and the Arbitration Agreement and, in turn, had properly denied the Facility's equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 ("Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and [the Facility's] equitable estoppel argument was properly denied.") Most respectfully, the merger analysis in *Solesbee* is erroneous and incomplete, and it should not control the disposition of this case.

First, the *Solesbee* Court erroneously found against merger on the basis that "the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law." It is not true that "the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law."

Regarding governing law, what the Admission Agreement actually states is this: “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which the Facility is located.” (Admission Agreement.) And what the Arbitration Agreement actually states is this:

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

(Arbitration Agreement.)

Without question, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the “FAA”), applies to the Arbitration Agreement. The FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *Allied-Bruce*, 513 U.S. at 273–77 (explaining that, unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

The rule that the FAA applies whenever an arbitration agreement involves interstate commerce of course applies even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12

(1984) (The FAA “create[d] a body of federal substantive law,” which is “applicable in state and federal courts.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.”); *see also Allied-Bruce*, 513 U.S. 265, 270–77. Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted). Further still, the Arbitration Agreement expressly calls for the arbitration proceedings to be conducted pursuant to the South Carolina ADR Rules. (Arbitration Agreement.)

Essentially, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are to the effect that South Carolina law applies except where displaced by federal law, and indeed, even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself, the FAA would still apply separately to the Arbitration Agreement. In other words, any difference between the governing law as to the Arbitration Agreement and the governing law as to the Admission Agreement would still exist even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself. Accordingly, the supposed difference in the governing law does not support any reasonable inference of any intent contrary to merger.

Second, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement ‘shall survive any termination or breach of this Agreement or the Admission Agreement.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger here. Unlike in *Coleman* and *Hodge*, the supposed textual recognition of the Admission Agreement as being separate from the Arbitration Agreement is not included in any “Entire Agreement” provision. Rather, the “Entire Agreement” provision of the Admission Agreement expressly states, “other Admissions materials . . . are made a part of this Agreement by reference.” (Admission Agreement p. 12.) And as in the instant case, the Arbitration Agreement that was signed in conjunction with the admission is clearly among these “other Admissions materials.” Moreover, that the Arbitration Agreement “shall survive any termination or breach of this Agreement or the Admission Agreement” just means that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. Again, this is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. 2d at 612–13 (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

Third, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, ‘Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable

inference of an intent contrary to merger. The absence of a “revocation” provision is one way in which the Arbitration Agreement is materially different from those at issue in *Coleman* and *Hodge*, and, for that matter, *Thompson*. Moreover, the *Solesbee* Court drew a false equivalency between the concept of “revocation” and that of “termination.” A “revocation” is an annulment (i.e., to make something a nullity),¹¹ whereas “termination” is to put or bring something to an end. *Id.* at p. 1482. And, again, that the Arbitration Agreement survives the termination of the Admission Agreement is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. at 612–13.

Fourth, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages.” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, the fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of

¹¹ *Black’s Law Dictionary* p. 1321 revocation (7th ed. 1999); *id.* at 89 annulment (“The act of nullifying or making void.”).

merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of *merger* is to *merge* separate documents.

Finally, the *Solesbee* Court erroneously found against the Facility on merger on the basis that Arbitration Agreement was voluntary. 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, to be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for the resident to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

To say that the Arbitration Agreement was not required for admission, which it was not, is not to say that it was not intended to be part of the admissions materials in the event it was agreed to, which it was, by Mr. Dover on Ms. Solesbee's behalf in *Solesbee* and by Mr. Paris on Ms. Paris's behalf in the instant case. While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: the Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration

Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement's) sole reason for being. (*See* Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or relating to Facility’s Admission Agreement, or breach thereof, or relating in any way to Resident’s stay at Facility, or to the provisions of care or services to Resident”); *id.* (“This [Arbitration] Agreement shall remain in effect for all care rendered at Facility”).)

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission, whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of the resident’s relationship with the Facility: the Admission Agreement setting forth the terms of her admission, the Arbitration Agreement providing for arbitration of disputes arising out of her admission. (*Compare* Admission Agreement (setting forth the terms of the admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of the admission).)

Accordingly, the merger analysis in *Solesbee* is erroneous and incomplete, and it should not control the disposition of this case.

