

**RECEIVED**

**Nov 24 2025**

**SC Court of Appeals**

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

Appeal from Dorchester County  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2023-CP-18-00758  
Appellate Case No. 2025-000275

James Graham,  
as Personal Representative of the Estate of Phyllis Chestnut,

Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc.,  
Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC,  
Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC,  
and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC,

Defendants,

Of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC,  
Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services,  
LLC, and Fundamental Clinical Consulting, LLC, are the

Appellants.

**RECORD ON APPEAL**

PARKER LAW GROUP, LLP  
Lee D. Cope (SC Bar No. 14361)  
John E. Parker, Jr. (SC Bar No. 104225)  
Virginia Caitlin Ball (SC Bar No. 105497)  
101 Mulberry Street East  
P.O. Box 487  
Hampton, South Carolina 29924  
(803) 903-1738

*-and-*

THE STEINBERG LAW FIRM, LLP  
Steven E. Goldberg (SC Bar No. 66446)  
P.O. Box 2670  
Summerville, South Carolina 29484

*Attorneys for Respondent*

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis Jr. (SC Bar No. 12084)  
James D. Gandy III (SC Bar No. 11925)  
Russell G. Hines (SC Bar No. 72100)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Appellants*

## **INDEX**

### **Orders**

|                                      |    |
|--------------------------------------|----|
| Order, filed November 21, 2024 ..... | 1  |
| Order, filed January 14, 2025 .....  | 15 |

### **Pleadings**

|                                                                 |    |
|-----------------------------------------------------------------|----|
| Summons and Complaint, filed May 15, 2023 .....                 | 18 |
| Exhibit A, Affidavit of Merit of Luanne Trahant .....           | 26 |
| Facility's <sup>1</sup> Answer, filed dated June 16, 2023 ..... | 28 |
| FAS's <sup>2</sup> Answer, filed dated June 16, 2023 .....      | 34 |
| FCOS's <sup>3</sup> Answer, filed dated June 16, 2023 .....     | 40 |
| HVH's <sup>4</sup> Answer, filed dated June 16, 2023 .....      | 46 |
| THIB's <sup>5</sup> Answer, filed dated June 16, 2023 .....     | 52 |
| THISC's <sup>6</sup> Answer, filed dated June 16, 2023 .....    | 58 |
| FCC's <sup>7</sup> Motion to Dismiss, filed June 16, 2023 ..... | 64 |

### **Transcript**

|                                                    |    |
|----------------------------------------------------|----|
| Transcript of hearing held September 4, 2024 ..... | 66 |
|----------------------------------------------------|----|

### **Other Material**

|                                                                                                |    |
|------------------------------------------------------------------------------------------------|----|
| Facility's Motion to Stay or Dismiss Action and Compel Arbitration, filed April 16, 2024 ..... | 89 |
|------------------------------------------------------------------------------------------------|----|

---

<sup>1</sup> The "Facility" refers to Defendant Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center.

<sup>2</sup> "FAS" refers to Fundamental Administrative Services, LLC.

<sup>3</sup> "FCOS" refers to Fundamental Clinical and Operational Services, LLC.

<sup>4</sup> "HVH" refers to Hunt Valley Holdings, LLC.

<sup>5</sup> "THIB" refers to THI of Baltimore, Inc.

<sup>6</sup> "THISC" refers to THI of South Carolina, LLC.

<sup>7</sup> "FCC" refers to Fundamental Clinical Consulting, LLC.

|                                                                                                                             |            |
|-----------------------------------------------------------------------------------------------------------------------------|------------|
| Exhibit A, Arbitration Agreement .....                                                                                      | 91         |
| FAS’s Motion to Stay, filed April 16, 2024 .....                                                                            | 92         |
| FCC’s Motion to Stay, filed April 16, 2024 .....                                                                            | 94         |
| FCOS’s Motion to Stay, filed April 16, 2024.....                                                                            | 96         |
| HVH’s Motion to Stay, filed April 16, 2024 .....                                                                            | 98         |
| THIB’s Motion to Stay, filed April 16, 2024.....                                                                            | 100        |
| THISC’s Motion to Stay, filed April 16, 2024 .....                                                                          | 102        |
| Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Compel Arbitration,<br>filed September 3, 2024 .....          | 104        |
| Exhibit 1, Trahant Affidavit.....                                                                                           | (see 26)   |
| Affidavit of James Graham, filed September 3, 2024 .....                                                                    | 129        |
| Memo in Support of Motion to Compel Arbitration and Motions to Stay, filed<br>September 4, 2024 .....                       | 131        |
| Exhibit A, Admission Agreement.....                                                                                         | 142        |
| Exhibit B, Arbitration Agreement.....                                                                                       | (see 91)   |
| Exhibit C, Readmission Agreement.....                                                                                       | 154        |
| Motion to Alter, Amend, and/or Reconsider Motion to Compel Arbitration and<br>Motions to Stay, filed December 2, 2024 ..... | 156        |
| Plaintiff’s Memo in Opposition to Defendant’s Motion for Reconsideration, filed<br>December 20, 2024 .....                  | 165        |
| Exhibit A, Email .....                                                                                                      | 169        |
| Exhibit B, Orders .....                                                                                                     | 171        |
| Notice of Appeal filed February 13, 2025, with Proof of Service (omitting Orders).....                                      | 180        |
| <b>Certificate of Counsel .....</b>                                                                                         | <b>187</b> |

|                                |   |                                    |
|--------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS       |
|                                | ) |                                    |
| COUNTY OF DORCHESTER           | ) | CIVIL ACTION NO.: 2023-CP-18-00758 |
|                                | ) |                                    |
| JAMES GRAHAM, AS PERSONAL      | ) |                                    |
| REPRESENTATIVE OF THE ESTATE   | ) |                                    |
| OF PHYLLIS CHESTNUT,           | ) |                                    |
|                                | ) |                                    |
| Plaintiff,                     | ) |                                    |
|                                | ) |                                    |
| v.                             | ) |                                    |
|                                | ) |                                    |
| HALLMARK LONG TERM CARE, LLC   | ) |                                    |
| D/B/A HALLMARK HEALTHCARE      | ) | <b>ORDER</b>                       |
| CENTER, FUNDAMENTAL LONG       | ) |                                    |
| TERM CARE, INC., THI OF SOUTH  | ) |                                    |
| CAROLINA, LLC, THI OF          | ) |                                    |
| BALTIMORE, INC., HUNT VALLEY   | ) |                                    |
| HOLDINGS, LLC, FUNDAMENTAL     | ) |                                    |
| ADMINISTRATIVE SERVICES, LLC,  | ) |                                    |
| FUNDAMENTAL CLINICAL AND       | ) |                                    |
| OPERATIONAL SERVICES, LLC,     | ) |                                    |
| FUNDAMENTAL CLINICAL           | ) |                                    |
| CONSULTING, LLC, and CURANA    | ) |                                    |
| HEALTH OF SOUTH CAROLINA, P.C. | ) |                                    |
| F/K/A ELITE PATIENT CARE OF    | ) |                                    |
| SOUTH CAROLINA, PC             | ) |                                    |
|                                | ) |                                    |
| Defendants.                    | ) |                                    |

This matter came before the Court on September 4, 2024, on a Motion to Compel Arbitration filed by Defendant Hallmark Operating, LLC d/b/a Hallmark Healthcare Center (“Hallmark”) and Motions to Stay this action filed by Defendants Hallmark Operating, LLC d/b/a Hallmark Healthcare Center, THI of South Carolina, LLC, THI of Baltimore, LLC, Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC (“collectively Defendants”). The Motion to Compel Arbitration was brought pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. The Motions to Stay sought to stay any requirements to file any further responsive pleadings or to respond to any motions or

discovery filed or served by Plaintiff James Graham as the Personal Representative of the Estate of Phyllis Chestnut until the Motion to Compel Arbitration and any subsequent appellate or arbitration proceedings are resolved. Present at the hearing and arguing on behalf of Defendants was Russell G. Hines. Appearing and arguing on behalf of Plaintiff was John E. Parker, Jr.

After reviewing the submissions of the parties, the pleadings, and hearing the arguments of counsel, the Court DENIES Defendants' Motions in part and GRANTS the Motions in part for the reasons set forth herein.

Plaintiff filed this action on May 15, 2023, in the Dorchester County Court of Common Pleas, alleging that the Decedent passed away due to inadequate care while she was a resident of Defendants' facility. Plaintiff has alleged wrongful death and survival claims as a result of the care and treatment provided to the Decedent, Ms. Phyllis Chestnut. The basis of the Motion to Compel Arbitration is that a valid and enforceable arbitration agreement (the "Arbitration Agreement") exists between Ms. Chestnut and Hallmark. However, Plaintiff argues that Ms. Chestnut did not have authority to waive the wrongful death beneficiaries' rights to a jury trial at the time she entered the Arbitration Agreement. The Arbitration Agreement relied upon by Defendants was signed by Ms. Chestnut at the time of her admission to Defendants' facility. Ms. Chestnut was the mother of her Estate's Personal Representative, Mr. James Graham, and two other adult children, and Plaintiff argues that even though she had authority to enter the Agreement on her own behalf and on behalf of the Estate at the time of admission, she did not have authority to enter any such agreement on her adult children's behalf as wrongful death beneficiaries, and therefore, the wrongful death claims are not arbitrable.

Plaintiff additionally argues that South Carolina law is clear that only the representations and conduct of the principal, and not the actions of the agent, can create the agency relationship, and that there is no evidence that the wrongful death beneficiaries or Mr. Graham as Personal

Representative of Ms. Chestnut's Estate ever represented to Defendants that Ms. Chestnut had authority to act on their behalf and waive the wrongful death beneficiaries' rights to a jury trial. Defendants, on the other hand, argue that the Arbitration Agreement applies with equal force to the wrongful death claims as it does to the Estate's survival claim because the wrongful death claim does not belong to the wrongful death beneficiaries, and that any rule prohibiting enforcement of an agreement to arbitrate wrongful death claims would violate the FAA's equal footing principle as articulated in *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 532-33, 132 S. Ct. 1201, 1203-04, 182 L. Ed. 2d 42 (2012).

The Court disagrees with Defendants' position. While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement against the statutory beneficiaries' and Personal Representative's wrongful death claims for the simple reason that Ms. Chestnut did not have authority to execute the Arbitration Agreement on their behalf at the time the Arbitration Agreement was entered. By statute, the wrongful death claims belong to and are for the benefit of the Personal Representative and the remaining wrongful death beneficiaries, and not the Estate or the Decedent. There is no evidence that Ms. Chestnut had actual or apparent authority to act on the Personal Representative's and remaining wrongful death beneficiaries' behalf at the time she entered the Arbitration Agreement, as there is no evidence that they ever consciously represented or implied to Defendants that Ms. Chestnut was their agent for the purposes of entering an arbitration agreement.

Public policy favors arbitration, but only to the extent that it would aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . ."). The public policy has no

relevance to an analysis of arbitrability until a court first determines a valid agreement to arbitrate exists. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229, 847 S.E.2d 268, 271 (Ct. App. 2020).

The FAA commands that arbitration agreements between parties trading in interstate commerce must be treated the same as all other contracts, no more, no less. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967) (“[T]he purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so.”). “The FAA therefore places arbitration contracts on equal footing with other contracts, but it does not, as Appellants suggest, give the party seeking arbitration a leg up in the threshold determination of whether a valid arbitration agreement exists.” *Weaver*, 431 S.C. at 229, 847 S.E.2d at 271-72. In other words, the presumption in favor of arbitration applies only to the scope of an arbitration agreement; “it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement.” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). “Moreover, because arbitration, while favored, exists solely by agreement of the parties, a presumption *against arbitration* arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Id.* (emphasis added). Plaintiff has challenged the identity of parties who may be bound to the Arbitration Agreement, and therefore there is no presumption in favor of arbitration under this Court’s analysis.

The wrongful death claim of a statutory beneficiary is not as a matter of law subject to arbitration when the decedent has previously signed an arbitration agreement. South Carolina law indicates that wrongful death claims are for the benefit of the statutory beneficiaries, may only be brought by the personal representative of the decedent’s estate, and are distinct and separate from survival claims personal to the decedent and subsequently to the estate. *Bennett v. Spartanburg*

*Ry. Gas and Elec. Co.*, 97 S.C. 27, 81 S.E. 189, 190 (1914). Wrongful death actions are brought by the personal representative of the decedent directly for the benefit of the statutory beneficiaries and include compensatory damages for pecuniary loss, mental shock and suffering, grief and sorrow, and loss of companionship: all losses suffered by the beneficiaries themselves. S.C. Code Ann. §§ 15-51-10 and -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). Survival actions, on the other hand, are separate claims for injuries to the decedent, and belong to the estate, not the statutory beneficiaries. *See Bennett*, 97 S.C. at 27, 81 S.E. at 189-90. In a chapter devoted to wrongful death claims, a section of *South Carolina Jurisprudence* entitled “[s]eparate, independent cause of action” notes the existence of two claims at the tortious death of a person and, crucially, “*the wrongful death action and the survival action involve different, independent claims.*” 28 S.C. Jur. *Wrongful Death* § 5 (emphasis added).

Therefore, wrongful death claims, while they are brought by the personal representative of an estate, do not “belong” solely to the personal representative of an estate or the decedent, and instead are a right to recovery vesting with the statutory beneficiaries themselves. This right directly arises from the wrongful death statute. The wrongful death claim is not derivative of claims belonging to the decedent; ergo, the decedent would not have authority to waive jury trial rights belonging to statutory beneficiaries but not herself. To argue otherwise would mistakenly conflate the wrongful death claim and survival claims. The history and development of South Carolina’s wrongful death and survival statutes shows that wrongful death is something entirely different from the survival of tort claims after an individual’s death. South Carolina courts have long recognized that these are two disparate theories of liability with distinct origins, purposes, and results. *See Grainger v. Greenville, S. & A. Ry. Co.*, 101 S.C. 399, 85 S.E. 968, 969 (1915). The statutory scheme shows wrongful death and survival are distinct claims accruing at different times and are governed by different statutes of limitation. *See* S.C. Code Ann. § 15-3-560(6).

Defendants argue that wrongful death claims are derivative of survival claims. In both types of claims, the decedent's personal representative is the named plaintiff. *Complete Auto Transit, Inc. v. Bass*, 229 S.C. 607, 612, 93 S.E.2d 912, 914 (1956). However, this fact alone is not determinative of any derivative nature the wrongful death claim may have. When asserting wrongful death and survival claims, a personal representative "function[s] under two separate and distinct trusteeships." *Id.* In other words, while it is the personal representative's name in the caption for a wrongful death claim, "it is clear . . . the real parties to the action were the beneficiaries." *Claussen v. Brothers*, 148 S.C. 1, 145 S.E. 539, 541 (1928).

In light of the history and structure of wrongful death and survival claims, a number of other reported opinions have rejected the notion that the former is derivative of the latter. As early as 1907, the South Carolina Supreme Court recognized a wrongful death action is not the survival of an action which the deceased had in his lifetime but is a "new cause of action" arising after his death. *Osteen v. Southern Ry., Carolina Division*, 76 S.C. 368, 57 S.E. 196, 200 (1907). *Claussen* held a wrongful death claim is "not a continuation" of any claim the decedent had before her death. *Claussen*, 145 S.E. at 540. And contrary to the proposition that wrongful death claims belong to the personal representative or the decedent's estate, *Claussen* states that "as has been pointed out, the party in whose favor the right of action in reality exists under Lord Campbell's Act is *not the personal representative of the deceased person.*" *Id.* at 541 (emphasis added).

A wrongful death claim is "independent" of claims the decedent had during his life and "wholly different" than any other claim available at his death. *Wellman v. Bethea*, 243 F. 222 (E.D.S.C. 1917); *In re Mayo's Estate*, 60 S.C. 401, 38 S.E. 634, 638 (1901). Wrongful death and survival claims are "separable and distinct." *Keel v. Seaboard Air Line Ry.*, 122 S.C. 17, 114 S.E. 761, 762 (1922). In sum, wrongful death claims are not derivative of survival claims and do not belong to the decedent or her estate's personal representative, namely because "[t]he object, scope,

and measure of damages” is different for the two claims, regardless of whether the claim is brought by the personal representative. *In re Mayo's Estate*, 38 S.E. at 638. South Carolina's appellate courts have held wrongful death claims are “distinct,” “independent,” “separate,” “wholly different,” and “not a continuation” of claims a decedent could have filed during her lifetime. In other words, wrongful death is a distinct, independent claim that solely belongs to the statutory beneficiaries. It is anything but a derivative claim, therefore, a decedent must derive any authority to act on the behalf of the wrongful death beneficiaries in agreeing to arbitrate their claims not from the wrongful death statute and the nature of the claim, but from some other source of actual or apparent authority.