2. Equitable Estoppel

The Facility’s merger/equitable estoppel argument is a standalone argument that does not depend on any showing of authority (actual or apparent or otherwise) on the part of Mr. Paris or otherwise on the existence of any per se valid and enforceable agreement between the parties. *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (“South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel.”); *see also Coleman*, 407 S.C. at 354–55, 755

S.E.2d at 455 (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel); *id.* (explaining that “Appellants’ equitable estoppel argument,” which “[wa]s premised on [Appellants’] contention that, under state law, the admission agreements and the [arbitration agreements] merged,” as follows: “Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] . . . , she is nevertheless *equitably estopped to deny the [arbitration agreement’s] enforceability.*”) (emphasis added).

Conceptually, the Facility’s merger/equitable estoppel argument is *not* an argument for the *enforceability* of the Admission Agreement/Arbitration Agreement *but rather* an argument for *Ms. Paris and, in turn, Plaintiff (her estate) to be estopped to deny the enforceability* of the Admission Agreement/Arbitration Agreement. In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and Ms. Paris having effectively embraced and directly benefitted from the Admission Agreement, her estate is now estopped to deny the enforceability not only of the Admission Agreement but also the Arbitration Agreement merged therewith.

Accordingly, as to the Facility’s merger/equitable estoppel argument, any contrary analysis regarding the Admission Agreement/Arbitration Agreement’s supposed lack of enforceability—e.g., that Mr. Paris lacked authority to sign the Admission Agreement/Arbitration Agreement on behalf of Ms. Paris under the law of agency and/or under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. §§ 44-66-10 to -80, because Mr. Paris lacked power of attorney or guardianship over Ms. Paris, and/or because Ms. Paris was not a third-party beneficiary of the Arbitration Agreement—is beside the point and unavailing to refute the Facility’s merger/equitable estoppel argument, which, again, turns not on the question of whether the Arbitration Agreement is enforceable but whether Ms. Paris and, in turn, Plaintiff (her estate) is estopped to deny its enforceability.

In *Wilson*, our Supreme Court favorably discussed the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and under which the Facility contends Ms. Paris and, in turn, Plaintiff (her estate) is estopped from refusing to comply with the Arbitration Agreement here, where Ms. Paris received direct benefits (in the form of her admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement was merged. *Wilson*, 426 S.C. at 340–345, 827 S.E.2d at 175–177; *see also id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added).

Wilson supports the use of the direct benefits test to answer the question of equitable estoppel in an arbitration case like this, and it instructs that the key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the nonsignatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (“Under direct benefits estoppel, [a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits

theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted).

Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

Here, Ms. Paris was a direct beneficiary. To deny her receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of her residency: every night’s stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility—even her complaint does not go nearly so far as that. (*See Compl.*)

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Ms. Paris received the benefit of her admission to the Facility, including, without limitation, the room,

board, care, and treatment he received therein. Respectfully, the Court should have found that the Arbitration Agreement merged with the Admission Agreement and that Ms. Paris and, in turn, Plaintiff (her estate) is estopped to deny the Admission Agreement/Arbitration Agreement's enforceability, Ms. Paris having effectively embraced the contract with the Facility for the purpose of her admission and receipt of the benefits thereof.¹²

B. The Court should have found (and should now find) that the Arbitration Agreement was indeed valid because Mr. Paris had authority to sign it for Ms. Paris under principles of agency law.

At the time of her admission, Ms. Paris was no longer able to care for herself (Ex. B to the Facility's 2d Mem. in Support [Dep. of Beverly Vaughn] pp. 16:22-17:15.) According to Mr. Paris, by the time Ms. Paris went to the Facility, he was no longer able to have a conversation with her: "it was no more speaking or talking or anything like that." (Ex. G to the Facility's 2d Mem. in Support [Dep. of George Paris] pp. 10:18-11:6; *see also* Ex. B to the Facility's 2d Mem. in Support [Dep. of Beverly Vaughn] p. 29:4-11 (referring to Ms. Paris's status with respect to communication at the time of her admission to the Facility: "She would not. She wasn't talking.")) Medical records from the time, copies of which were attached hereto as Exhibits M, N, and O to the Facility's Second Memo in Support, respectively, but were only provided to the Court and opposing counsel via email rather than filing, reflect that Ms. Paris was suffering from dementia; an inability to recall the current season, staff names/faces, the location of her room, or that she was in a nursing home; impaired mental status; disorganized thinking; altered level of consciousness; difficulty speaking, and an inability to provide consent regarding health care decision as defined by the South Carolina Adult

¹² To be clear, although the dispute here is about the Arbitration Agreement, as opposed to the Admission Agreement, to the extent there were any question about the enforceability of the Admission Agreement, the Facility's equitable estoppel argument applies with equal force to the Admission Agreement.

Health Care Consent Act. (*See* Ex. M to the Facility’s 2d Mem. in Support [Nursing Data Collection Tool (Bates No. Paris, Loris_St. Matthews 001392)] (regarding diagnosis of dementia, lack of recall, and limited ability to understand and be understood); Ex. N to the Facility’s 2d Mem. in Support [Daily Skilled Nurse’s Note dated April 12, 2019 (Paris, Loris_St. Matthews 001454)] (regarding impaired decision making, disorganized thinking, altered level of consciousness, and difficulty speaking); Ex. O to the Facility’s 2d Mem. in Support [Physician Certification Regarding Ability to Consent [Paris, Loris_St. Matthews 000065]] (regarding dementia and inability to provide consent to health care decisions).

Years earlier, on February 6, 2015, Ms. Paris had executed a Durable Power of Attorney (the “power of attorney”), naming Ms. Vaughn as her attorney-in-fact. (*See* Ex. A to the Facility’s 2d Mem. in Support [Durable Power of Attorney].) In broad and unlimited terms, the power of attorney granted Ms. Vaughn authority “to do and perform all acts, deeds, matters, and necessary and advisable . . . as fully and effectual for all intents and purposes as [Ms. Paris] could do if personally present and acting” and expressly granted Ms. Vaughn authority to “arbitrate” on behalf of Ms. Paris. (*See* Ex. A to the Facility’s 2d Mem. in Support [Durable Power of Attorney] pp. 1, 5.) Ms. Vaughn herself understood that the power of attorney allowed her to “handle whatever needed to be handled” on her mother’s behalf as if she “acted as Loris Paris.” (Ex. A to the Facility’s 2d Mem. in Support [Dep. of Beverly Vaughn] p. 9:12-22.) Specifically, she understood that the power of attorney gave her the authority to execute legally binding documents on behalf of her mother. (Ex. A to the Facility’s 2d Mem. in Support [Dep. of Beverly Vaughn] p. 40:4-8.)

When Ms. Paris was admitted to the Facility, Ms. Vaughn was living out of state and could not be present. Ms. Vaughn contacted the Facility and spoke with then-Admissions Director, Cindy Reck, concerning her mother’s admission. (Ex. C to the Facility’s 2d Mem. in Support [Dep. of

Cindy Reck] p. 8:11-18.) Ms. Reck offered to send Ms. Vaughn the admission paperwork, but Ms. Vaughn declined to sign the documents herself. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 8:9-21.) Instead, Ms. Vaughn had Mr. Paris complete the paperwork. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 8:9-21.) Ms. Vaughn told Ms. Reck specifically that Mr. Paris could complete the admissions paperwork. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 26:12-16, p. 27:1-14.) She also told Ms. Reck that she was her mother's "power of attorney" and that Mr. Paris had permission to sign paperwork for Ms. Paris to be admitted to the Facility. (Ex. B to the Facility's 2d Mem. in Support [Dep. of Beverly Vaughn] p. 27:1-15; Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 27:1-15). When she was deposed in this case, Ms. Vaughn was unable to recall telling Ms. Reck that there was any limitation on the type of paperwork that Mr. Paris was authorized to sign for Mr. Paris. (Ex. B to the Facility's 2d Mem. in Support [Dep. of Beverly Vaughn] pp. 27:17-29:8.)