Defendants argue that under the equal footing principle, the Court is precluded from invalidating the Arbitration Agreement based on any legal rule that applies “only to arbitration”, citing *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). *Dean* briefly addresses the arbitrability of wrongful death claims in a footnote. This footnote addressed an overly broad pronouncement by the trial court suggesting wrongful death claims are categorically excluded from arbitration. *Id.* (citing circuit court order statement stating that “wrongful death actions are not something that's arbitrated”). Clearly, that type of rule would violate the FAA's equal footing principle. *Id.* (citing *Marmet*, 565 U.S. at 532-33, 132 S. Ct. at 1203-04); *see also Kindred Nursing Ctrs., Ltd. P'ship v. Clark*, 581 U.S. 246, 251, 137 S. Ct. 1421, 1426, 197 L. Ed. 2d 806 (2017). However, that is not the argument Plaintiff makes here. Plaintiff has agreed that a wrongful death claim may be arbitrable in instances where the statutory beneficiaries explicitly agree to do so.<sup>1</sup> Any of the statutory beneficiaries, including Mr. Graham,

---

<sup>1</sup> The Court notes that even if a personal representative, as the individual statutorily authorized to bring the wrongful death claim, could waive the wrongful death beneficiaries’ right to a jury trial, he would only have the right to do so while acting in his capacity as personal representative. At the time a decedent enters an arbitration agreement, the decedent is still living and has not had a personal representative appointed so there is no realistic probability that this scenario could ever occur.

could have individually agreed to waive their rights to a jury trial on their wrongful death claims. Here, Plaintiff simply argues a *decedent*'s consent to arbitrate may not be grafted into a wrongful death claim that pays different people for different losses when she does not have authority to act on their behalf. *Dean* does not reject that argument or even consider it. And here, Plaintiff is not arguing that Ms. Chestnut's lack of authority applies "only to arbitration"; Plaintiff's argument is that Ms. Chestnut did not have authority to bind the wrongful death beneficiaries to any agreement, much less an agreement to arbitrate their claims.

Several other courts have held that rejecting arbitration for wrongful death claims in similar cases does not violate *Marmet* or any other Supreme Court precedent on the equal footing principle.<sup>2</sup> Refusing to compel arbitration here does not mean wrongful death claims can categorically never be arbitrated. Instead, as other courts have recognized, it simply means the Defendants have failed to satisfy a generally applicable contract law rule because they have not demonstrated they had consent for arbitration from all of the proper parties. Finally, reading *Dean*'s footnote to have any bearing on the parties' dispute does not adequately account for either side's arguments on the key issue. *Dean* had no reason to undertake this analysis and has nothing to offer the Court on the Motion to Compel Arbitration.

Defendants argue that since S.C. Code Ann. § 15-51-10 permits wrongful death claims only when the decedent would have had a claim if she survived, then the wrongful death claim is derivative and the decedent, or the estate's personal representative, has the authority to waive the statutory beneficiaries' right to a jury trial, relying on *Quattlebaum v. Carey Canada, Inc.*, 685 F.

---

<sup>2</sup> See *Carter v. SSC Odin Operating Co., LLC*, 976 N.E.2d 344, 360 (Ill. 2012) (unlike *Marmet*, Illinois was not applying a categorical anti-arbitration rule but was rather applying "common law principles governing all contracts"); *Vickers v. Canal Pointe Nursing Home & Rehab Ctr.*, 2016-Ohio-3244, 2016 WL 3080329 (Ohio App. June 1, 2016) (finding that Ohio Supreme Court precedent preventing arbitration of wrongful death claims did not create a categorical ban that would run afoul of *Marmet* because it applied generally applicable contract law rule against enforcing contract against person who had not assented).

Supp. 939 (D.S.C. 1988) and *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 699 S.E.2d 143 (2010). The logic of this argument appears to be that because the decedent or a personal representative has the ability to permit the beneficiaries' right to recovery under the Wrongful Death Act to lapse with the statute of limitations, then the decedent or personal representative also must have the ability to waive the beneficiaries' right to a jury trial by signing an arbitration agreement. However, *Quattlebaum* (and *Stokes*) did not address arbitration at all. Instead, they simply held that if an individual allows the statute of limitations on a personal injury claim to lapse during his life, then a wrongful death claim may not be used after his death to "revive" the stale claim. *Stokes*, 389 S.C. at 349, 699 S.E.2d at 146.

The statute of limitations is not at issue here and neither *Quattlebaum* nor *Stokes* have ever been cited as justification for binding nonsignatories to an arbitration contract or imputing authority to a decedent. Plus, the legal authority holding that an individual may forfeit a wrongful death claim by ignoring or settling a personal injury suit during his life does not mean the individual, or someone acting on his behalf, has authority to waive a nonsignatory's rights. Several courts have made this distinction explicitly. Oklahoma, like South Carolina, bars a wrongful death suit if the decedent ended a personal injury claim during his lifetime based on the same wrongdoing. *Boler v. Sec. Health Care, L.L.C.*, 2014 OK 80, 336 P.3d 468, 477 (Okla. 2014) (citing *Haws v. Luethje*, 1972 OK 146, 503 P.2d 871 (Okla. 1972)). Even so, the court in *Boler* refused to apply a nursing home resident's arbitration contract to a wrongful death claim because doing so would violate contract principles requiring mutual assent. *Id.* at 471.

Pennsylvania also bars wrongful death claims if the decedent allowed his personal injury claim to lapse. *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 657 (Pa. Super. Ct. 2013) (citing *Moyer v. Rubright*, 651 A.2d 1139 (Pa. Super. Ct. 1994)). Yet, just like Oklahoma, Pennsylvania does not extrapolate from that rule the notion that an individual can bind other wrongful death

beneficiaries to arbitration. *Pisano*, 77 A.3d at 657, 662 (refusing to find wrongful death beneficiaries lost jury trial right “where they did not waive it of their own accord”). Thus, *Quattlebaum*’s, and by extension, *Stoke*’s, interpretation of section 15-51-10 does not necessarily require arbitration in this case. Had Ms. Chestnut settled any claims against the Defendants before her death, or if the statute of limitations had lapsed on her negligence claim, the Estate’s Personal Representative could not now bring a wrongful death claim on behalf of the statutory beneficiaries because under section 15-51-10, there would not be an action the decedent could have maintained if death had not ensued. But it does not logically follow that Ms. Chestnut in her individual capacity had the ability to direct the wrongful death claims to arbitration on behalf of the wrongful death beneficiaries when she did not have authority to do so. Since Ms. Chestnut had a viable dispute with the Defendant when she died, any proposed arbitration of the wrongful death claim must consider whether all beneficiaries agreed to waive a jury trial such that there is mutual assent.

In light of the historical and structural differences between South Carolina's wrongful death and survival statutes, and the remedies afforded by them, as well as substantial case law defining and treating wrongful death and survival claims distinctly, the Court rejects any attempt to use Ms. Chestnut’s purported assent to the Arbitration Agreement to force arbitration on the wrongful death beneficiaries. At least a dozen other jurisdictions have rejected such arguments. *See FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 n. 1 (Pa. 2016) (citing *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013)); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014); *Daniels v. Sunrise Sr. Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr. 3d 273 (2013); *Carter v. SSC Odin Operating Co, LLC*, 976 N.E.2d 344, 355-58 (Ill. 2012); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581 (Ky. 2012); *Woodall v. Avalon Care Center-*

*Federal Way, LLC*, 231 P.3d 1252 (Wash. App. 2010); *Lawrence v. Beverly Manor*, 273 S.W.3d 525 (Mo. 2009); *Bybee v. Abdulla*, 189 P.3d 40 (Utah 2008); *Peters v. Columbus Steel Castings Co.*, 873 N.E.2d 1258, 1262 (Ohio 2007); *Chapman v. Cardiac Pacemakers, Inc.*, 673 P.2d 385 (Idaho 1983); see also *Strickholm v. Evangelical Lutheran Good Samaritan Soc’y*, Case No. 4:11-CV-00059-BLW, 2011 WL 2532395 (D. Idaho June 24, 2011). At best, the Arbitration Agreement only reaches the Estate’s survival claim, unless Ms. Chestnut had apparent or actual authority to act on the statutory beneficiaries’ behalf. Defendants have not produced any evidence indicating that Ms. Chestnut had actual or apparent authority to enter the Arbitration Agreement on the wrongful death beneficiaries’ behalf or to waive their right to a jury trial, nor have they argued that she did.

S.C. Code Ann. § 15-51-20 explicitly provides that the wrongful death action is for the benefit of the wrongful death beneficiaries, and that it may only be brought by the personal representative of the decedent’s estate. It does not vest any right to institute a wrongful death action or to benefit from a wrongful death actions’ proceeds in the decedent herself. Ms. Chestnut was not the personal representative of her estate at the time she signed the Arbitration Agreement and her Estate did not even exist at that point. She did not have actual authority to waive the statutory beneficiaries’ rights to a jury trial under the wrongful death statutes, and there is no evidence the wrongful death beneficiaries, including Mr. Graham, ever represented to Defendants in any capacity that she had authority to act on their behalf. Neither Mr. Graham nor the remaining wrongful death beneficiaries signed the Arbitration Agreement in an individual capacity or as Personal Representative for Ms. Chestnut’s Estate, and therefore there is no mutual assent to arbitrate the wrongful death claims.

As to Defendant’s Motions to Stay, it is in the Court’s discretion whether to stay for considerations of economy and efficiency an entire action, including issues not arbitrable, pending

arbitration. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 21 n.23, 103 S. Ct. at 939 n. 23 (1983). “A party is only entitled to a stay pursuant to section 3 [of the FAA] as to arbitrable claims or issues,” but “[a]s to nonarbitrable claims and issues, . . . the district court has discretion whether to stay the litigation pending arbitration.” *Winfrey v. Kmart Corp.*, 692 F. App’x 356, 357 (9th Cir. 2017). Courts generally refuse to stay proceedings of nonarbitrable claims when it is feasible to proceed with the litigation. *See Dean Witter Reynolds Inc.*, 470 U.S. 213, 225, 105 S. Ct. 1238, 1245 (1985) (White, J., concurring).

Hallmark and the remaining Defendants have not demonstrated or argued why a Motion to Stay is justified other than to argue they are entitled to one under 9 U.S.C. § 3 because the entirety of Plaintiff’s claims are arbitrable, nor have the remaining Defendants demonstrated as non-parties to the relevant Arbitration Agreement why they are entitled to a stay under 9 U.S.C. § 3, or that it is not feasible to proceed with the litigation. The arbitrable survival claim against Hallmark does not predominate over the remaining nonarbitrable wrongful death and survival claims against all Defendants, and the nonarbitrable claims do not depend on the arbitrator’s resolution of the survival claim against Hallmark, as under South Carolina law wrongful death and survival claims are independent, separate, and distinct. The outcome of the arbitration will not have a preclusive effect as to the remaining Defendants, nor would the outcome necessarily have a preclusive effect as to Hallmark or Plaintiff for the entirety of the litigation, as the survival and wrongful death claims have separate and independent categories of damages.

Proceeding with the wrongful death and survival claims against the remaining Defendants and the wrongful death claim against Hallmark in this Court will not destroy the right of Hallmark to a meaningful arbitration of the survival claim, and Defendants have not argued how permitting the nonarbitrable claims to go forward will impair the arbitrator’s decision of the lone survival claim against Hallmark. Therefore, balancing the risk of inconsistent rulings, the extent to which

a minority of the issues and parties could be bound by the arbitrator's decision, and the prejudice to Plaintiff that will result from delays, the Court finds these factors do not clearly weigh in favor of staying the entire action. While cognizant of the risk of duplicative proceedings, the Court recognizes the desirability of bringing to a conclusion all the litigation, both arbitrable and nonarbitrable, and to expedite that finality, the Court concludes that the nonarbitrable claims will not be stayed.

Based on the foregoing authorities and findings, the Court DENIES Defendant Hallmark Operating, LLC d/b/a Hallmark Healthcare Center's Motion to Compel Arbitration in part as to Plaintiff's wrongful death claims and GRANTS Hallmark's Motion to Compel Arbitration in part as to Plaintiff's survival claim and DENIES Hallmark's Motion to Stay. The Court consequently DENIES the remaining Defendants' Motions to Stay.

THEREFORE, it is ORDERED that Defendant Hallmark Operating, LLC d/b/a Hallmark Healthcare Center's Motion to Compel Arbitration is DENIED in part as to Plaintiff's wrongful death claims and is GRANTED in part as to Plaintiff's survival claim, and the remaining Motions to Stay are DENIED.

**IT IS SO ORDERED.**

---

The Honorable Maite Murphy

November \_\_\_\_, 2024  
St. George, South Carolina



Dorchester Common Pleas

**Case Caption:** James Graham , plaintiff, et al VS Hallmark Long Term Care Llc ,  
defendant, et al

**Case Number:** 2023CP1800758

**Type:** Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2024-11-21 10:49:36 page 14 of 14

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1800758

James Graham et al  
PLAINTIFF(S)

Hallmark Long Term Care 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 the Court's Order Denying Motions to Compel Arbitration and to Stay. The Court respectfully DENIES as to the Motion to Compel Arbitration, maintaining that the wrongful death actions belong to beneficiaries who did not waive their right to trial. The Court further GRANTS this Motion to Reconsider the Motions to Stay, finding that the Court must stay the proceedings pending the arbitration of the survival actions to prevent duplicative proceedings and potentially inconsistent outcomes for components of the actions in this suit.

## 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 01/13/2025 .

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.

---



Dorchester Common Pleas

**Case Caption:** James Graham , plaintiff, et al VS Hallmark Long Term Care Llc ,  
defendant, et al

**Case Number:** 2023CP1800758

**Type:** Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-01-14 16:16:01 page 3 of 3

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DOCHESTER ) CIVIL ACTION NO.: 2023-CP-18-

JAMES GRAHAM, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF PHYLLIS CHESTNUT,

Summons

v.

HALLMARK LONG TERM CARE, LLC  
D/B/A HALLMARK HEALTHCARE  
CENTER, FUNDAMENTAL LONG  
TERM CARE, INC., THI OF SOUTH  
CAROLINA, LLC, THI OF  
BALTIMORE, INC., HUNT VALLEY  
HOLDINGS, LLC, FUNDAMENTAL  
ADMINISTRATIVE SERVICES, LLC,  
FUNDAMENTAL CLINICAL AND  
OPERATIONAL SERVICES, LLC,  
FUNDAMENTAL CLINICAL  
CONSULTING, LLC, and CURANA  
HEALTH OF SOUTH CAROLINA, P.C.  
F/K/A ELITE PATIENT CARE OF  
SOUTH CAROLINA, PC

**TO THE ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at Post Office Box 487, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

*-Signature Page to Follow-*

PARKER LAW GROUP, LLP

BY: s/Lee D. Cope

Lee D. Cope  
SC Bar # 14361  
P.O. Box 487  
Hampton, SC 29924  
(803) 903-1781

AND

The Steinberg Law Firm, LLP  
Steven E. Goldberg, Esquire  
SC Bar # 66446  
Post Office Box 2670  
Summerville, SC 29484

ATTORNEYS FOR THE PLAINTIFF

May 15, 2023  
Hampton, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DOCHESTER ) CIVIL ACTION NO.: 2023-CP-18-

JAMES GRAHAM, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF PHYLLIS CHESTNUT,

v.

HALLMARK LONG TERM CARE, LLC,  
D/B/A HALLMARK HEALTHCARE  
CENTER, FUNDAMENTAL LONG  
TERM CARE, INC., THI OF SOUTH  
CAROLINA, LLC, THI OF  
BALTIMORE, INC., HUNT VALLEY  
HOLDINGS, LLC, FUNDAMENTAL  
ADMINISTRATIVE SERVICES, LLC,  
FUNDAMENTAL CLINICAL AND  
OPERATIONAL SERVICES, LLC,  
FUNDAMENTAL CLINICAL  
CONSULTING, LLC, and CURANA  
HEALTH OF SOUTH CAROLINA, P.C.  
F/K/A ELITE PATIENT CARE OF  
SOUTH CAROLINA, PC

Complaint  
*(Jury Trial Requested)*

COMES NOW the Plaintiff above named complaining of the Defendants alleges and says as follows:

1. The Plaintiff, JAMES GRAHAM, as Personal Representatives of the Estate of PHYLLIS CHESTNUT, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant S.C. Code Ann. §15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law other applicable statutory and/or common law and seek a jury trial pursuant to the Survival Action of South Carolina, S.C. Code Ann. §15-5-90 *et seq.* on behalf of the Estate for conscious pain and suffering of the deceased for all damages authorized by said statute.

2. That upon information and belief Defendant Hallmark Long Term Care, LLC, d/b/a Hallmark Healthcare Center is a Delaware corporation with its principal place of business

in Dorchester County, South Carolina. At the time of the acts complained of, Hallmark Healthcare Center was a skilled nursing home facility.

3. That upon information and belief Defendant Fundamental Long Term Care, Inc. is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

4. That upon information and belief Defendant THI of South Carolina, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

5. That upon information and belief Defendant THI of Baltimore, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

6. That upon information and belief Defendant Hunt Valley Holdings, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

7. That upon information and belief Defendant Fundamental Administrative Services, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

8. That upon information and belief Defendant Fundamental Clinical and Operational Services, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

9. That upon information and belief Defendant Fundamental Clinical Consulting, LLC is a Delaware corporation with its principal place of business in Dorchester County, South Carolina.

10. That upon information and belief Defendant Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC is a South Carolina corporation with its principal place of business in Dorchester County, South Carolina and provides nursing and other

designated healthcare and/or healthcare management services to Palmetto Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center.

11. That on April 12, 2019, Mrs. Chestnut was admitted to the Defendants' facility.

12. That on admission Mrs. Chestnut was assessed as being at high risk for skin breakdown and she required oxygen on a continuous basis.

13. That throughout her residency, the records indicate that she had ongoing problems with skin breakdown and yeast under her breasts and in her groin area due to her obesity. The areas required treatment on multiple occasions with antifungal and antibiotics creams. The records also support that she required oxygen on a continuous basis.

14. That on July 31, 2020, Mrs. Chestnut was transferred to the COVID unit due to exposure.

15. That on July 28, 2020 and July 30, 2020, the nursing assessment showed that Mrs. Chestnut did not have shortness of breath and was not on oxygen.

16. That on August 1, 2020 and August 2, 2020 the nursing assessment indicated that Mrs. Chestnut is wearing oxygen and that her lungs are clear.

17. That on August 4, 2020, Mrs. Chestnut was lethargic, not oriented, slurred speech, shortness of breath and her lungs were positive for Rhonchi. She was transported to Trident Medical Center by EMS.

18. That when EMS arrives, they find Mrs. Chestnut with her head of bed below 45 degrees and short of breath. They also note that Mrs. Chestnut had two deep wounds below her breast with continuous, uncontrolled bleeding.

19. That upon arrival at the hospital, Mrs. Chestnut had shortness of breath that had been ongoing for "weeks" with increased respiratory distress starting "last night".

20. That after two hours into the physician's workup, the Defendants informed them

that Mrs. Chestnut was positive for COVID.

21. That on August 4, 2020, Mrs. Chestnut passed away.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence/Gross Negligence)**

22. While in the Defendants' custody and control, Mrs. Chestnut did suffer grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring.

- a. In failing to provide oversight of Mrs. Chestnut's safety and dignity;
- b. In failing to exercise due care, including without limitation, failing to care for Mrs. Chestnut;
- c. In failing to provide appropriate administrative oversight and management to assure Mrs. Chestnut was appropriately cared for;
- d. In failing to realize Mrs. Chestnut needed a higher level of medical care;
- e. In failing to conduct an assessment of Mrs. Chestnut's change in condition;
- f. In failing to communicate with appropriate staff to advise of a potential need of a higher level of care;
- g. In failing to exercise reasonable care for the safety and well-being of Mrs. Chestnut under the circumstances;
- h. In failing to implement appropriate pressure sore preventions;
- i. In failing to properly monitor Mrs. Chestnut's skin;
- j. In failing to have sufficient and properly trained staff to care for its residents;
- k. In failing to document Mrs. Chestnut's condition accurately and timely;

- l. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mrs. Chestnut;
- m. In failing to manage its revenue and income such that appropriate care may be rendered to Mrs. Chestnut;
- n. In failing to implement an appropriate care plan;
- o. In failing to communicate her COVID positive status with EMS and treating physicians;
- p. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- q. In such other particulars as the evidence may establish.

23. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

24. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff suffered grave and severe injuries prior to her death; she was hospitalized; she incurred medical expenses; she suffered conscious pain and suffering and mental anguish prior to her death; she suffered a loss of her dignity and individuality; she suffered a diminished quality of life prior to her death; her estate has incurred funeral expenses.

25. That by reason of the foregoing, the Plaintiff is informed and believes that he is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the

Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

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

PARKER LAW GROUP, LLP

BY: s/Lee D. Cope

Lee D. Cope  
SC Bar # 14361  
P.O. Box 487  
Hampton, SC 29924  
(803) 903-1781

AND

The Steinberg Law Firm, LLP  
Steven E. Goldberg, Esquire  
SC Bar# 66446  
Post Office Box 2670  
Summerville, SC 29484

ATTORNEYS FOR THE PLAINTIFF

May 15, 2023  
Hampton, South Carolina

|                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS  |
|                                   | ) |                               |
| COUNTY OF DOCHESTER               | ) | CIVIL ACTION NO.: 2023-NI-42- |
|                                   | ) |                               |
| JAMES GRAHAM, AS PERSONAL         | ) |                               |
| REPRESENTATIVE OF THE ESTATE      | ) |                               |
| OF PHYLLIS CHESTNUT,              | ) |                               |
|                                   | ) |                               |
|                                   | ) | Affidavit of Merit            |
|                                   | ) |                               |
| v.                                | ) |                               |
|                                   | ) |                               |
| PALMETTO HALLMARK OPERATING,      | ) |                               |
| LLC, D/B/A HALLMARK               | ) |                               |
| HEALTHCARE CENTER,                | ) |                               |
| FUNDAMENTAL LONG TERM CARE,       | ) |                               |
| INC., THI OF SOUTH CAROLINA, LLC, | ) |                               |
| THI OF BALTIMORE, INC., HUNT      | ) |                               |
| VALLEY HOLDINGS, LLC,             | ) |                               |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                               |
| SERVICES, LLC, FUNDAMENTAL        | ) |                               |
| CLINICAL AND OPERATIONAL          | ) |                               |
| SERVICES, LLC, FUNDAMENTAL        | ) |                               |
| CLINICAL CONSULTING, LLC, and     | ) |                               |
| CURANA HEALTH OF SOUTH            | ) |                               |
| CAROLINA, PC F/K/A ELITE PATIENT  | ) |                               |
| CARE OF SOUTH CAROLINA, PC        | ) |                               |

The Affiant, Luanne Trahan, MSN, APRN, FNP-BC, having been duly sworn testifies as follows:

- 1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.
- 2) I am a registered nurse in Louisiana. I received my Bachelor of Science in Nursing from Northwestern State University in 1992 and a Master of Science in Nursing in 2005. I am a Board-Certified Family Nurse Practitioner. I have practiced in the field of which I give this opinion for at least three out of the last five years.
- 3) I have been provided with the medical records from Hallmark Healthcare, Dorchester County EMS and Summerville Medical Center pertaining to Phyllis Chestnut.
- 4) On April 12, 2019, Mrs. Chestnut was admitted to Hallmark Healthcare Center. Mrs. Chestnut was dependent on the staff to provide all of activities of daily living and she suffered from shortness of breath with exertion.

- 5) On July 31, 2020, a telephone order was entered to transfer Mrs. Chestnut to the COVID unit due to exposure. The records indicated that there were no orders or labs confirming that Mrs. Chestnut was tested for COVID. The care plan indicated that they would monitor her vital signs, oxygen saturation levels and perform diagnostic testing and labs.
- 6) The nursing assessment completed on July 28<sup>th</sup> and 30<sup>th</sup> indicates that Mrs. Chestnut has no shortness of breath and does not require oxygen.
- 7) The nursing assessments completed on August 1<sup>st</sup> and 2<sup>nd</sup> indicate that Mrs. Chestnut is wearing oxygen and her lungs are clear.
- 8) On August 3, 2020 at 6:52pm, the nurse indicates that Mrs. Chestnut is wearing oxygen and her lungs are clear.
- 9) On August 4, 2020, Mrs. Chestnut was found lethargic, not oriented, she had slurred speech, shortness of breath and her lungs were positive for rhonchi.
- 10) EMS arrived at 8:58am on August 4, 2020 and found Mrs. Chestnut with her head of bed below 45 degrees and short of breath. Mrs. Chestnut told EMS that her condition had been ongoing throughout the night. EMS noted that Mrs. Chestnut had two deep wounds below her breast with continuous and uncontrolled bleeding.
- 11) According to the Summerville records, Mrs. Chestnut presented with shortness of breath that had been ongoing for "weeks" with increased respiratory distress starting "last night". The physical exam revealed that Mrs. Chestnut was minimally responsive and in respiratory distress.
- 12) Mrs. Chestnut passed away on August 4, 2020.
- 13) The Defendants failed to monitor and report Mrs. Chestnut's condition accurately and timely. The staff failed to report her condition which prevented her from being transferred to the hospital in a timely manner for definitive treatment.
- 14) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

*Luanne Trahant FNP-BC*  
 Luanne Trahant, MSN, APRN, FNP-BC

Sworn to and subscribed before me:

*Alison Blair*  
 Notary Public

Date: 01/24/2023



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

JAMES GRAHAM, AS PERSONAL ) CASE NO. 2023-CP-18-00758  
REPRESENTATIVE OF THE ESTATE OF )  
PHYLLIS CHESTNUT, )

PLAINTIFF, )

vs. )

HALLMARK LONG TERM CARE, LLC, )  
d/b/a HALLMARK HEALTHCARE )  
CENTER, FUNDAMENTAL LONG )  
TERM CARE, INC., THI OF SOUTH )  
CAROLINA, LLC, THI OF BALTIMORE, )  
INC., HUNT VALLEY HOLDINGS, LLC, )  
FUNDAMENTAL ADMINISTRATIVE )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL AND OPERATIONAL )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL CONSULTING, LLC, AND )  
CURANA HEALTH OF SOUTH )  
CAROLINA, P.C. f/k/a ELITE PATIENT )  
CARE OF SOUTH CAROLINA, PC, )

DEFENDANTS. )

**DEFENDANT HALLMARK LONG TERM  
CARE, LLC d/b/a HALLMARK  
HEALTHCARE CENTER'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

Defendant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center (hereinafter this "Defendant" or "the facility"), *subject to and without waiving its right to compel this matter to arbitration*, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. Responding to Paragraph 2 of Plaintiff's Complaint, this Defendant admits it is organized pursuant to the laws of the State of Delaware and operates the skilled nursing facility at issue in Plaintiff's Complaint located in Dorchester County, South Carolina. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

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

5. Responding to the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of Plaintiff's Complaint, this Defendant would crave reference to Ms. Chestnut's medical records for their contents. This Defendant denies any and all allegations inconsistent with those medical records or which are intended to allege liability or damages against this Defendant. Further responding, this Defendant would affirmatively assert that the care and treatment provided to Ms. Chestnut during her residency at the facility was at all times in compliance with the governing standard of care.

6. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

8. This Court lacks jurisdiction over this matter because Plaintiff's claims as to this Defendant should be submitted to arbitration pursuant to a valid arbitration agreement entered into between the parties to this litigation and therefore this matter should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and compelled to arbitration.

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

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

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

10. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLEMENT RIVERS, LLP

By: s/ James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 720-5406; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Hallmark Long Term  
Care, LLC d/b/a Hallmark Healthcare Center*

Dated: June 16, 2023  
Charleston, South Carolina

|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS           |
|                                    | ) |                                        |
| COUNTY OF DORCHESTER               | ) | FIRST JUDICIAL CIRCUIT                 |
|                                    | ) |                                        |
| JAMES GRAHAM, AS PERSONAL          | ) | CASE NO. 2023-CP-18-00758              |
| REPRESENTATIVE OF THE ESTATE OF    | ) |                                        |
| PHYLLIS CHESTNUT,                  | ) |                                        |
|                                    | ) |                                        |
| PLAINTIFF,                         | ) |                                        |
|                                    | ) |                                        |
| vs.                                | ) |                                        |
|                                    | ) |                                        |
| HALLMARK LONG TERM CARE, LLC,      | ) |                                        |
| d/b/a HALLMARK HEALTHCARE          | ) |                                        |
| CENTER, FUNDAMENTAL LONG TERM      | ) |                                        |
| CARE, INC., THI OF SOUTH CAROLINA, | ) | <b>DEFENDANT FUNDAMENTAL</b>           |
| LLC, THI OF BALTIMORE, INC., HUNT  | ) | <b>ADMINISTRATIVE SERVICES, LLC'S</b>  |
| VALLEY HOLDINGS, LLC,              | ) | <b>ANSWER TO PLAINTIFF'S COMPLAINT</b> |
| FUNDAMENTAL ADMINISTRATIVE         | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL         | ) |                                        |
| CLINICAL AND OPERATIONAL           | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL         | ) |                                        |
| CLINICAL CONSULTING, LLC, AND      | ) |                                        |
| CURANA HEALTH OF SOUTH             | ) |                                        |
| CAROLINA, P.C. f/k/a ELITE PATIENT | ) |                                        |
| CARE OF SOUTH CAROLINA, PC,        | ) |                                        |
|                                    | ) |                                        |
| DEFENDANTS.                        | ) |                                        |
|                                    | ) |                                        |

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

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

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the

extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. The allegations set forth in Paragraphs 2, 3, 4, 5, and 6 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

4. Responding to the allegations set forth in Paragraph 7 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware but denies the remaining allegations set forth in the above Paragraph.

5. The allegations set forth in Paragraphs 8, 9, and 10 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

6. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Ms. Chestnut. This Defendant further denies any interaction or relationship with Ms. Chestnut of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

7. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

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

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

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

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

11. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

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

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

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

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

CLEMENT RIVERS, LLP

By: s/ James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 720-5406; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Fundamental  
Administrative Services, LLC*

Dated: June 16, 2023  
Charleston, South Carolina

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS |
|                                    | ) |                              |
| COUNTY OF DORCHESTER               | ) | FIRST JUDICIAL CIRCUIT       |
|                                    | ) |                              |
| JAMES GRAHAM, AS PERSONAL          | ) | CASE NO. 2023-CP-18-00758    |
| REPRESENTATIVE OF THE ESTATE OF    | ) |                              |
| PHYLLIS CHESTNUT,                  | ) |                              |
|                                    | ) |                              |
| PLAINTIFF,                         | ) |                              |
|                                    | ) |                              |
| vs.                                | ) |                              |
|                                    | ) |                              |
| HALLMARK LONG TERM CARE, LLC,      | ) |                              |
| d/b/a HALLMARK HEALTHCARE          | ) |                              |
| CENTER, FUNDAMENTAL LONG TERM      | ) |                              |
| CARE, INC., THI OF SOUTH CAROLINA, | ) |                              |
| LLC, THI OF BALTIMORE, INC., HUNT  | ) |                              |
| VALLEY HOLDINGS, LLC,              | ) |                              |
| FUNDAMENTAL ADMINISTRATIVE         | ) |                              |
| SERVICES, LLC, FUNDAMENTAL         | ) |                              |
| CLINICAL AND OPERATIONAL           | ) |                              |
| SERVICES, LLC, FUNDAMENTAL         | ) |                              |
| CLINICAL CONSULTING, LLC, AND      | ) |                              |
| CURANA HEALTH OF SOUTH             | ) |                              |
| CAROLINA, P.C. f/k/a ELITE PATIENT | ) |                              |
| CARE OF SOUTH CAROLINA, PC,        | ) |                              |
|                                    | ) |                              |
| DEFENDANTS.                        | ) |                              |
|                                    | ) |                              |

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

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

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

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the

extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. The allegations set forth in Paragraphs 2, 3, 4, 5, 6, and 7 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

4. Responding to the allegations set forth in Paragraph 8 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware but denies the remaining allegations set forth in the above Paragraph.

5. The allegations set forth in Paragraphs 9 and 10 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

6. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Ms. Chestnut. This Defendant further denies any interaction or relationship with Ms. Chestnut of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

7. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

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

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

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

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

11. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

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

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

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

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

CLEMENT RIVERS, LLP

By: s/ James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 720-5406; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Fundamental Clinical  
and Operational Services, LLC*

Dated: June 16, 2023  
Charleston, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

JAMES GRAHAM, AS PERSONAL ) CASE NO. 2023-CP-18-00758  
REPRESENTATIVE OF THE ESTATE OF )  
PHYLLIS CHESTNUT, )

PLAINTIFF, )

vs. )

HALLMARK LONG TERM CARE, LLC, )  
d/b/a HALLMARK HEALTHCARE )  
CENTER, FUNDAMENTAL LONG )  
TERM CARE, INC., THI OF SOUTH )  
CAROLINA, LLC, THI OF BALTIMORE, )  
INC., HUNT VALLEY HOLDINGS, LLC, )  
FUNDAMENTAL ADMINISTRATIVE )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL AND OPERATIONAL )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL CONSULTING, LLC, AND )  
CURANA HEALTH OF SOUTH )  
CAROLINA, P.C. f/k/a ELITE PATIENT )  
CARE OF SOUTH CAROLINA, PC, )

DEFENDANTS. )

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

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

Defendant Hunt Valley Holdings, LLC (hereinafter this "Defendant") *subject to and without waiving its right to have this matter dismissed for lack of personal jurisdiction*, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. The allegations set forth in Paragraphs 2, 3, 4, and 5 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

4. Responding to the allegations set forth in Paragraph 6 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware but denies the remaining allegations set forth in the above Paragraph.

5. The allegations set forth in Paragraphs 7, 8, 9, and 10 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

6. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Ms. Chestnut. This Defendant further denies any interaction or relationship with Ms. Chestnut of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

7. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

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

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

10. This Court lacks jurisdiction over this Defendant pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 36-2-803. Accordingly, Plaintiff's claims against this Defendant must be dismissed and Defendant hereby reserves the right to move to dismiss Plaintiff's Complaint on the stated basis.

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

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

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

12. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

17. This Defendant would affirmatively assert that, to the extent it was is liable to Plaintiff, which is vehemently denied, it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Uniform Contributions Among Tortfeasors Act,

Noneconomic Damages Award Act, and Medical Malpractice Reform Bill, including but not limited to §15-38-15; §15-32-200 *et. seq.*; §15-36-100; and §15-79-125 and any other applicable provisions under the acts.