Mr. Paris met with Ms. Reck at Facility and signed the Admission Agreement on April 12, 2019. (See Admission Agreement p. 12.) According to Ms. Reck, Mr. Paris said he could not stay to complete the remaining paperwork and left the Facility after signing the Admission Agreement, but at the request of Ms. Reck and Ms. Vaughn, Mr. Paris returned to complete the remaining paperwork, including the Arbitration Agreement and certain authorization, consents, and acknowledgements, relating to his mother's care on April 15, 2019. (See Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] pp. 17:19-23:2; Ex. E to the Facility's 2d Mem. in Support [Arbitration Agreement]; Ex. F to the Facility's 2d Mem. in Support [Authorizations, Consents & Acknowledgments].)

Ms. Reck explained to Mr. Paris what the Arbitration Agreement was and told him it was optional (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 22:21-22, p. 23:3-10.)

She also asked him to read the Arbitration Agreement before signing it. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 24:8-10.) During their meeting, Mr. Paris had the opportunity to read any of the documents, including the Arbitration Agreement, he was signing. Ms. Reck was also there to answer any questions he may have had. (Ex. G to the Facility's 2d Mem. in Support [Dep. of George Paris] p. 23:17-20, p. 24:15-17.)

Regarding Mr. Paris's authority to sign, the Arbitration Agreement expressly states:

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

(Arbitration Agreement.) And by virtue of his signature, Mr. Paris is "presumed to have read, understood, and assented to [the] terms" of the Arbitration Agreement, *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.")

Through her conversations with Ms. Vaughn, Ms. Reck understood that Mr. Paris had the authority to sign the admission paperwork, including the Arbitration Agreement. Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 29:6-10.) Neither Mr. Paris nor Ms. Vaughn ever explained to her that Mr. Paris was only authorized to sign the Admission Agreement and not the Arbitration Agreement. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 29:11-16.) In fact, Ms. Reck testified she would not have presented Mr. Paris with the Arbitration Agreement, had she known he was not authorized to sign. (Ex. C to the Facility's 2d Mem. in Support [Dep. of Cindy Reck] p. 29:17-21.)

"A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal." *Watson v. Underwood*, 407 S.C. 443, 454, 756 S.E.2d 155, 161

(Ct. App. 2014) (quoting *In re Thames*, 344 S.C. 564, 569, 544 S.E.2d 854, 856 (Ct. App. 2001)) (internal quotation marks omitted). “[T]he holder of [the] power of attorney steps into the shoes of the grantor and is basically the alter ego of the grantor.” *Bennett v. Carter*, 421 S.C. 374, 382, 807 S.E.2d 197, 201 (2017).

Mr. Paris possessed the *actual* authority to execute the Arbitration Agreement in addition to the other admissions paperwork he signed for his mother. The power of attorney permitted Ms. Vaughn as attorney-in-fact to “do and perform all acts, deeds, matters...as [Ms. Paris] could do if personally present and acting.” (Ex. A to the Facility’s 2d Mem. in Support [Power of Attorney] p. 1). Commensurate with this broad authority, Ms. Vaughn was expressly permitted to “appoint agents...upon such terms and conditions and at such compensation as [Ms. Vaughn] shall deem proper in the exercise of the powers herein granted.” (Ex. A to the Facility’s 2d Mem. in Support [Power of Attorney] p. 5). Ms. Vaughn also possessed the authority arbitrate disputes on her mother’s behalf. (*Id.*, “On my behalf and in my name or the name of my Attorney, to institute, prosecute, appear in, defend, compromise, **arbitrate**...any legal, equitable, or administrative hearings actions, suits...to which I am or may become a party or in which I have any interest.) There can be no dispute that Ms. Vaughn, acting as her mother’s attorney in fact, appointed Mr. Paris as her representative to execute admission paperwork. The record contains no indication that Ms. Paris ever expressly limited George Paris’ authority to specifically exclude the authority to sign arbitration agreements.

And while the power of attorney was a springing power, i.e., it did not become effective until Ms. Paris was mentally incompetent or incapacitated, the record (cited in the background section above) shows that Ms. Paris was indeed mentally incompetent/incapacitated when she was admitted to the Facility. Moreover, in response to questioning from Plaintiff’s own counsel about

whether she “w[as] the person that should be signing documents for [Ms. Paris]” at the time of her admission, Plaintiff herself testified, “Absolutely.” (Ex. B to the Facility’s 2d Mem. in Support [Dep. of Beverly Vaughn] pp. 32:18-33:1.) In other words, Plaintiff herself clearly takes the position that any conditions precedent to her ability to act as Ms. Paris’s attorney-in-fact had come to pass by the time Ms. Paris was admitted to the Facility. Further still, the power of attorney does not define incompetent/incapacitated or establish any particular procedure for determining when this has occurred. This reflects an intent to prioritize flexibility and functionality so that Ms. Vaughn was able to seamlessly step in to protect Ms. Paris’s interests when Ms. Vaughn believes such action is warranted—and clearly, given all of her admitted actions as attorney-in-fact at the relevant time, Ms. Vaughn believed such action was warranted when Ms. Paris was admitted to the Facility. Indeed, the power of attorney expressly gives third parties, like the Facility, the right to rely on the actions Ms. Vaughn took as attorney-in-fact “without inquiring” as to their propriety. (Ex. A to the Facility’s 2d Mem. in Support [Power of Attorney] p. 6 (Without limiting in any way the right of third parties to rely on actions by my Attorney-in-Fact without inquiring as to the property [sic] of such actions, I do hereby declare as between me and my Attorney-in-Fact a fiduciary relationship exist”).)

Mr. Paris also possessed the *apparent* authority to execute the Arbitration Agreement. Ms. Vaughn clearly held Mr. Paris out as her agent to sign admission paperwork for their mother, with no indication to the contrary. Based on Ms. Vaughn’s (and George conduct and representations during the admissions process, Ms. Reck believed she possessed the authority to execute *all admissions documents* on his behalf, including the Arbitration Agreement. Neither of the siblings ever communicated to Ms. Reck that George specifically did not have the authority to sign the Arbitration Agreement. Ms. Reck understood George had the authority to sign any admissions

paperwork, including the Arbitration Agreement. She presented him with Arbitration Agreement based on the understanding he was in a position to accept or decline arbitration. She would not have presented the agreement to him, had she known he lacked the ability to make such a decision. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances”) (emphasis added).

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable belief that the agent has been authorized to act.* By telling Ms. Reck Mr. Paris was authorized to sign admissions paperwork, Ms. Vaughn cloaked Mr. Paris with the authority to execute the admissions paperwork, including the Arbitration Agreement. Further, no family member ever repudiated or invalidated Mr. Paris' actions. Instead, Ms. Vaughn allowed her mother to remain at the Facility and receive skilled nursing care and services, thereby ratifying her brother's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, Ms. Reck and the Facility were further justified in believing Mr. Paris had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Arbitration Agreement should be deemed enforceable.

C. The Arbitration Agreement is not unconscionable.

The Court's unconscionability analysis is erroneous and does not apply the applicable test, under which the Arbitration Agreement clearly is not unconscionable. For an agreement to be

deemed unconscionable, there must be both (1) an absence of meaningful choice on the part of one party due to one-sided contract provisions and (2) terms that are so oppressive no reasonable person would make them and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). Neither is the case here.

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

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

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

By signing the Arbitration Agreement and Admission Agreement, Mr. Paris, acting on behalf of Ms. Paris, with express authority effectively from Ms. Paris herself via her attorney-in-fact Ms. Vaughn (who, again, according to the plain language of the power of attorney, was authorized “to

do and perform all acts, deeds, matters, and necessary and advisable . . . as fully and effectual for all intents and purposes as [Ms. Paris] could do if personally present and acting”¹³ and was expressly authorized to “arbitrate” on behalf of Ms. Paris¹⁴), represented that he understood and assented to their terms. Indeed, he was given the option of entering into the Arbitration Agreement – *or not* – and he freely and voluntarily made the decision to proceed. The Arbitration Agreement by its plain language was not a precondition of admission to the Facility and simply could not have been an adhesion or “take it or leave it” contract. Mr. Paris had the option not to enter into the Arbitration Agreement on behalf of his mother, yet he voluntarily did so, voluntarily did not retract his agreement thereto, and his mother stayed at the Facility and received skilled nursing care after admission.