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

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

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

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

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

20. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

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

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

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

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

CLEMENT RIVERS, LLP

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

Dated: June 16, 2023  
Charleston, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

JAMES GRAHAM, AS PERSONAL ) CASE NO. 2023-CP-18-00758  
REPRESENTATIVE OF THE ESTATE OF )  
PHYLLIS CHESTNUT, )

PLAINTIFF, )

vs. )

HALLMARK LONG TERM CARE, LLC, )  
d/b/a HALLMARK HEALTHCARE )  
CENTER, FUNDAMENTAL LONG TERM )  
CARE, INC., THI OF SOUTH CAROLINA, )  
LLC, THI OF BALTIMORE, INC., HUNT )  
VALLEY HOLDINGS, LLC, )  
FUNDAMENTAL ADMINISTRATIVE )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL AND OPERATIONAL )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL CONSULTING, LLC, AND )  
CURANA HEALTH OF SOUTH )  
CAROLINA, P.C. f/k/a ELITE PATIENT )  
CARE OF SOUTH CAROLINA, PC, )

DEFENDANTS. )

**DEFENDANT THI OF BALTIMORE,  
INC.'S ANSWER TO PLAINTIFF'S  
COMPLAINT**

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

Defendant THI of Baltimore, Inc. (hereinafter this "Defendant"), *subject to and without waiving its right to have this matter dismissed for lack of personal jurisdiction*, hereby answers the Plaintiff's Complaint and alleges and states as follows:

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. The allegations set forth in Paragraphs 2, 3, and 4 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

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

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

6. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Ms. Chestnut. This Defendant further denies any interaction or relationship with Ms. Chestnut of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

7. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

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

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

10. This Court lacks jurisdiction over this Defendant pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 36-2-803. Accordingly, Plaintiff's claims against this Defendant must be dismissed and Defendant hereby reserves the right to move to dismiss Plaintiff's Complaint on the stated basis.

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

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

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

12. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

17. This Defendant would affirmatively assert that, to the extent it was is liable to Plaintiff, which is vehemently denied, it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Uniform Contributions Among Tortfeasors Act,

Noneconomic Damages Award Act, and Medical Malpractice Reform Bill, including but not limited to §15-38-15; §15-32-200 *et. seq.*; §15-36-100; and §15-79-125 and any other applicable provisions under the acts.

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

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

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

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

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

20. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

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

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

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

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

CLEMENT RIVERS, LLP

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

Dated: June 16, 2023  
Charleston, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

JAMES GRAHAM, AS PERSONAL ) CASE NO. 2023-CP-18-00758  
REPRESENTATIVE OF THE ESTATE OF )  
PHYLLIS CHESTNUT, )

PLAINTIFF, )

vs. )

HALLMARK LONG TERM CARE, LLC, )  
d/b/a HALLMARK HEALTHCARE )  
CENTER, FUNDAMENTAL LONG )  
TERM CARE, INC., THI OF SOUTH )  
CAROLINA, LLC, THI OF BALTIMORE, )  
INC., HUNT VALLEY HOLDINGS, LLC, )  
FUNDAMENTAL ADMINISTRATIVE )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL AND OPERATIONAL )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL CONSULTING, LLC, AND )  
CURANA HEALTH OF SOUTH )  
CAROLINA, P.C. f/k/a ELITE PATIENT )  
CARE OF SOUTH CAROLINA, PC, )

DEFENDANTS. )

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

TO: LEE D. COPE, ATTORNEY FOR THE PLAINTIFF:

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

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

2. The allegations set forth in Paragraph 1 of Plaintiff's Complaint are legal conclusions or non-factual allegations which require no response from this Defendant. To the

extent a response is required, those allegations are denied to the extent they assert or imply liability and/or damages as to this Defendant.

3. The allegations set forth in Paragraphs 2 and 3 of Plaintiff's Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies those allegations to the extent they allege liability or damages against this Defendant.

4. Responding to the allegations set forth in Paragraph 4 of Plaintiff's Complaint, this Defendant admits it is an LLC organized under the laws of the state of Delaware but denies the remaining allegations set forth in the above Paragraph.

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

6. This Defendant is without sufficient knowledge or information to form an opinion as to the truth of the allegations set forth in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Plaintiff's Complaint and therefore denies the same and demands strict proof thereof. This Defendant has never been a licensed operator of a skilled nursing facility and never provided care or treatment to Ms. Chestnut. This Defendant further denies any interaction or relationship with Ms. Chestnut of any kind. To the extent the allegations set forth in the above Paragraph are directed at parties other than this Defendant, no response is required.

7. This Defendant denies the allegations of Paragraphs 22, 23, 24, and 25 of Plaintiff's Complaint including all subparts, and demands strict proof thereof.

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

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

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

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

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

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

11. This Defendant is entitled to all privileges, rights, and immunities under the South Carolina COVID-19 Liability Immunity Act and the Public Readiness and Emergency Preparedness Act to the extent they are applicable to this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. This Defendant would assert that it owes no duty of care to the Plaintiff in either tort or contract. To the extent this Defendant did owe Plaintiff a duty of care, which is denied, this Defendant was at all times compliant with the governing standard of care.

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

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

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

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

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

CLEMENT RIVERS, LLP

By: s/ James D. Gandy, III

D. Jay Davis, Jr., SC Bar No.: 12084

James D. Gandy, III, SC Bar No.: 11925

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

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),

[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)

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

Dated: June 16, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

JAMES GRAHAM, AS PERSONAL ) CASE NO. 2023-CP-18-00758  
REPRESENTATIVE OF THE ESTATE OF )  
PHYLLIS CHESTNUT, )

PLAINTIFF,

vs.

HALLMARK LONG TERM CARE, LLC, )  
d/b/a HALLMARK HEALTHCARE )  
CENTER, FUNDAMENTAL LONG TERM )  
CARE, INC., THI OF SOUTH CAROLINA, )  
LLC, THI OF BALTIMORE, INC., HUNT )  
VALLEY HOLDINGS, LLC, )  
FUNDAMENTAL ADMINISTRATIVE )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL AND OPERATIONAL )  
SERVICES, LLC, FUNDAMENTAL )  
CLINICAL CONSULTING, LLC, AND )  
CURANA HEALTH OF SOUTH )  
CAROLINA, P.C. f/k/a ELITE PATIENT )  
CARE OF SOUTH CAROLINA, PC, )

DEFENDANTS.

**DEFENDANT FUNDAMENTAL  
CLINICAL CONSULTING, LLC'S  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

TO: LEE COPE, ATTORNEY FOR THE PLAINTIFF:

Please take notice that Defendant Fundamental Clinical Consulting, LLC (hereinafter referred to as this "Defendant"), 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 dismissing this action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, this Defendant has never been a licensed operator of a skilled nursing facility and has never provided resident care. Further, this Defendant ceased providing clinical consulting services on or about December 31, 2010.

This motion is supported by the statutory and case law 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/ James D. Gandy, III

D. Jay Davis, Jr., SC Bar No.: 12084

James D. Gandy, III, SC Bar No.: 11925

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

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),

[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)

*Attorneys for the Defendant Fundamental Clinical Consulting, LLC*

Dated: June 16, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA            )     TRANSCRIPT OF RECORD  
COUNTY OF DORCHESTER            )     CASE NO. 2023-CP-18-00758

-----  
September 4, 2024

BEFORE:   The Honorable Judge Maite Murphy  
-----

James Graham, as Personal Representative of the Estate of  
Phyllis Chestnut,

Plaintiff,

vs.

Hallmark Operating , LLC, d/b/a Hallmark Healthcare Center,  
Fundamental Long Term Care, Inc., et al.,

Defendants.  
-----

APPEARANCES:

John E. Parker, Jr., Esq.  
Attorney for the Plaintiff

Russell G. Hines, Esq.  
Attorney for the Defendants.

Official Court Reporter/Transcriber  
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform  
2 interruption and audio interference throughout the  
3 hearing, those instances are denoted with  
4 (inaudible) in the transcript.)

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

6 THE COURT: Good afternoon, everyone.

7 MR. HINES: Good afternoon.

8 MS. THOMPSON: Good afternoon.

9 THE COURT: I appreciate everyone hopping on a  
10 little early since we were moving along more quickly this  
11 afternoon, so thank you for that. And so it looks like we  
12 have several motions that -- is there -- obviously y'all are  
13 more familiar with the case and what might make more sense  
14 in how we proceed. Who would like to jump in and give me a  
15 kind of a heads up of what we've got going on here.

16 MR. HINES: Your Honor, I think I can do that and  
17 I'm Russ Hines, and may it please the Court, with the  
18 Clement Rivers. I know Jay Davis, I think Trip Gandy, our  
19 other counsel of record with me. The good news is, and our  
20 firm represents all the moving parties today on your docket.  
21 The good news is there's really -- there's the one primary  
22 motion, which is a Motion to Compel Arbitration. I think  
23 there are six other motions and I'll call them tag alongs  
24 they are all motions to stay and they rise or fall on the  
25 Motion to Compel Arbitration.

1           I did file, and with apologies to all, just this  
2   afternoon I think it should be in the Court's record, it was  
3   accepted, a memo in support, it's not particularly long and  
4   it includes in there the citation to the Federal Arbitration  
5   Act, in particular, Section 3, and some case law that  
6   supports the position that if the Court grants the Motion to  
7   Compel Arbitration, then there should be a stay of the cases  
8   that aren't -- or the claims that aren't compelled to  
9   arbitration. I'm happy to let that just be my argument on  
10  that written form just to move things along if that's okay  
11  with Your Honor?

12           THE COURT: Yes, sir. I appreciate that.  
13  Obviously, I will take the time to review all the  
14  memorandums before making a decision. So if y'all just want  
15  to hit the highlights of the major points that would be  
16  great.

17           MR. HINES: Great. And, Your Honor, will do. And  
18  I think this is one where it seems like -- well this is the  
19  rare case where I'm not in front of you arguing a Motion to  
20  Compel Arbitration and talking to you about a non-signatory  
21  in this kind in the concept of merger and estoppel, which  
22  I'm sure you've heard more than you care to about.

23           This is one where this is a Motion to Compel  
24  Arbitration. It is in the context of a skilled nursing  
25  facility. And in this case it's a wrongful death and

1 survival action brought by James Graham as the Personal  
2 Representative of the Estate of his late mother,  
3 Ms. Chestnut.

4 The Arbitration Agreement that we have here was  
5 indeed signed by Ms. Chestnut herself and that's the  
6 agreement under which we are moving to compel the wrongful  
7 death and survival claims against the facility itself, which  
8 is the defendant called Hallmark, Long Term Care, LLC, d/b/a  
9 Hallmark Healthcare Center.

10 We're only moving to compel arbitration between  
11 the facility, again, that Hallmark entity, and the  
12 plaintiff. And this might help Ms. Thompson, because she I  
13 know she filed a, I assume, sort of out of an abundance of  
14 caution, a memo saying, Hey, we object on behalf of her  
15 client, Curana or Curana -- I'm sure I'll mispronounce it --  
16 to us being included in arbitration to which we've not  
17 agreed.

18 We are not asking the Court to compel her client  
19 to arbitrate with us. We're only asking the Court to compel  
20 arbitration with the Hallmark entity and the plaintiff. And  
21 we're doing that on the basis, again, of a signed  
22 Arbitration Agreement that was signed by in this the  
23 resident, now decedent, but herself.

24 So, again, we have a, you know, it's a direct  
25 signatory situation. This is not a situation where we have

1 to talk about agency or powers of attorney or, heaven  
2 forbid, merger in estoppel. So in looking at the memo in  
3 opposition that plaintiff filed, my understanding is, is  
4 that in this wrongful death and survival action, the only  
5 disagreement we have is whether or not the wrongful death  
6 claim should be -- against Hallmark should be compelled to  
7 arbitration. At least that's the only argument that I'm  
8 aware of. I don't at all mean to speak for Mr. Parker, and  
9 I know he'll set me straight if I've stated that wrong, but  
10 so I -- what I intend to do is to focus on the wrongful  
11 death claim and why it is just as subject to arbitration as  
12 the survival aspect of the case.

13 The -- as I understand their argument, the  
14 wrongful death claim is not subject to arbitration, they  
15 makes the point that the claim belongs to, not Ms. Chestnut  
16 herself, but the statutory beneficiaries. I would, take  
17 issue with that in the sense that I recognize that the  
18 statutory beneficiaries have the beneficial interest in the  
19 claim, but I do disagree that it is their claim, per se.  
20 The statute requires that claim to be brought by the  
21 Personal Representative of the estate and they could not  
22 bring the claim, they being the statutory beneficiaries  
23 themselves.

24 But, more importantly, my argument really I think  
25 boils down pretty nicely to this, looking at SC Code Section

1 15-51-10, which is the Code Section under which the wrongful  
2 death claim is created, and if the Court will indulge just a  
3 moment's worth of reading, it reads as follows: Whenever  
4 the death of a person shall be caused by the wrongful act,  
5 neglect, or defaults of another, and the act, neglect, or  
6 default is such as would, if death had not ensued, have  
7 entitled the party injured to maintain an action and recover  
8 damages in respect, thereof, the person who would have been  
9 liable, if death had not been ensued, shall be liable to an  
10 action for damages notwithstanding the death of the person  
11 injured.

12 Well, that's obviously statutory language and it's  
13 not usually particularly poetic or succinct, but I can --  
14 but the long and short of it is what the Supreme Court  
15 explained in a case called the Estate of Stokes, ex rel.  
16 Spell v. Pee Dee Family Physicians, and we cite it, which is  
17 succinctly stated: If the decedent had no claim of his  
18 death, the estate has no claim.

19 The point of me reading that statutory language is  
20 really to focus on the part that refers to -- my page, oh --  
21 and the act, neglect, or default is such as would have if  
22 death and not ensued entitled the party injured to maintain  
23 an action. And I would point to that word "maintain" in  
24 action and recover damages. In particular, I point to that  
25 word "maintain" because I look back at this case, the Estate

1 of Stokes, again, which we do cite in our memo. And it goes  
2 through -- in that case, and I would certainly acknowledge  
3 that the Stokes case was not a case about whether or not  
4 wrongful death beneficiaries were bound by an Arbitration  
5 Agreement that the decedent had signed, that's -- there's --  
6 to be clear, that's not what Stokes addressed expressly, but  
7 the principle that Stokes supports, I believe, carries us  
8 all the way through to vindicate my position today about the  
9 wrongful death beneficiaries being bound by the decedent's  
10 Arbitration Agreement.

11 In the Stokes case, what it looked at was whether  
12 or not the statute of limitations running on the decedent  
13 prior to death would bar a wrongful death claim after this  
14 decedent's death. And in finding that it was, our Supreme  
15 Court looked at a case called Quattlebaum that Judge Joe  
16 Anderson decided in the Federal Court that addressed that  
17 issue and concluded up that the statute of limitations did  
18 apply to the wrongful death claim.

19 And in quoting Judge Anderson's decision, the  
20 Court -- our Supreme Court noted that: The right to bring a  
21 wrongful death claim is conditioned upon the decedent's  
22 right to maintain a claim or action. Judge Anderson's case  
23 was called Quattlebaum, and what the Court said is:  
24 Quattlebaum was correctly decided and adheres to the  
25 principle that the decedent's of estate may maintain an

1 action only when the decedent would have been entitled to  
2 maintain an action had he survived.

3 My point here is really so simple as to say that  
4 the decedent here, Ms. Chestnut, by virtue of the  
5 Arbitration Agreement, could not maintain a civil action,  
6 she had to proceed against arbitration. And she, being  
7 bound -- or Ms. Chestnut being bound in that way, it also  
8 binds the statutory beneficiaries who, again, do not  
9 actually own the claim, I would make that clear, that they  
10 are -- they have a beneficial interest in it, but they  
11 couldn't come to court and bring a lawsuit on their behalf.  
12 The suit is brought by and has to be brought by the personal  
13 representative of the estate.

14 But, Your Honor, I guess at the risk of repeating  
15 myself or so as to not to repeat myself, I'll leave it at  
16 that if you'll allow me a little bit of time to reply to  
17 Mr. Parker as maybe needed. But, again, basically we have  
18 signed Arbitration Agreement by the resident. I'm not aware  
19 of any argument that the plaintiff is making that that's not  
20 binding as to the survival claim, they attack the wrongful  
21 death claim. And, in so doing, we respectfully disagree and  
22 say that on the authority of the Quattlebaum case and the  
23 Stokes case that we've cited and the statute, which  
24 conditions the right to maintain an action on the right that  
25 the decedent would have had, had they lived, that that

1 Arbitration Agreement applies with the equal force to the  
2 wrongful death claim. Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Hines. Response?

4 MR. PARKER: Thank you, Your Honor. This is Jay  
5 Parker appearing on behalf of the plaintiff.

6 This is actually about having -- trying to enforce  
7 an Arbitration Agreement against people that that did not  
8 sign it. So I would disagree with Mr. Hines on that point.  
9 We do agree that there is an Arbitration Agreement that was  
10 signed by the decedent Ms. Chestnut, on her admission to the  
11 facility.

12 So that's there and that's why we're not  
13 contesting their survival claims. Obviously, their survival  
14 claims have their own categories of damages and all of those  
15 are damages that were suffered personally by Ms. Chestnut  
16 after the acts of negligence that we allege in the complaint  
17 prior to her death.

18 So we think that those are arbitrable, we think  
19 there is a valid Arbitration Agreement that's going to  
20 compel the survival claims to arbitration and Ms. Chestnut  
21 herself signed the Arbitration Agreement. I mean, those are  
22 her claims. Now, obviously, after she dies, the survival  
23 statute enables the Personal Representative of her estate to  
24 pursue those claims on the estate's behalf, but those were  
25 personal to her.

1           But if you're -- forgive me, Your Honor, I didn't  
2 get some extra time to prepare for this, as I normally  
3 would, so I'm probably going to look at my notes a little  
4 bit more than I normally would, so my argument might be a  
5 little bit stopping and starting.

6           So when you look at -- if we get a chance to look  
7 at the brief that we filed, a lot of states have looked at  
8 this issue. And, actually, this question is a novel  
9 question for South Carolina, so I don't have any binding  
10 authority that I can provide to you for guidance on this.  
11 But there are a slew of other state jurisdictions that have  
12 looked at this issue and this is the way that they -- that  
13 they analyze it. Excuse me. And the question that the  
14 Court has to answer, is this: Are wrongful death claims  
15 derivative of the survival claims that belonged to the  
16 decedent and therefore passed to the estate, are they  
17 independent of those claims?

18           That is the key question that every state  
19 jurisdiction that has looked at this has turned on. And all  
20 the ones that we cite, and there's a bunch of them in our  
21 brief, I didn't count them, but it's at least seven or  
22 eight, they've all looked at that question and said: If the  
23 wrongful death claims are derivative of the survival claims,  
24 then they're not severable and you can't separately compel  
25 the survival claims into arbitration while leaving the

1 wrongful death claims in litigation at state court. And  
2 what this Court has said is that the converse of that is,  
3 you know, if they're independent then they can go their own  
4 separate ways. And so there's a lot of different places we  
5 can look to, to try to answer that question.

6           The first being the wrongful death statute that  
7 Mr. Hines just brought up, I don't have it pulled up in  
8 front of me and I'm not going to read the language to you  
9 again, but that language that Mr. Hines read to you, that in  
10 no way is saying that wrongful death claims are derivative  
11 of the survival claims. What that language is saying is  
12 that the wrongful death claims arise out of the act of  
13 negligence that occurred prior to the decedent's death that  
14 caused that decedent's death. And that's true of both the  
15 survival and the wrongful death claims. They both arise  
16 from that act of negligence, but that doesn't mean that the  
17 wrongful death claims are derivative of that survival claim.

18           And to kind of reinforce that language, Mr. Hines  
19 cited two cases Stokes and Quattlebaum, Quattlebaum being a  
20 case that was in the District and Federal Court, District of  
21 South Carolina, and then the Stokes case was a Court of  
22 Appeals case, but those cases had nothing and -- he's --  
23 Mr. Hines told you this, those cases had nothing to do with  
24 the issue we brought before you today. Those cases just had  
25 to do with the statute of limitations and how the statute of

1 limitations interplays with the time that the negligent act  
2 occurred.

3 And so, in brief, to tell you what the holding of  
4 those two cases is, and I'm sure you're aware of this, is  
5 that, let's take Ms. Chestnut's example, she's in the  
6 facility, some conduct occurs on behalf of the defendants  
7 that we allege causes her injuries and leads to her death.

8 Ms. Chestnut has three years from the date of that  
9 act to bring her claims and we all know also that the  
10 wrongful death statute of limitations actually says that the  
11 wrongful death claim statute doesn't begin to run until the  
12 time of death. What those cases hold is that if the act of  
13 negligence occurs, three years pass, that decedent doesn't  
14 bring any claims on behalf of herself and those claims  
15 basically die, they grow stale, then you can't revive that  
16 with the wrongful death statute of limitations. And that's  
17 the very narrow holding of those cases.

18 And, again, that has nothing to do with whether or  
19 not the wrongful death claims are derivative of the survival  
20 claims. That has to do with does the statute start running  
21 when the act of negligence occurred? And that's all that  
22 language of this wrongful death statute is referring to.

23 And so I think we can dispose of that as a source  
24 for the proposition that somehow wrongful death claims are  
25 derivative of the survival claims. And so you have to

1 assess whether or not they're independent, whether they're  
2 truly independent causes of action. And there's a lot of  
3 different places where we can find that that is the case.

4           One, there's different categories of damages. The  
5 wrongful death claims, those damages are solely based on the  
6 wrongful death beneficiaries damages, their pain and  
7 suffering for the loss of their loved one. You know,  
8 survival claims obviously have a totally separate category  
9 of damages, which are for medical expenses, funeral  
10 expenses, pain and suffering suffered by the decedent prior  
11 to their death. Those claims -- those are damages that are  
12 awarded to the decedent or the decedent's estate. Those are  
13 two totally separate categories of damages that seek to  
14 remedy two totally different things that happen.

15           You can look at the statutes of limitations,  
16 wrongful death has its own statute of limitations. The case  
17 law of South Carolina going back to 1907, and we cite all of  
18 this in our brief, but, there's a case that's called,  
19 Claussen v. Brothers, and in that case, the Supreme Court  
20 stated that the party in whose favor the right of action in  
21 reality exists under the wrongful statute, it's not the  
22 personal representative of the deceased person, it's the  
23 wrongful death beneficiaries. The real party is the  
24 wrongful death beneficiary, not the decedent, not the  
25 personal representative.

1           And so our argument is that because those wrongful  
2 death beneficiaries are the real party, the only person that  
3 could waive those jury trial rights that they have are  
4 themselves. The personal representative can't waive it for  
5 them, that decedent during her life can't waive it for them.  
6 Therefore, you do have this issue of someone signing this  
7 Arbitration Agreement and then them trying to compel  
8 nonparties into the arbitration who haven't voluntarily  
9 relinquished their right to a jury trial.

10           And we cite numerous cases in South Carolina for  
11 the proposition that these truly are independent, not  
12 derivative claims. The survival action is not solely -- or,  
13 excuse me, the wrongful death action isn't solely relying on  
14 the survival action for its existence. And you can kind of  
15 think about this -- you can make up a scenario in your head  
16 where you think about it and, I mean, imagine that -- I  
17 mean, I've got a case I was working on today where our  
18 client passed away, he was hit by a truck, instantly, you  
19 know, no evidence that he had any conscious pain and  
20 suffering, no evidence that he was aware of what was about  
21 to happen, happened, no medical expenses, nothing that we  
22 could claim as survival damages.

23           Now, we could have filed that lawsuit in state  
24 court just as a wrongful death action and had it brought by  
25 the PR on behalf of the wrongful death beneficiaries. So

1 the idea that the survival claim, excuse me, the wrongful  
2 death claim is derivative of the survival claim, that just  
3 kind of blows it out of the water because you have these  
4 scenarios where you can bring a wrongful death action  
5 without even asserting a survival claim, because the people  
6 who are benefiting from that are totally different and it's  
7 totally different classes of damages, they're relying on  
8 different sources of evidence.

9 And so just to kind of go back into the other  
10 jurisdictions, I mean, the ones that we found they all find  
11 that -- that we put in our brief -- they all find that a  
12 survive -- or, excuse me, a wrongful death action is not  
13 derivative of a survival action. That those claims are  
14 separate and severable and you can compel the survival  
15 claims to arbitration while maintaining the wrongful death  
16 claims in state court. So that those wrongful death  
17 beneficiaries do get their right to a jury trial.

18 Mr. Hines, and I'll just mention these cases one  
19 more time, Mr. Hines mentioned Stokes and Quattlebaum, and I  
20 told you those cases actually have very narrow holdings and  
21 they only hold that you can't let the claims lapse and then  
22 try to revive them with the wrongful death statute.

23 Well, those other jurisdictions that we cite that  
24 say that the wrongful death claims do belong to the wrongful  
25 death beneficiaries and that you can separate these claims

1 and not compel them to arbitration, several of those  
2 jurisdictions have identical language in their statutes.  
3 And several of those jurisdictions also hold the same thing  
4 that Stokes and Quattlebaum do. And at the same time within  
5 the very same cases they turn around and say, But just  
6 because that claim can grow stale and it can lapse, doesn't  
7 mean that those wrongful death claims don't solely belong to  
8 the wrongful death beneficiaries.

9 And so I think two of the jurisdictions are  
10 Oklahoma and it's in our brief, Your Honor, Oklahoma and  
11 Pennsylvania, but they look at the argument that Mr. Hines  
12 just made and say, Yeah, that's true, but that doesn't mean  
13 that the wrongful death claim is derivative of the survival  
14 plan. It just means that they both have the same point of  
15 origin for the statute of limitations to begin with.

16 And so, in that case, this is very similar to a  
17 lot of the cases that I argue against Mr. Hines on where we  
18 have, and we've done a good bit and a lot of the other  
19 people in my office have done it even more, but this is a  
20 very similar situation to where you have a daughter or son  
21 signing the Arbitration Agreement who has no apparent  
22 authority, no actual authority to sign the Arbitration  
23 Agreement, and then they're trying to enforce it against the  
24 wrongful death beneficiaries in the state on the back end.

25 Well, now you have the decedent who signed it,

1   there's no evidence that she had actual or apparent  
2   authority to waive her children's rights to recovery on the  
3   wrongful death claims and now they're trying to bind them to  
4   that.  And so -- and they've appealed so many of these in  
5   the last couple of years and the Court of Appeals has come  
6   back with the exact same holding every single time published  
7   or unpublished, which is that it doesn't matter if it's  
8   under the FAA, it doesn't matter if it's an Arbitration  
9   Agreement, you cannot have a third party sign an Arbitration  
10   Agreement and purport to waive the rights of other people  
11   and their rights to recovery and their rights to a jury  
12   trial when they don't have authority.

13           And the reason I tell you that, Your Honor, is I  
14   think in accordance with other state law and South Carolina  
15   law treating these claims as independent and separate causes  
16   of action, I think it would be error to basically grant  
17   Mr. Hines' motion and compel all of it in arbitration, but  
18   if you give any credence to anything I'm saying, I'm  
19   positive they will appeal this if they can.  And I can  
20   assure you that I think on appeal that the Court of Appeals  
21   and the Supreme Court ruled the exact same way they have on  
22   this in the last twelve times has come before them, which is  
23   that you cannot have the decedent sign an agreement and  
24   waive other people's rights to a jury trial for claims that  
25   solely belong to them.  Whether those claims statutorily can

1     only be brought by the personal representative or  
2     themselves.

3             And, you know, I'm not saying this is right, but I  
4     would throw this out there, if the PR is the person who can  
5     bring the claim and that's who's statutorily authorized to  
6     bring the claim, well then it's the PR's authority to waive  
7     that jury right, and that never happened here either. Ms.  
8     Chestnut, the decedent, is not the PR and she just doesn't  
9     have any authority to do this.

10            So what we're asking the Court to do is we're not  
11    holding up this -- the arbitration of the survival claim,  
12    we're asking that you sever it -- you don't even have to  
13    sever it because they're brought separately, but then you do  
14    not compel the wrongful death claims to arbitration.

15            Thank you, Your Honor.

16            THE COURT: Thank you, Mr. Parker.

17            Mr. Hines, brief response?

18            MR. HINES: Well, Your Honor, Mr. Parker always  
19    does a fine job. And I'm surely arguing these motions  
20    against it, but I must respectfully say I believe he gets a  
21    little ahead of himself in referring or likening this case  
22    to the other ones that he talked about, all of which dealt  
23    with the merger and the estoppel argument, which isn't  
24    present here. And I think as proof of that, I would note  
25    and agree with Mr. Parker who, before he said that, he

1 acknowledged this was a novel question.

2           So it can't on the one hand be a novel question  
3 and on the other one be clear and clearly decided by the  
4 existing law, which it isn't. And now he mentioned that  
5 there was these Quattlebaum and Stokes cases, narrow  
6 holdings, I think that's probably -- that's an accurate  
7 thing to say in terms of what the holding was narrowed,  
8 the reasoning is broadly supportive of my argument. And I'm  
9 not suggesting that those cases establish the principle that  
10 I'm arguing, but I'm saying that, that, that the reasoning  
11 upon which those cases stand is -- well, it that's all that  
12 needs to be established to make the point that I'm making.

13           And I would point, this is language that from  
14 Quattlebaum that the Supreme Court and in the Stokes case  
15 cited with approval, and if the Court will indulge me a  
16 moment: Therefore, a new statutory right is created by  
17 Section 15-51-10 in the personal representative of the  
18 decedent which can only be maintained if the decedent had he  
19 lived could have maintained such an action.

20           I'll stop there and mention, I respectfully  
21 disagree with Mr. Parker when he says that the origin of  
22 these claims is the same. That's the origin -- if the  
23 origin were the same, we would strictly be talking about the  
24 act, the alleged negligent act out of which they arise, but  
25 the statute doesn't stop there. The statute says, Whenever

1 the death of a person shall be caused by the wrongful, act,  
2 neglect, or the fault of another, and the act, neglect, or  
3 default is such as would if death had not ensued entitled  
4 the injured party to maintain an action. That's the reason  
5 why that even in Mr. Parker's case, there maybe no  
6 cognizable claim for survival based upon conscious pain and  
7 suffering, but to have a wrongful death claim in the case  
8 he's mentioning, it has to be one -- again that, you know,  
9 if the poor person who is no longer with us had survived, he  
10 would have a claim. That's an essential element of that.

11 And so, these claims, they absolutely the wrongful  
12 death claim is very much intertwined with the survival  
13 claim. The idea that they would be independent of one or  
14 another again is belied by the idea that the decedent had to  
15 have a claim that would have existed had he lived. And in  
16 that regard, this is what Judge Anderson said and it was  
17 approved of by the Supreme Court: Furthermore, anything  
18 that would have defeated the decedent's recovery had he  
19 survived the accident such as contributory negligence, a  
20 valid release or similar acts on his part would defeat the  
21 right of recovery on behalf of his family in case of his  
22 death.

23 I would note there that he mentioned specifically  
24 a valid release. That's a contract which he would have  
25 signed which would have released the claim which would have

1 verified extinguish a subsequent wrongful death claim.  
2 Meaning, that let's just imagine the insured, excuse me, the  
3 decedent prior to dying after an accident that led to that  
4 that was, you know, on its way to leading to that insured --  
5 that injured person's death, signed the release and released  
6 all claims arising out of that accident and then later dies.

7 Even not -- putting aside the statute of  
8 limitations, but that valid release would extinguish the  
9 ability to bring a wrongful death claim. And I would also  
10 note that valid release is a contract that would not have  
11 been signed by any wrongful death beneficiary. It would  
12 have waived the right to a jury trial, because by releasing  
13 a claim, you certainly are waiving the right to a jury  
14 trial, you're waiving the right to pursue it in any form.

15 And then the last thing I suppose I would mention  
16 is when Mr. Parker, and I maybe, not to make too much of it,  
17 but just he said, If anyone, you know, he suggested that the  
18 personal representative should need to sign. Well, who of  
19 course does the personal representative stand in the shoes  
20 of? Ms. Chestnut. You know, that's her represent -- I  
21 mean, it sort of puts it -- turns around backwards to  
22 suggest that the representative needed to sign it to  
23 validate the signing of it by the actual person themselves.

24 So, Your Honor, I realized -- well, anyways,  
25 you've been indulgent and I appreciate very much the

1 opportunity to have this much time to, argue with you or  
2 argue before you and -- but I think we've addressed  
3 Mr. Parker's -- or at least I think between Mr. Parker and  
4 I, our respective sides are pretty well fleshed out in our  
5 briefs. And I'm happy to rest on that with this and other  
6 than to say we would ask respectfully, Your Honor, to grant  
7 the Motion to Compel Arbitration and the tag along motions  
8 to stay and believe that -- well, that the Motion to Compel  
9 Arbitration is meritorious and therefore so are the motions  
10 to stay. Thank you.

11 THE COURT: All right. Thank you, gentlemen. I  
12 appreciate both of your arguments. I'll certainly take the  
13 time to review the memorandums in this matter.

14 Anything further?

15 MR. PARKER: No, Your Honor.

16 THE COURT: Thank you, everyone. Have a great  
17 day.

18 MR. HINES: Thank you, Your Honor.

19 END OF REQUESTED PROCEEDINGS  
20  
21  
22  
23  
24  
25

CERTIFICATE OF TRANSCRIBER

Case Name/Number: James Graham, PR vs. Hallmark Long Term  
Care, LLC, et al., 2023-CP-18-00758

Date of Hearing: September 4, 2024

Court Reporter/Monitor: WebEx

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio 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.

April 16, 2025

*Cynthia D Weaver*

Cynthia D. Weaver,  
Official Court Reporter/Transcriber  
State of South Carolina

|                                   |   |                                       |
|-----------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS          |
|                                   | ) | FIRST JUDICIAL CIRCUIT                |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758             |
|                                   | ) |                                       |
| JAMES GRAHAM, AS PERSONAL         | ) |                                       |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                       |
| PHYLLIS CHESTNUT,                 | ) |                                       |
|                                   | ) |                                       |
| PLAINTIFF,                        | ) |                                       |
|                                   | ) |                                       |
| vs.                               | ) |                                       |
|                                   | ) |                                       |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                       |
| HALLMARK HEALTHCARE CENTER,       | ) |                                       |
| FUNDAMENTAL LONG-TERM CARE,       | ) | <b>DEFENDANT HALLMARK OPERATING,</b>  |
| INC., THI OF SOUTH CAROLINA, LLC, | ) | <b>LLC, d/b/a HALLMARK HEALTHCARE</b> |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>CENTER MOTION TO STAY OR</b>       |
| VALLEY HOLDINGS, LLC,             | ) | <b>DISMISS ACTION AND COMPEL</b>      |
| FUNDAMENTAL ADMINISTRATIVE        | ) | <b>ARBITRATION</b>                    |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                       |
| CLINICAL AND OPERATIONAL          | ) |                                       |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                       |
| CLINICAL CONSULTING, LLC, AND     | ) |                                       |
| CURANA HEALTH OF SOUTH            | ) |                                       |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                       |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                       |
|                                   | ) |                                       |
| DEFENDANTS.                       | ) |                                       |
|                                   | ) |                                       |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant, Hallmark Operating, LLC d/b/a Hallmark Healthcare Center (“Defendant”), by and through its undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying or dismissing this action and compelling arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Phyllis Chestnut’s admission to

the Facility. (See Arbitration Agreement attached as Exhibit A). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff's claims be submitted to arbitration.