Ms. Reck gave Mr. Paris the option of entering into the Arbitration Agreement after explaining it to him and he made the decision to proceed. In addition, although her personal experience with arbitration is beside the point, Ms. Reck was available to answer any questions he may have had about any of the paperwork he signed.¹⁵ Mr. Paris did not have to accept this offer nor has there been any allegation or evidence that he was coerced into signing anything. In fact, he agreed he was not “forced” into signing anything at the facility. (Ex. G to the Facility’s 2d Mem. in Support [Dep. of George Paris] p. 25:2-4.) Again, references in the Subject Order to Mr. Paris having been made or otherwise required or forced to sign the Arbitration Agreement are erroneous. And as for the Court’s reliance on the fact that “Plaintiff was not given a copy of the South Carolina

¹³ (See Ex. A to the Facility’s 2d Mem. in Support [Power of Attorney] p. 1.)

¹⁴ (See Ex. A to the Facility’s 2d Mem. in Support [Power of Attorney] p. 5.)

¹⁵ Again, by virtue of his signature, Mr. Paris himself is “presumed to have read, understood, and assented to [the] terms” of the Arbitration Agreement, *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”)

Alternative Dispute Resolution Rules with the agreement” (Subject Order p. 9), the Facility is not aware of any legal authority requiring such a copy to be given, and the Subject Order cites none.

Nonetheless, even if Plaintiff could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiff must still show that the “terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, the Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 25, 644 S.E.2d at 668. Under the terms of the Arbitration Agreement, the parties are to select a third-party arbitrator *jointly* “from a panel having experience and knowledge of the health care industry.” (Arbitration Agreement.) If the parties are unable to agree upon such an arbitrator, the agreement vests the Court with authority to make a selection. The selected neutral arbitrator is vested with authority to hear the case and make a decision which is “binding on all parties.” As a result, it can only be said that the Arbitration Agreement allows for complete mutuality of remedies. Neither party is given an advantage by its terms. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration. And there is nothing about the Arbitration Agreement—which, again, calls for arbitration conducted pursuant to the South Carolina ADR Rules—that would suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker. Indeed, Rule 1 of the South Carolina ADR Rules expressly states, “These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.” Moreover, the rules empower the panel of arbitrators to conduct the arbitrator so as to achieve these ends, including addressing the matters regarding the locations of the proceedings, costs, and the

availability of discovery. *See* Rules 12 (regarding the arbitration hearing and award¹⁶) and 13 (authority and duties of arbitrators), SCRADR. To say that terms of the Arbitration Agreement are unconscionable is to say that the terms of the South Carolina ADR Rules are unconscionable, which, of course, they are not.

D. The Admission Agreement does not lack consideration or benefit to Plaintiff.

Without question, mutual promises to arbitrate, like those set forth in the Arbitration Agreement, constitute sufficient consideration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”) (citing *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“[T]he exchange of promises qualified as consideration.”); *see also* *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) (“Mutual promises also constitute a good consideration.”). The Subject Order’s view that the Arbitration Agreement is invalid for lack of consideration or a benefit to Plaintiff is erroneous. The mutual promises to arbitration are sufficient consideration insofar as the Facility’s agency argument is concerned. And as far as the Facility’s equitable estoppel argument is concerned, the merger of the Arbitration Agreement and the Admission Agreement means that the direct benefits Ms. Paris received under the Admission Agreement are sufficient to estop Plaintiff from denying the validity of the Arbitration Agreement, because the Arbitration Agreement (by virtue of merger) is part and parcel of the Admission Agreement.

¹⁶ Although arbitrations under the South Carolina ADR Rules are “non-binding . . . unless otherwise expressly agreed,” here, the Arbitration Agreement expressly calls for binding arbitration.

III. The Motions to Stay should have been granted, too.

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that the denial of the former mooted the latter. Accordingly, to show, as, most respectfully, the Facility has, that the Court erred in denying the Motion to Compel Arbitration, is also to show that the Court erred in denying the corresponding Motions to Stay, which should have (and now should be) granted. *See* 9 U.S.C. § 3 (“If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.”) (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (“[The] FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.”); *see also Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) (“The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement.”).

WHEREFORE, for the foregoing reasons (and, again, for that matter, for all of the reasons previously advanced to the Court in and in support of the Underlying Motions (both those advanced in writing and those advanced via oral argument), all of which the Movants incorporate by reference herein and asks the Court to (re)consider and expressly rule upon in full), the Movants

ask that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Underlying Motions.

PLEASE NOTE: The Movants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,
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November 25, 2024

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-00525

BEVERLY VAUGHN AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
LORIS PARIS,

Plaintiff,

v.

SAINT MATTHEWS HEALTHCARE, LLC;
MELISSA KIZER; MELISSA DAVIS; AND
ANGELA SMITH TELIHA

Defendants.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO RECONSIDER**

TO: THE HONORABLE COURT AND ALL ATTORNEYS FOR DEFENDANTS

Plaintiff, through the undersigned attorney, respectfully submits this Memorandum of Law in Opposition to Defendants' Motion to Reconsider. In the interest of judicial economy and being mindful of the Court's time, rather than addressing each of the Defendants' grounds previously addressed before the Court, Plaintiff incorporates by reference all arguments made in its previous memoranda of law and the arguments made by counsel during oral arguments before the Court at the hearing on this matter. All issues were presented to the Court during those proceedings, and the Court properly decided to deny Defendants' Motions to Compel Arbitration.

As Defendants have primarily focused on the argument and application of the doctrine of merger in its Motion to Reconsider, Plaintiff will address that argument in this memorandum and asserts that the recent Court of Appeals' decision of *Solesbee v. Fundamental Clinical and*

Operational Services, LLC, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023) is directly on point in regards to the matter at hand.

The facts of the *Solesbee* decision dealt with a similar situation of a son placing his mother in a nursing home. In both cases, the sons signed both an admission agreement and an arbitration agreement outside the presence of their mothers. Not only were the facts similar to the present case, defense counsel represented the defendants in *Solesbee* and made the same arguments before the court as presented today. The *Solesbee* Court determined that the doctrine of merger did not apply and that the admissions agreement and arbitration agreement were separate and distinct. It reasoned that “[o]n the Admission Agreement's final page, there is an "Entire Agreement" section indicating the twelve pages of the Agreement constitute "the entire agreement and understanding between the parties" concerning Solesbee's admission to Magnolia.” *Id. at* 643 (S.C. Ct. App. 2023). This shows that the admission document was presented as being a stand-alone contract for the resident admission. Further, even if the “Entire Agreement” clause in the admission agreement creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, the defendant. Furthermore, the Court reasoned that the admissions agreement did not mention the issue of arbitration anywhere in the agreement, and it recognized that admission was not dependent on the resident also signing the arbitration agreement.

Here, Defendants’ admit that the form of the admission agreement and the arbitration agreement are exactly the same as those documents at issue in the *Solesbee* case. The defendants in both cases used the same language in both documents, and we are presented with almost an identical factual situation. Defendants, however, argue that the *Solesbee* decision did not present facts which would support a “contrary intention to merger” on the part of the Defendant.

Defendants' argument relies, in part, upon the following language concerning the application of the doctrine of merger:

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

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 354-55, 755 S.E.2d 450, 455 (2014) (emphasis added). However, this argument is misguided as applied to the present situation because the documents were not signed at the same time, and they were not signed for the same purpose. The testimony of George Paris indicated that he signed the admissions agreement on April 12, 2019, the date of his mother's admission, and he did not sign the arbitration agreement until April 15, 2019, when the facility called him and told him that they needed him to come back into the facility to "sign more paperwork." The dates on the respective documents reflect the same and support his contention that he did not sign the arbitration agreement at the time of the admission. While the admissions agreement deals with resident care and payment for services rendered, the arbitration agreement is only

The *Solesbee* Court found that the characteristics of the documents including having separate titles, separate pagination, and separate signature pages all supported the argument against the merger of the two documents. The Court also relied on the language of the Arbitration Agreement, which specifically states that it would "survive any termination or breach of this Agreement or the Admission Agreement" indicating a distinction between the two. Each documents repeats the phrase "this agreement" over and over throughout, indicating that they are not considered to be the same. Furthermore, the Admissions Agreement contains the following language, "[t]he undersigned further acknowledges that he/she has received and read the

Admissions Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.” Mr. Paris did not have the arbitration agreement at the time he signed the admissions agreement and there was no reference to it in the Admissions Agreement.