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

CLEMENT RIVERS, LLP

By: s/ James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Hallmark Operating,  
LLC d/b/a Hallmark Healthcare Center*

Dated: April 16, 2024  
Charleston, South Carolina

FACILITY - RESIDENT/REPRESENTATIVE ARBITRATION AGREEMENT

This Agreement is made between Hallmark ("Facility"), its agents, employees and servants, and Dear Sir or Madam ("Resident") or Phyllis Chestnut ("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.

✓ Phyllis Chestnut 4-12-19  
Resident/Representative Signature Date

Printed Name of Resident/Representative

Quinda Ambrose 4-12-19  
Authorized Agent of Facility Date

Admissions

Original: Business File • Photocopy: Resident/Representative  
FFS019 South Carolina Arbitration Agreement (6/2009)

Page 1 of 1

ROA 091

DEFENDANT'S  
EXHIBIT

A

ELECTRONICALLY FILED - 2024 Apr 16 2:09 PM - DORCHESTER - COMMON PLEAS - CASE#2023CPI1800758

|                                   |   |                                     |
|-----------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS        |
|                                   | ) | FIRST JUDICIAL CIRCUIT              |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758           |
|                                   | ) |                                     |
| JAMES GRAHAM, AS PERSONAL         | ) |                                     |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                     |
| PHYLLIS CHESTNUT,                 | ) |                                     |
|                                   | ) |                                     |
| PLAINTIFF,                        | ) |                                     |
|                                   | ) |                                     |
| vs.                               | ) |                                     |
|                                   | ) |                                     |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                     |
| HALLMARK HEALTHCARE CENTER,       | ) |                                     |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                                     |
| INC., THI OF SOUTH CAROLINA, LLC, | ) | <b>DEFENDANT FUNDAMENTAL</b>        |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>ADMINISTRATIVE SERVICES, LLC</b> |
| VALLEY HOLDINGS, LLC,             | ) | <b>MOTION TO STAY</b>               |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL AND OPERATIONAL          | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL CONSULTING, LLC, AND     | ) |                                     |
| CURANA HEALTH OF SOUTH            | ) |                                     |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                     |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                     |
|                                   | ) |                                     |
| DEFENDANTS.                       | ) |                                     |
|                                   | ) |                                     |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Fundamental  
Administrative Services, LLC*

Dated: April 16, 2024  
Charleston, South Carolina

|                                   |   |                                        |
|-----------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS           |
|                                   | ) | FIRST JUDICIAL CIRCUIT                 |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758              |
|                                   | ) |                                        |
| JAMES GRAHAM, AS PERSONAL         | ) |                                        |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                        |
| PHYLLIS CHESTNUT,                 | ) |                                        |
|                                   | ) |                                        |
| PLAINTIFF,                        | ) |                                        |
|                                   | ) |                                        |
| vs.                               | ) |                                        |
|                                   | ) |                                        |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                        |
| HALLMARK HEALTHCARE CENTER,       | ) |                                        |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                                        |
| INC., THI OF SOUTH CAROLINA, LLC, | ) | <b>DEFENDANT FUNDAMENTAL</b>           |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>CLINICAL CONSULTING, LLC MOTION</b> |
| VALLEY HOLDINGS, LLC,             | ) | <b>TO STAY</b>                         |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                        |
| CLINICAL AND OPERATIONAL          | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                        |
| CLINICAL CONSULTING, LLC, AND     | ) |                                        |
| CURANA HEALTH OF SOUTH            | ) |                                        |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                        |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                        |
|                                   | ) |                                        |
| DEFENDANTS.                       | ) |                                        |
|                                   | ) |                                        |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Fundamental Clinical  
Consulting, LLC*

Dated: April 16, 2024  
Charleston, South Carolina

|                                   |   |                                     |
|-----------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS        |
|                                   | ) | FIRST JUDICIAL CIRCUIT              |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758           |
|                                   | ) |                                     |
| JAMES GRAHAM, AS PERSONAL         | ) |                                     |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                     |
| PHYLLIS CHESTNUT,                 | ) |                                     |
|                                   | ) |                                     |
| PLAINTIFF,                        | ) |                                     |
|                                   | ) |                                     |
| vs.                               | ) |                                     |
|                                   | ) |                                     |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                     |
| HALLMARK HEALTHCARE CENTER,       | ) |                                     |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                                     |
| INC., THI OF SOUTH CAROLINA, LLC, | ) | <b>DEFENDANT FUNDAMENTAL</b>        |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>CLINICAL AND OPERATIONAL</b>     |
| VALLEY HOLDINGS, LLC,             | ) | <b>SERVICES, LLC MOTION TO STAY</b> |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL AND OPERATIONAL          | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL CONSULTING, LLC, AND     | ) |                                     |
| CURANA HEALTH OF SOUTH            | ) |                                     |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                     |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                     |
|                                   | ) |                                     |
| DEFENDANTS.                       | ) |                                     |
|                                   | ) |                                     |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Fundamental Clinical  
and Operational Services, LLC*

Dated: April 16, 2024  
Charleston, South Carolina

|                                   |   |                                     |
|-----------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS        |
|                                   | ) | FIRST JUDICIAL CIRCUIT              |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758           |
|                                   | ) |                                     |
| JAMES GRAHAM, AS PERSONAL         | ) |                                     |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                     |
| PHYLLIS CHESTNUT,                 | ) |                                     |
|                                   | ) |                                     |
| PLAINTIFF,                        | ) |                                     |
|                                   | ) |                                     |
| vs.                               | ) |                                     |
|                                   | ) |                                     |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                     |
| HALLMARK HEALTHCARE CENTER,       | ) |                                     |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                                     |
| INC., THI OF SOUTH CAROLINA, LLC, | ) |                                     |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>DEFENDANT HUNT VALLEY</b>        |
| VALLEY HOLDINGS, LLC,             | ) | <b>HOLDINGS, LLC MOTION TO STAY</b> |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL AND OPERATIONAL          | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                     |
| CLINICAL CONSULTING, LLC, AND     | ) |                                     |
| CURANA HEALTH OF SOUTH            | ) |                                     |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                     |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                     |
|                                   | ) |                                     |
| DEFENDANTS.                       | ) |                                     |
|                                   | ) |                                     |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant Hunt Valley Holdings,*  
*LLC*

Dated: April 16, 2024  
Charleston, South Carolina

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS |
|                                   | ) | FIRST JUDICIAL CIRCUIT       |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758    |
|                                   | ) |                              |
| JAMES GRAHAM, AS PERSONAL         | ) |                              |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                              |
| PHYLLIS CHESTNUT,                 | ) |                              |
|                                   | ) |                              |
| PLAINTIFF,                        | ) |                              |
|                                   | ) |                              |
| vs.                               | ) |                              |
|                                   | ) |                              |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                              |
| HALLMARK HEALTHCARE CENTER,       | ) |                              |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                              |
| INC., THI OF SOUTH CAROLINA, LLC, | ) | DEFENDANT THI OF BALTIMORE,  |
| THI OF BALTIMORE, INC., HUNT      | ) | INC.'S MOTION TO STAY        |
| VALLEY HOLDINGS, LLC,             | ) |                              |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                              |
| SERVICES, LLC, FUNDAMENTAL        | ) |                              |
| CLINICAL AND OPERATIONAL          | ) |                              |
| SERVICES, LLC, FUNDAMENTAL        | ) |                              |
| CLINICAL CONSULTING, LLC, AND     | ) |                              |
| CURANA HEALTH OF SOUTH            | ) |                              |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                              |
| CARE OF SOUTH CAROLINA, PC,       | ) |                              |
|                                   | ) |                              |
| DEFENDANTS.                       | ) |                              |
|                                   | ) |                              |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant THI of Baltimore, Inc.*

Dated: April 16, 2024  
Charleston, South Carolina

|                                   |   |                                       |
|-----------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS          |
|                                   | ) | FIRST JUDICIAL CIRCUIT                |
| COUNTY OF DORCHESTER              | ) | CASE NO. 2023-CP-18-00758             |
|                                   | ) |                                       |
| JAMES GRAHAM, AS PERSONAL         | ) |                                       |
| REPRESENTATIVE OF THE ESTATE OF   | ) |                                       |
| PHYLLIS CHESTNUT,                 | ) |                                       |
|                                   | ) |                                       |
| PLAINTIFF,                        | ) |                                       |
|                                   | ) |                                       |
| vs.                               | ) |                                       |
|                                   | ) |                                       |
| HALLMARK OPERATING, LLC, d/b/a    | ) |                                       |
| HALLMARK HEALTHCARE CENTER,       | ) |                                       |
| FUNDAMENTAL LONG-TERM CARE,       | ) |                                       |
| INC., THI OF SOUTH CAROLINA, LLC, | ) |                                       |
| THI OF BALTIMORE, INC., HUNT      | ) | <b>DEFENDANT THI OF SOUTH</b>         |
| VALLEY HOLDINGS, LLC,             | ) | <b>CAROLINA, LLC'S MOTION TO STAY</b> |
| FUNDAMENTAL ADMINISTRATIVE        | ) |                                       |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                       |
| CLINICAL AND OPERATIONAL          | ) |                                       |
| SERVICES, LLC, FUNDAMENTAL        | ) |                                       |
| CLINICAL CONSULTING, LLC, AND     | ) |                                       |
| CURANA HEALTH OF SOUTH            | ) |                                       |
| CAROLINA, PC f/k/a ELITE PATIENT  | ) |                                       |
| CARE OF SOUTH CAROLINA, PC,       | ) |                                       |
|                                   | ) |                                       |
| DEFENDANTS.                       | ) |                                       |
|                                   | ) |                                       |

TO: LEE D. COPE, ATTORNEY FOR PLAINTIFF:

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

Defendant Hallmark Operating, LLC, d/b/a Hallmark Healthcare Center, (“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 at the time of Phyllis Chestnut's admission to the Facility.

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

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

CLEMENT RIVERS, LLP

By: s/James D. Gandy, III  
D. Jay Davis, Jr., SC Bar No.: 12084  
James D. Gandy, III, SC Bar No.: 11925  
Gaillard T. Dotterer, III, SC Bar No.: 103620  
P.O. Box 993, Charleston, SC 29402  
(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),  
[jgandy@ycrlaw.com](mailto:jgandy@ycrlaw.com), [gdotterer@ycrlaw.com](mailto:gdotterer@ycrlaw.com)  
*Attorneys for the Defendant THI of South Carolina,*  
*LLC*

Dated: April 16, 2024  
Charleston, South Carolina

|                                |   |                                         |
|--------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS            |
|                                | ) |                                         |
| COUNTY OF DORCHESTER           | ) | CIVIL ACTION NO.: 2023-CP-18-00758      |
|                                | ) |                                         |
| JAMES GRAHAM, AS PERSONAL      | ) |                                         |
| REPRESENTATIVE OF THE ESTATE   | ) |                                         |
| OF PHYLLIS CHESTNUT,           | ) |                                         |
|                                | ) |                                         |
| Plaintiff,                     | ) |                                         |
|                                | ) |                                         |
| v.                             | ) |                                         |
|                                | ) |                                         |
| HALLMARK LONG TERM CARE, LLC   | ) | <b>PLAINTIFF'S MEMORANDUM IN</b>        |
| D/B/A HALLMARK HEALTHCARE      | ) | <b>OPPOSITION TO DEFENDANT'S MOTION</b> |
| CENTER, FUNDAMENTAL LONG       | ) | <b>TO COMPEL ARBITRATION</b>            |
| TERM CARE, INC., THI OF SOUTH  | ) |                                         |
| CAROLINA, LLC, THI OF          | ) |                                         |
| BALTIMORE, INC., HUNT VALLEY   | ) |                                         |
| HOLDINGS, LLC, FUNDAMENTAL     | ) |                                         |
| ADMINISTRATIVE SERVICES, LLC,  | ) |                                         |
| FUNDAMENTAL CLINICAL AND       | ) |                                         |
| OPERATIONAL SERVICES, LLC,     | ) |                                         |
| FUNDAMENTAL CLINICAL           | ) |                                         |
| CONSULTING, LLC, and CURANA    | ) |                                         |
| HEALTH OF SOUTH CAROLINA, P.C. | ) |                                         |
| F/K/A ELITE PATIENT CARE OF    | ) |                                         |
| SOUTH CAROLINA, PC             | ) |                                         |
|                                | ) |                                         |
| Defendants.                    | ) |                                         |

---

Defendant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center has moved the Court to dismiss this action and compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. The basis of Defendant's Motion is that a valid and enforceable arbitration agreement (the "Arbitration Agreement") exists between the Decedent and Defendant. However, the Decedent, Ms. Phyllis Chestnut, did not have the authority to waive the wrongful death beneficiaries' rights to a jury trial at the time she entered the Arbitration Agreement. Additionally, since the wrongful death beneficiaries have not received a direct benefit from the Admission Agreement or Arbitration

Agreement, and they are not seeking to enforce any rights solely arising from the Agreements, Plaintiff is not estopped from refusing to submit the wrongful death claims to arbitration.

The Arbitration Agreement relied upon by Defendant was signed by Ms. Chestnut at the time of her admission to Defendant's facility. Ms. Chestnut was the mother of Plaintiff, Mr. James Graham, and two other adult children, and at the time of admission she did not have authority to enter any such agreement on their behalf as wrongful death beneficiaries. Further, the Plaintiff is not seeking to enforce any part of the Admission Agreement or Arbitration Agreement, so Plaintiff is not estopped from denying the Arbitration Agreement's enforceability. South Carolina law is clear that only the representations and conduct of the principal, and not the actions of the agent, can create the agency relationship. Lastly, there is no evidence that the Agreement was ever ratified. Therefore, Defendant's Motion should be denied by the Court.

### **FACTUAL BACKGROUND**

On April 12, 2019, Ms. Chestnut was admitted to Defendants' facility to provide assistance with daily living activities due to breathing difficulties. (Ex. 1, Trahan Aff. ¶ 4). After being admitted into Defendants' care, Ms. Chestnut was transferred to the COVID unit for monitoring due to exposure. (*Id.* at ¶ 5). For approximately one week from July 28, 2020, until August 3, 2020, Defendants' nursing assessments indicated that Ms. Chestnut's lungs were clear and that she had no shortness of breath. (*Id.* at ¶¶ 6-8). However, on August 4, 2020, Ms. Chestnut was found with slurred speech and shortness of breath accompanied by rhonchi and required emergency medical attention. (*Id.* at ¶¶ 9-10). Ms. Chestnut was then admitted to Summerville Medical Center, where it was determined that her shortness of breath had been ongoing for weeks, and that she had been in serious respiratory distress since at least the evening of August 3. (*Id.* at ¶ 11).

Ms. Chestnut passed away on August 4, 2020, due to Defendants' failure to monitor her condition and seek treatment in a timely manner. (*Id.* at ¶¶ 12-13). Plaintiff commenced this action

on May 15, 2023, alleging wrongful death and survival claims for negligence and gross negligence in Ms. Chestnut's care and treatment while a patient at Defendants' facility. (*See generally* Compl.). On April 16, 2024, Defendant filed a Motion to Compel Arbitration, relying on an Arbitration Agreement that was signed by Ms. Chestnut in her individual capacity on or about April 12, 2019. (Defs.' Mot. Compel Arbitration, Ex. A).

### **ARGUMENT**

While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement against the statutory beneficiaries' wrongful death claims for the simple reason that Ms. Chestnut did not have authority to execute the Arbitration Agreement on their behalf at the time it was entered. To the extent that Defendant may maintain that Plaintiff is estopped from denying the validity of the Arbitration Agreement due to Ms. Chestnut's execution of an admission agreement in her individual capacity, Plaintiff, on behalf of the wrongful death beneficiaries, is not seeking to enforce any parts of the Admission or Arbitration Agreements. Additionally, there is no evidence that Ms. Chestnut had actual or apparent authority to act on the wrongful death beneficiaries' behalf at the time she entered the Arbitration Agreement, as there is no evidence that they consciously represented or implied to Defendant that Ms. Chestnut was their agent for the purposes of entering an arbitration agreement. For these and the following reasons, Defendant's motion should be denied.

**I. The law in this case does not favor arbitration or give rise to a presumption of arbitrability.**

Public policy favors arbitration, but only to the extent that it would aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of

arbitrable issues should be resolved in favor of arbitration . . . .”). The public policy has no relevance to an analysis of arbitrability until a court first determines a valid agreement to arbitrate exists. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229, 847 S.E.2d 268, 271 (Ct. App. 2020).

The FAA commands that arbitration agreements between parties trading in interstate commerce must be treated the same as all other contracts, no more, no less. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967) (“[T]he purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so.”). “The FAA therefore places arbitration contracts on equal footing with other contracts, but it does not, as Appellants suggest, give the party seeking arbitration a leg up in the threshold determination of whether a valid arbitration agreement exists.” *Weaver*, 431 S.C. at 229, 847 S.E.2d at 271-72. In other words, the presumption in favor of arbitration applies only to the scope of an arbitration agreement; “it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement.” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). “Moreover, because arbitration, while favored, exists solely by agreement of the parties, a presumption *against arbitration* arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Id.* (emphasis added). Here, Plaintiff challenges the formation and existence of the Arbitration Agreement and its individual provisions at its inception, and there is no presumption in favor of arbitration under such an analysis.

## **II. Under South Carolina law, a wrongful death beneficiary’s claims do not belong to a decedent or her estate.**

The wrongful death claim of a statutory beneficiary is not as a matter of law subject to arbitration when the decedent has previously signed an arbitration agreement. South Carolina law

is very clear that wrongful death claims belong to the statutory beneficiaries and are distinct and separate from survival claims personal to the decedent and subsequently to the estate. *Bennett v. Spartanburg Ry. Gas and Elec. Co.*, 97 S.C. 27, 81 S.E. 189, 190 (1914). Wrongful death actions are brought by the personal representative of the decedent directly for the benefit of the statutory beneficiaries and include pecuniary loss, mental shock and suffering, grief and sorrow, and loss of companionship: all losses suffered by the beneficiaries themselves. S.C. Code Ann. §§ 15-51-10 and -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). Survival actions, on the other hand, are separate claims for injuries to the decedent, and belong to the estate, not the statutory beneficiaries. *See Bennett*, 97 S.C. at 27, 81 S.E. at 189-90.

Therefore, wrongful death claims do not “belong” to the personal representative of an estate or the decedent, and instead are a right to recovery solely vesting with the statutory beneficiaries themselves. This right directly arises from the wrongful death statute. The wrongful death claim is not derivative of claims belonging to the decedent; ergo, the decedent would not have authority to waive jury trial rights belonging to all statutory beneficiaries and not herself. To argue otherwise would mistakenly conflate the wrongful death claim and survival claims. The history and development of South Carolina’s wrongful death and survival statutes shows that wrongful death is something entirely different from the survival of tort claims after an individual’s death. South Carolina courts have long recognized that these are two disparate theories of liability with distinct origins, purposes, and results. *See Grainger v. Greenville, S. & A. Ry. Co.*, 101 S.C. 399, 85 S.E. 968, 969 (1915). The statutory scheme shows wrongful death and survival are distinct claims accruing at different times and are governed by different statutes of limitation. *See* S.C. Code Ann. § 15-3-560(6).

Wrongful death claims are often erroneously perceived as derivative of survival claims. In both types of claims, the decedent’s personal representative is the named plaintiff. *Complete Auto*

*Transit, Inc. v. Bass*, 229 S.C. 607, 612, 93 S.E.2d 912, 914 (1956). However, this fact alone is not determinative of any derivative nature the wrongful death claim may have. When asserting wrongful death and survival claims, a personal representative “function[s] under two separate and distinct trusteeships.” *Id.* In other words, while it is the personal representative’s name in the caption for a wrongful death claim, “it is clear . . . the real parties to the action were the beneficiaries.” *Claussen v. Brothers*, 148 S.C. 1, 145 S.E. 539, 541 (1928).

In light of the history and structure of wrongful death and survival claims, a number of other reported opinions have rejected the notion that the former is derivative of the latter. As early as 1907, the South Carolina Supreme Court recognized a wrongful death action is not the survival of an action which the deceased had in his lifetime but is a "new cause of action" arising after his death. *Osteen v. Southern Ry., Carolina Division*, 76 S.C. 368, 57 S.E. 196, 200 (1907). *Claussen* held a wrongful death claim is "not a continuation" of any claim the decedent had before her death. *Claussen*, 145 S.E. at 540. And contrary to the proposition that wrongful death claims belong to the personal representative or the decedent’s estate, *Claussen* states that “as has been pointed out, the party in whose favor the right of action in reality exists under Lord Campbell’s Act is *not the personal representative of the deceased person.*” *Id.* at 541 (emphasis added).

A wrongful death claim is "independent" of claims the decedent had during his life and "wholly different" than any other claim available at his death. *Wellman v. Bethea*, 243 F. 222 (E.D.S.C. 1917); *In re Mayo's Estate*, 60 S.C. 401, 38 S.E. 634, 638 (1901). Wrongful death and survival claims are "separable and distinct." *Keel v. Seaboard Air Line Ry.*, 122 S.C. 17, 114 S.E. 761, 762 (1922). In sum, wrongful death claims are not derivative of survival claims and do not belong to the decedent or her estate’s personal representative, namely because "[t]he object, scope, and measure of damages" is different for the two claims. *In re Mayo's Estate*, 38 S.E. at 638. South Carolina's appellate courts have held wrongful death claims are "distinct," "independent,"

"separate," "wholly different," and "not a continuation" of claims a decedent could have filed during her lifetime. In other words, wrongful death is a distinct, independent claim that solely belongs to the statutory beneficiaries. It is anything but a derivative claim.

*Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014) briefly addresses the arbitrability of wrongful death claims in a footnote. This footnote addressed an overly broad pronouncement by the trial court suggesting wrongful death claims are categorically excluded from arbitration. *Id.* (citing circuit court order statement stating that "wrongful death actions are not something that's arbitrated"). Clearly, that type of rule would violate the FAA's equal footing principle. *Id.* (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 532-33, 132 S. Ct. 1201, 1203-04, 182 L. Ed. 2d 42 (2012)); *see also Kindred Nursing Ctrs., Ltd. P'ship v. Clark*, 581 U.S. 246, 251, 137 S. Ct. 1421, 1426, 197 L. Ed. 2d 806 (2017). However, that is not the argument the Estate makes here. A wrongful death claim may be arbitrable in instances where the statutory beneficiaries agree to do so. Any of the statutory beneficiaries, including Mr. Graham, could have individually agreed to waive their rights to a jury trial on their wrongful death claims. Here, Plaintiff simply argues a *decedent's* consent to arbitrate may not be grafted into a wrongful death claim that pays different people for different losses. *Dean* does not reject that argument or even consider it.

Several other courts have held that rejecting arbitration for wrongful death claims in similar cases does not violate *Marmet* or any other Supreme Court precedent on the equal footing principle.<sup>1</sup> Refusing to compel arbitration here does not mean wrongful death claims can

---

<sup>1</sup> *See Carter v. SSC Odin Operating Co., LLC*, 976 N.E.2d 344, 360 (Ill. 2012) (unlike *Marmet*, Illinois was not applying a categorical anti-arbitration rule but was rather applying "common law principles governing all contracts"); *Vickers v. Canal Pointe Nursing Home & Rehab Ctr.*, 2016-Ohio-3244, 2016 WL 3080329 (Ohio App. June 1, 2016) (finding that Ohio Supreme Court precedent preventing arbitration of wrongful death claims did not create a categorical ban that would run afoul of *Marmet* because it applied generally applicable contract law rule against enforcing contract against person who had not assented).

categorically never be arbitrated. Instead, as other courts have recognized, it simply means the Defendant violated a generally applicable contract law rule by failing to prove it had consent for arbitration from all of the proper parties. Finally, reading *Dean's* footnote to have any bearing on the parties' dispute does not adequately account for either side's arguments on the key issue. *Dean* had no reason to undertake this analysis and has nothing to offer the Court on Defendant's Motion.

Defendant may ask the Court to declare wrongful death a "derivative" claim based essentially on one sentence in *South Carolina Jurisprudence* that has been cited in various authorities. However, this would require the Court to ignore the most pertinent entry. In a chapter devoted to wrongful death claims, a section entitled "[s]eparate, independent cause of action" notes the existence of two claims at the tortious death of a person and, crucially, "*the wrongful death action and the survival action involve different, independent claims.*" 28 S.C. Jur. *Wrongful Death* § 5 (emphasis added).

Defendant may also contend that, since S.C. Code Ann. § 15-51-10 permits wrongful death claims only when the decedent would have had a claim if he survived, then the decedent, or the estate's personal representative, has the authority to waive the statutory beneficiaries' right to a jury trial, relying on *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939 (D.S.C. 1988) and *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 699 S.E.2d 143 (2010). The logic of this argument appears to be that because the decedent or a personal representative has the ability to permit the beneficiaries' right to recovery under the Wrongful Death Act to lapse with the statute of limitations, then the decedent or personal representative also must have the ability to waive the beneficiaries right to a jury trial by signing an arbitration agreement. However, *Quattlebaum* (and *Stokes*) did not address arbitration at all. Instead, they simply held that if an individual allows the statute of limitations on a personal injury claim to lapse

during his life, then a wrongful death claim may not be used after his death to "revive" the stale claim. *Stokes*, 389 S.C. at 349, 699 S.E.2d at 146.

The statute of limitations is not at issue here and neither *Quattlebaum* nor *Stokes* have ever been cited as justification for binding nonsignatories to an arbitration contract. Plus, the legal authority holding that an individual may forfeit a wrongful death claim by ignoring or settling a personal injury suit during his life do not mean the individual, or someone acting on his behalf, has authority to waive a nonsignatory's rights. Several courts have made this distinction explicitly. Oklahoma, like South Carolina, bars a wrongful death suit if the decedent ended a personal injury claim during his lifetime based on the same wrongdoing. *Boler v. Sec. Health Care, L.L.C.*, 2014 OK 80, 336 P.3d 468, 477 (Okla. 2014) (citing *Haws v. Luethje*, 1972 OK 146, 503 P.2d 871 (Okla. 1972)). Even so, the court in *Boler* refused to apply a nursing home resident's arbitration contract to a wrongful death claim because doing so would violate contract principles requiring mutual assent. *Id.* at 471.

Pennsylvania also bars wrongful death claims if the decedent allowed his personal injury claim to lapse. *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 657 (Pa. Super. Ct. 2013) (citing *Moyer v. Rubright*, 651 A.2d 1139 (Pa. Super. Ct. 1994)). Yet, just like Oklahoma, Pennsylvania does not extrapolate from that rule the notion that an individual can bind other wrongful death beneficiaries to arbitration. *Pisano*, 77 A.3d at 657, 662 (refusing to find wrongful death beneficiaries lost jury trial right "where they did not waive it of their own accord"). Thus, *Quattlebaum's*, and by extension, *Stoke's*, interpretation of section 15-51-10 does not necessarily require arbitration in this case. Had Ms. Chestnut settled any claims against the Defendant before her death, or if the statute of limitations had lapsed on her negligence claim, the Estate could not now bring a wrongful death claim on behalf of the statutory beneficiaries. But it does not follow that theoretically Ms. Chestnut in her individual capacity had the ability to direct the wrongful

death claim to arbitration on behalf of the wrongful death beneficiaries. Since Ms. Chestnut had a viable dispute with the Defendant when she died, any proposed arbitration of the wrongful death claim must consider whether all beneficiaries agreed to waive a jury trial.

In light of the historical and structural differences between South Carolina's wrongful death and survival statutes, and the remedies afforded by them, as well as substantial case law defining and treating wrongful death and survival claims distinctly, the Court should reject any attempt to use Ms. Chestnut's purported assent to the arbitration agreement to force arbitration on any remaining wrongful death beneficiaries. At least a dozen other jurisdictions have rejected such arguments. *See FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 n. 1 (Pa. 2016) (citing *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013)); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014); *Daniels v. Sunrise Sr. Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr. 3d 273 (2013); *Carter v. SSC Odin Operating Co, LLC*, 976 N.E.2d 344, 355-58 (Ill. 2012); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581 (Ky. 2012); *Woodall v. Avalon Care Center-Federal Way, LLC*, 231 P.3d 1252 (Wash. App. 2010); *Lawrence v. Beverly Manor*, 273 S.W.3d 525 (Mo. 2009); *Bybee v. Abdulla*, 189 P.3d 40 (Utah 2008); *Peters v. Columbus Steel Castings Co.*, 873 N.E.2d 1258, 1262 (Ohio 2007); *Chapman v. Cardiac Pacemakers, Inc.*, 673 P.2d 385 (Idaho 1983); *see also Strickholm v. Evangelical Lutheran Good Samaritan Soc'y*, Case No. 4:11-CV-00059-BLW, 2011 WL 2532395 (D. Idaho June 24, 2011). At best, the Arbitration Agreement would only reach the Estate's survival claim, unless Ms. Chestnut had apparent or actual authority to act on the statutory beneficiaries' behalf.

**III. Ms. Chestnut did not have actual or apparent authority to waive the statutory beneficiaries' right to a jury trial on the wrongful death action.**

The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. *Charleston Registry v. Young Clement*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority. *Frasier v. Palmetto Homes of Florence*, 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). South Carolina law requires that to prove apparent authority, the defendant must show: (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party's detriment. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005).

The basis of apparent authority is representations *made by the principal to the third party* and reliance by the third party on those representations. *Young v. S.C. Dep't of Disabilities and Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that *between the principal and the third party*. *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 428, 412 S.E.2d 425, 428 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal-agent relationship exists. *Id.*

Defendant has not produced any evidence indicating that Ms. Chestnut had authority to enter the Arbitration Agreement on the wrongful death beneficiaries' behalf or waive their right to a jury trial. The simple fact that Ms. Chestnut signed the agreements so that she could be admitted to Defendants' facility and receive health care in no way indicates a manifestation of authority by Plaintiff and his siblings to waive their right to a jury trial or agree to arbitration. There is no evidence that the beneficiaries ever manifested any form of assent establishing Ms. Chestnut as their agent. Defendant will likely point to language in the Arbitration Agreement indicating that the executing party of the Agreement intended to bind her heirs and personal representatives, and

that she and any representative on her behalf would be equally bound by the Agreement. However, this language is not a representation made by the beneficiaries to Defendant that Ms. Chestnut had authority to act on their behalf. Instead, it is at best a representation made by Ms. Chestnut to Defendant and fails to meet the requirement for proving apparent authority.

In fact, this same argument has been directly addressed and disagreed with by the Supreme Court in *Hodge*. In *Hodge*, the facility argued that a husband had taken over his wife's medical affairs and had authority to enter an arbitration agreement on her behalf. The court described the apparent authority as follows:

Apparent authority to do an act is created as to a third person *by written or spoken words or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him. Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.

*Hodge*, 422 S.C. at 572, 813 S.E.2d at 307. (emphasis added) (citations and punctuation omitted).

The court then went on to disagree with the exact arguments likely to be advanced in this case by Defendant, stating that merely because a family member signs an arbitration agreement, admissions agreement, and other forms does not make them an agent, especially when there is no power of attorney and there is no evidence that the principal represented to the facility that the family member was their agent. *Id.* at 573-74, 813 S.E.2d at 308.

Apparent authority must be established based upon manifestations by the principal, *not the agent*. The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and the third party.

*Id.* at 577, 813 S.E.2d at 310.

In *Thompson*, other circumstances similar to the instant facts were addressed by the Supreme Court and found not to constitute evidence of apparent or actual authority. In *Thompson*, the facility asserted that the resident “allowed, passively or otherwise” a family member to sign

her admissions agreement and arbitration agreement, and to handle other financial affairs for her, as evidence of apparent or actual authority. *Thompson*, 426 S.C. at 55, 784 S.E.2d at 686. The court did not take the same view of the circumstances:

While the evidence indicates Son handled Mother's finances in the years leading up to her admission to UniHealth, the evidence also indicates Mother had dementia prior to being admitted to UniHealth. Therefore, her incapacity prevented her from "consciously or impliedly" representing another to be her agent. Further, the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial. Based on the foregoing, the evidence does not show that Son had either actual or apparent authority to execute the AA on Mother's behalf.

*Thompson*, 416 S.C. at 55-56, 784 S.E.2d at 686 (citations omitted). In other words, "an agency may not be established solely by the declarations and conduct of an alleged agent." *Id.* (citation omitted).

Regardless of whether Ms. Chestnut held herself out as an agent for her heirs, personal representatives, and statutory beneficiaries, there is no evidence that at any point her heirs and beneficiaries made representations, or voluntarily placed Ms. Chestnut in a position which would indicate a conscious or implied representation that she was authorized to enter arbitration agreements on their behalf, making the Arbitration Agreement invalid and unenforceable. There is no evidence that Ms. Chestnut had actual or apparent authority to enter the Arbitration Agreement on the wrongful death beneficiaries' behalf.

#### **IV. Plaintiff is not estopped from denying the arbitrability of the wrongful death claim.**

##### **A. Plaintiff is not estopped under the traditional, six-element equitable estoppel test.**

Plaintiff cannot be estopped from denying enforcement of the Arbitration Agreement. "Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." *Kelly v. Logan, Jolley & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that *the party to be estopped* (1) acted in a way

amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting the estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on the conduct of the party to be estopped. *Id.*

Defendant has not and cannot meet its burden to establish these elements. Plaintiff and the wrongful death beneficiaries have never made any misrepresentations or representations of any kind to Defendant, and there is no evidence they knew that Ms. Chestnut had signed an Arbitration Agreement. Additionally, Defendant cannot prove it lacked the means of knowledge of the truth of the facts in question. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

In this case, Defendant had the ability to determine whether Ms. Chestnut had authority to sign an arbitration agreement on her heirs and beneficiaries' behalf. It should be clear to health care entities such as Defendant that an individual without a valid power of attorney, conservatorship, or guardianship at best only has authority to make healthcare decisions for others and does not have authority to waive other adults' statutory and common law rights. Defendant is a sophisticated business entity frequently interacting with residents and their families during the assisted living facility admission process. As such, Defendant should be familiar with the legal concepts of authority, guardianship, and powers of attorney. Defendant knows that its residents do not have authority to make legal decisions for their heirs and beneficiaries, and that its residents

relatives do not have authority to act on a resident's behalf without priority under the Adult Health Care Consent Act or a valid power of attorney, conservatorship, or guardianship. Since Defendant cannot provide evidence on numerous elements of equitable estoppel, it cannot satisfy its burden, and Plaintiff is not equitably estopped from denying the Arbitration Agreement.