Defendant argues that the Admissions Agreement and Arbitration Agreement having separate titles, separate pagination, and separate signature pages “provides no reasonable inference of an intent contrary to merger,” however, all of these things show evidence that the documents stand alone. Certainly, if one of the two documents did not have a separate title, pagination, and signature blocks, it would support a contention that they were to be construed as one, but as it stands, it presents factual support that the two were not to be construed as one agreement.

CONCLUSION

For these reasons, and those as set forth in the Plaintiff’s previous memoranda of law in opposition to Defendants’ Motion to Compel Arbitration, Plaintiff respectfully requests that Defendants’ motion is denied.

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

Appeal from Orangeburg County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2022-CP-38-00525

Beverly Vaughn,
as Personal Representative of the Estate of Loris Paris,

Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer;
Melissa Davis; and Angela Smith Teliha,

Defendants,

Of which Saint Matthews Healthcare, LLC;
Melissa Kizer; and Melissa Davis, are the

Appellants.

NOTICE OF APPEAL

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Attorney for Respondent

Defendants/Appellants, Saint Matthews Healthcare, LLC; Melissa Kizer; and Melissa Davis (“Appellants”), hereby appeal the following orders of the Honorable Maite Murphy, Circuit Court Judge:

- **Order filed November 13, 2024;** and
- **Order filed January 23, 2025.**

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on January 23, 2025.

Respectfully submitted,
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February 18, 2025

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

Appeal from Orangeburg County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2022-CP-38-00525

Beverly Vaughn,
as Personal Representative of the Estate of Loris Paris,

Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer;
Melissa Davis; and Angela Smith Teliha,

Defendants,

Of which Saint Matthews Healthcare, LLC;
Melissa Kizer; and Melissa Davis, are the

Appellants.

PROOF OF SERVICE

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Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on Respondent on February 18, 2025, by emailing (see attached email) a copy of the same to counsel of record:

Joshua P. Cantwell, Esquire
CANTWELL LAW FIRM, LLC
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Attorney for Respondent

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, February 18, 2025, E-Filed with the lower court (see attached NEF), which also, i.e., in addition to service by email, effected service of the notice today on counsel of record via the E-Filing System.

Respectfully submitted,
CLEMENT RIVERS, LLP

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Attorneys for Appellants

Charleston, South Carolina

February 18, 2025

From: [Hines, Russell](#)
To: [Josh Cantwell](#)
Cc: [Brown, Stephen L.](#); [Davis, Jay](#); [Gandy, III, James D. \(Tripp\)](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#); [Eversole, Amy R.](#); [Peterson, Susan](#); [Bohannon, Kiara](#); [Wakeham, Rebecca \(Becky\)](#)
Subject: Vaughn v. St. Matthews (Case No. 2022-CP-38-00525) -- Notice of Appeal
Date: Tuesday, February 18, 2025 4:54:00 PM
Attachments: [Vaughn v. St. Matthews \(Case No. 2022-CP-38-00525\) -- Notice of Appeal.pdf](#)
[Appealed Order 1 -- 2024 11-13 -- Order Denying MTCA and Mots. to Stay.pdf](#)
[Appealed Order 2 -- 2025 01-23 -- Order Denying MTR.pdf](#)
[image001.png](#)

Attached for service in the above-referenced matter please find our **Notice of Appeal** and copies of the **appealed orders** attached thereto.

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

A filing has been submitted to the court RE: 2022CP3800525

Official File Stamp: 02-18-2025 04:47:57 PM
Court: CIRCUIT COURT
Common Pleas
Orangeburg
Case Caption: Beverley Vaughn VS Saint Matthews Healthcare, Llc , defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

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

The following people were served electronically:

James D. Gandy, III for Saint Matthews Healthcare, Llc, Melissa Kizer, Melissa Davis
Russell Grainger Hines for Saint Matthews Healthcare, Llc, Melissa Kizer, Melissa Davis
Joshua P. Cantwell for Beverley Vaughn
Donald Jay Davis, Jr. for Saint Matthews Healthcare, Llc, Melissa Kizer, Melissa Davis

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

Angela Smith Teliha

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material and complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

RECEIVED
Oct 27 2025
SC Court of Appeals

Respectfully submitted,
CLEMENT RIVERS, LLP

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October 27, 2025