Further, the fact that Ms. Chestnut signed the Arbitration Agreement in her individual capacity, and now her Estate is a party to this action as a nonsignatory, does not bind Plaintiff or Ms. Chestnut's Estate to the Arbitration Agreement, at least as far as equitable estoppel is concerned. The Supreme Court addressed this concept in *Thompson*:

Respondent is attempting to use equitable estoppel against [the patient's] estate based on actions that [the patient] took *in [her] individual capacity*. The fact that [the patient's son] is *now the personal representative for [the patient's] estate* is of no moment; we will not hold this circumstance against [the patient's] estate. Simply put, [the patient's] estate is the plaintiff in this case, and Respondent has alleged no conduct on the part of [the patient's] estate, that has affected Respondent's position. This, too, is a necessary element of an equitable estoppel defense.

*Thompson*, 416 S.C. at 61, 784 S.E.2d at 689. *Ms. Chestnut's Estate*, not Ms. Chestnut, is the Plaintiff in this case, and Defendants can point to no evidence that the Estate, Plaintiff, or the wrongful death beneficiaries have ever engaged in any conduct that has affected Defendant's position.

B. Plaintiff is not seeking to enforce rights and claims that solely arise from a contractual relationship and contract terms.

Under a direct benefits theory of estoppel, a nonsignatory such as the Estate is estopped from refusing to comply with an arbitration clause "when it receives a direct benefit from a contract containing an arbitration clause." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000)). The direct benefits test is frequently used to determine whether a theory of estoppel is applicable within the arbitration context. *Estate of*

*Solesbee by Bayne v. Fundamental Clinical and Operational Servs., LLC*, 438 S.C. 638, 647, 885 S.E.2d 144, 148 (Ct. App. 2023). Here, the Arbitration Agreement is not a clause within the Admission Agreement, and as will be explained below, the two Agreements do not merge. However, even if the agreements did merge, the Defendant cannot satisfy the remaining requirements of the direct benefits estoppel test.

Direct benefits estoppel precludes a nonsignatory from denying the validity of an arbitration *provision* of a contract if “(1) the nonsigner’s claim arises from the contractual relationship, (2) the nonsigner has “exploited” other parts of the contract by reaping its benefits, *and* (3) the claim relies solely on the contract terms to impose liability. *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272. Thus, even if the Arbitration Agreement and Admission Agreement merged, the Defendant would still have to demonstrate that the wrongful death beneficiaries’ negligence claims rely solely on the terms of the Admission Agreement to impose liability in order to benefit from a direct benefits estoppel theory.

Plaintiff has not asserted a breach of contract claim, or a violation of contractual duties, and instead has brought his lawsuit under a negligence theory on behalf of the wrongful death beneficiaries arising from South Carolina’s Wrongful Death Act, S.C. Code Ann. §§ 15-51-10 *et seq.*, and common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176 (noting that a claim may rely on general principles of South Carolina law in addition to or to the exclusion of contractual rights). The Estate does not claim that the Defendant breached a contractual duty created by the Admission Agreement, but that it breached a duty owed by all healthcare practitioners, regardless of any contractual agreements, not to negligently care for their patients. Any contractual duties between Ms. Chestnut and the Defendant are irrelevant as to whether the Defendant breached common law tort duties owed to Ms. Chestnut. The statutory beneficiaries’ wrongful death action relies on common law tort duties owed by the Defendant to everyone and

not solely on any provision of the Admission Agreement and as such, the claims do not rely solely on the contract terms to impose liability, and Plaintiff is not precluded by direct benefits estoppel from denying the validity of the Arbitration Agreement. *Weaver*, 431 S.C. at 232-33, 847 S.E.2d at 273-74.

Simply because the alleged conduct would not have arisen in the absence of the Admission Agreement (and Ms. Chestnut's admission to Defendant's facility) does not mean that direct benefits estoppel is implicated.

When a claim depends on the contract's existence and cannot stand independently – that is, the alleged liability “arises solely from the contract or must be determined by reference to it” – equity prevents a person from avoiding the arbitration clause that was part of that agreement. But “when the substance of the claim arises from general obligations imposed by state law, including statutes, torts, and other common law duties, or federal law,” direct benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen “but for” the contract’s existence*.

*Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)). Therefore, just because Ms. Chestnut benefited from the Admission Agreement by receiving care at Defendant's facility, it does not mean that the statutory beneficiaries' wrongful death action depends on the Agreement's existence. This lawsuit is predicated on the breach of common law duties owed by Defendant to Ms. Chestnut and rights vested in the statutory beneficiaries by the Wrongful Death Act and would be justiciable even if Ms. Chestnut had never signed the Admission Agreement.

In sum, the analysis does not stop and start with whether Ms. Chestnut, and thus her Estate, received any benefits from the Admission Agreement. There are other requirements that must be met before direct benefits estoppel is implicated. Direct benefits estoppel is not applicable because the wrongful death action derives from common law duties and statutory law and is not solely derived from contractual claims. However, even if the wrongful death action did derive from the

Admission Agreement, direct benefits estoppel still would not apply because the Admission Agreement and Arbitration Agreement do not merge.

C. The Court of Appeals has explicitly held that the Arbitration Agreement and Admission Agreement used by Defendant do not merge.

When a party seeks to deny the enforcement of an arbitration agreement while at the same time enforce claims and rights arising solely arising from a contemporaneously executed admission agreement, the party will be estopped from opposing arbitration if the arbitration and admission agreements merged. *Solesbee*, 438 S.C. at 647-48, 885 S.E.2d 148-49. It is undisputed in this case that Defendant's Arbitration Agreement is not a clause in its Admission Agreement, and neither Plaintiff nor the Estate have received any direct benefit from the Arbitration Agreement itself. Defendant could argue that under a theory of merger, the Arbitration Agreement and the Admission Agreement became a unified contract once they were executed, and since Ms. Chestnut benefited from the terms of the Admission Agreement, her Estate, and Plaintiff as Personal Representative, should be precluded from denying the validity of the Arbitration Agreement. However, the language and formatting of the Agreements serve as evidence that the two Agreements were intended to be separate documents, and at minimum, create an ambiguity as to merger that must be construed against the Defendant.

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

*Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (emphasis added). Here, there is no evidence that the Agreements were signed in the course of the same transaction and at the same time, so the Court is not required to construe the documents together. And even if there is such evidence, the terms of the Agreements indicate an intent that the doctrine

of merger would not apply to the Agreements, and at minimum create an ambiguity as to merger. *See id.* at 355-56, 755 S.E.2d at 455 (stating that ambiguity as to merger must be construed against the drafter).

In determining whether a health care facility's admission and arbitration agreements merge, South Carolina appellate courts have looked to the following factors: (1) whether the two agreements are governed by separate bodies of law, (2) whether the language of the agreements recognizes the two agreements as separate, (3) whether the agreements contain different terms regarding revocation and termination, (4) whether the agreements are separately paginated and have their own signature pages, and (5) whether both agreements are required for the execution of the other, or whether one agreement is optional. *Hodge*, 422 S.C. at 562-63, 813 S.E.2d at 302. The Court of Appeals has previously analyzed the subject Admission and Arbitration Agreements in *Solesbee* and found the agreements do not merge.

In *Solesbee*, the court found that the Admission Agreement is governed by South Carolina law, while the Arbitration Agreement is governed by federal law. *Solesbee*, 438 S.C. at 648, 885 S.E.2d at 149. To be precise, the Admission Agreement is governed by "applicable Federal regulations" and South Carolina law. The Arbitration Agreement, on the other hand, is governed by the FAA's statutes and specifically not by South Carolina law.<sup>2</sup> Therefore, the two Agreements are not governed by identical spheres of law: one is subject to state law and the federal code of regulations, while the other is only subject to the statutes contained within the FAA.

Second, the court found that the language of the agreements recognizes that they are separate: "The Arbitration Agreement recognized the two documents were separate, stating the

---

<sup>2</sup> It may appear that both Agreements are broadly governed by South Carolina and federal law; however, the Arbitration Agreement specifically states it will only be enforced under the FAA. To the extent that the Arbitration Agreement provides that the arbitration *proceedings* will be governed by the South Carolina Alternate Dispute Resolution/Mediation Rules, these Rules only govern the proceedings and are irrelevant to the enforcement of the Arbitration Agreement and the Court's determination of merger.

Arbitration Agreement ‘shall survive any termination or breach of this Agreement or the Admission Agreement.’” *Solesbee*, 438 S.C. at 648-49, 885 S.E.2d at 149. This language mirrors that addressed in *Coleman* and *Thompson*, in which the Supreme Court and the Court of Appeals found such language to be proof that an admission agreement was separate and did not merge with an arbitration agreement:

The court then explained the evidence of the parties’ intent to keep the two agreements separate by highlighting the admission agreement’s recognition of the arbitration agreement as a separate document, i.e., “This Agreement, including all Exhibits hereto, and the Arbitration Agreement . . . .”

*Thompson*, 416 S.C. at 52, 784 S.E.2d at 685.

It is true that the Admission Agreement’s “Entire Agreement” clause contains language indicative of merger, specifically the statement that “[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*.” (emphasis added). Problematically, there is no evidence that the Arbitration Agreement is part of the “Admissions materials” Ms. Chestnut presumably received upon signing the Admission Agreement, and there is no evidence that the Arbitration Agreement was executed at the same time as the Admission Agreement.

There is dicta from prior decisions of the Court of Appeals discussing that arbitration agreements can be part of admissions documentation, and this dicta may be relied on by Defendant to support that its Arbitration Agreement was an “Admissions material” that was incorporated into its Admission Agreement, but those decisions have no evidentiary value to this Motion. Additionally, the “Entire Agreement” provision purports to incorporate the Admissions materials by reference within the Admission Agreement itself, but nowhere within the Admission Agreement, including the “Entire Agreement” provision, does it ever refer to the Arbitration

Agreement. The “Entire Agreement” provision creates at best an ambiguity as to merger when taken in context of the totality of the remaining circumstances.

Third, the *Solesbee* court found that the Arbitration Agreement contains no language indicating that it may be revoked or terminated, but the Admission Agreement provides that a resident may terminate the Admission Agreement at any time. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149. Fourth, the court found that the Agreements at issue are separately paginated and have their own signature pages. *Id.* Since the arbitration and admission contracts have different pagination with different signature pages, and the arbitration contract is entitled “Arbitration Agreement” at the top of its first page, these factors further indicate the drafter's intent for the Arbitration Agreement to stand by itself as an independent contract, at least when it suits the Defendant for it to do so. *See Thompson*, 416 S.C. at 53 n.1, 784 S.E.2d at 685 n.1 (noting that a separately labeled arbitration agreement indicates the drafter’s intent for the agreement to stand by itself as an independent contract). Lastly, the court found that the Arbitration Agreement is optional and voluntary, while the Admission Agreement is required for admission. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149. The Defendant does not dispute that the Arbitration Agreement is voluntary and optional.

In this case, the text of the Agreements creates ambiguity as to whether the Agreements merged. There is no legal presumption of merger. The language of *Coleman* never states that there is a presumption of merger in the context of health care facility arbitration agreements, or that one interpretation as to merger or the other is favored in any way, and in fact South Carolina precedent states that there is a presumption against merger when an arbitration agreement is attempted to be enforced against a nonsignatory. *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173. Instead, *Coleman* dictates that the Court can assume merger only if the Agreements were made at the same time, by

the same parties, for the same purpose, and in the course of the same transaction, so long as there is no language or other indications within the Agreements of a contrary intent.

Defendant has not demonstrated through evidence that the Agreements were made at the same time and within the course of the same transaction, so the Court has no obligation to assume the documents merged. The fact that there is ample evidence that the Agreements were drafted in such a manner that they could, if necessary, be construed as separate contracts further cautions against a finding of merger. The language, pagination, and formatting of the Admission Agreement and Arbitration Agreement evince an intent for the agreements to be considered separate, presumably when such a position would work to the advantage of the Defendant.

Additionally, if the above-discussed evidence is not indicative of a contrary intent, and the Defendant intended the documents to merge, then why hasn't it made the Arbitration Agreement a provision of the Admission Agreement, or merged the two documents with an explicit merger provision? Why make separate documents to begin with? The answer to these questions is that for certain purposes, the Defendant and other skilled nursing facilities want the Agreements to be separate. The language of the Agreements purposefully creates an ambiguity that must be construed against the drafter and requires the Court to find that in this instance there was no merger of the documents. The Court of Appeals has previously reached the same conclusion based on the same language and Agreements.

**V. Regardless of whether Plaintiff and the wrongful death beneficiaries are third-party beneficiaries to the Arbitration Agreement, which they are not, they cannot be required to arbitrate their claims.**

A third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third party is attempting to enforce the contract containing the arbitration agreement. *Thompson*, 416 S.C. at 57, 784 S.E.2d at 687. Here, the Agreements do not merge, and Plaintiff is not attempting to enforce the Arbitration Agreement or Admission Agreement on his own behalf

or on behalf of the statutory beneficiaries; instead, he is asserting tort claims arising from common law duties and the Wrongful Death Act independently of the Arbitration Agreement and Admission Agreement. Therefore, Plaintiff in his capacity as Personal Representative of the Estate of Ms. Chestnut and the wrongful death beneficiaries are not valid third-party beneficiaries to the Arbitration Agreement signed individually by Ms. Chestnut, and it cannot be enforced against them independently of any authority Ms. Chestnut did not have to enter the Agreement.

**VI. Neither Plaintiff nor the remaining beneficiaries ratified the Arbitration Agreement.**

Defendant may argue that by failing to repudiate the Arbitration Agreement during Ms. Chestnut's residency at Defendant's facility, either Plaintiff or the remaining beneficiaries ratified the Agreement. Any argument that Mr. Graham, by subsequently becoming Personal Representative, was required to repudiate the Agreement has been rejected by the Court of Appeals. *See Walker v. Hallmark Longterm Care, LLC*, Op. No. 2023-UP-400, 2023 WL 8621095, at \*1 n.1 (Ct. App. Dec. 13, 2023). To establish ratification, Defendants must demonstrate (1) acceptance by Mr. Graham of the benefits of Ms. Chestnut's acts, (2) Mr. Graham's *full* knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized agreement. *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989).

There is no evidence that Mr. Graham or the beneficiaries have ever had any knowledge or awareness of the Arbitration Agreement. And their "silence" does not serve as evidence that they acquiesced to the Agreement. "[M]ere silence or failure of a principal to repudiate the unauthorized act of an agent does not necessarily constitute a ratification, unless the silence or acquiescence in question cannot be explained on any other theory than that of ratification." 2A C.J.S. *Agency* § 71 (2003). Mr. Graham's and the wrongful death beneficiaries' "silence" is readily explained by the

fact that they had no knowledge that Ms. Chestnut had entered an Arbitration Agreement purporting to waive their rights to a jury trial as wrongful death beneficiaries.

**VII. Additional discovery on the issue of authority is unnecessary and would violate S.C. Code Ann. § 15-48-20.**

In the alternative, Defendant may request that the Court grant additional discovery on the nature of Ms. Chestnut's agency relationship with her children. S.C. Code Ann. § 15-48-20 only permits a court to "summarily" proceed to the determination of whether arbitration is appropriate when an agreement to arbitrate has been contested. Here, the only relevant and necessary evidence for the Court to make its determination is already available for the Court's review. Any further discovery with the goal of revisiting the arbitrability of this case would only serve to protract this litigation, offend section 15-48-20's mandate for an expedient determination of arbitrability, waste judicial resources, and increase costs for both parties unnecessarily. Defendant has had ample opportunity to investigate Plaintiff's claims and determine if any of their employees have knowledge of whether Mr. Graham or his siblings ever represented that Ms. Chestnut had authority to act on their behalf. Defendant chose to file this motion to compel arbitration at this juncture without such evidence. The undisputed evidence shows that Ms. Chestnut never had authority to act on the beneficiaries' behalf, and that Ms. Chestnut never asked Mr. Graham whether she had *any* authority to act on his behalf. The Court should deny any potential request for additional discovery, because such a request would be futile.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's Motion to Compel Arbitration.

PARKER LAW GROUP, LLP

BY: s/Lee D. Cope

Lee D. Cope  
SC Bar # 14361  
John E. Parker, Jr.  
SC Bar # 104225  
P.O. Box 487  
Hampton, SC 29924  
(803) 903-1781

AND

The Steinberg Law Firm, LLP  
Steven E. Goldberg, Esquire  
SC Bar #66446  
Post Office Box 2670  
Summerville, SC 29484

ATTORNEYS FOR THE PLAINTIFF

September 3, 2024  
Hampton, SC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) CIVIL ACTION NO.: 2023-CP-18-00758

JAMES GRAHAM, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF PHYLLIS CHESTNUT,

Plaintiff,

v.

HALLMARK LONG TERM CARE, LLC  
D/B/A HALLMARK HEALTHCARE  
CENTER, FUNDAMENTAL LONG  
TERM CARE, INC., THI OF SOUTH  
CAROLINA, LLC, THI OF  
BALTIMORE, INC., HUNT VALLEY  
HOLDINGS, LLC, FUNDAMENTAL  
ADMINISTRATIVE SERVICES, LLC,  
FUNDAMENTAL CLINICAL AND  
OPERATIONAL SERVICES, LLC,  
FUNDAMENTAL CLINICAL  
CONSULTING, LLC, and CURANA  
HEALTH OF SOUTH CAROLINA, P.C.  
F/K/A ELITE PATIENT CARE OF  
SOUTH CAROLINA, PC,

Defendants.

**AFFIDAVIT OF JAMES GRAHAM**

The Affiant, James Graham, having been duly sworn testifies as follows:

1. I am over 18, legally competent, and I make this affidavit as it relates to the matter captioned above, and everything I attest to within is in my personal knowledge.
2. I am the son of Phyllis Chestnut and Personal Representative of her Estate.
3. Neither myself nor my siblings had any knowledge that our mother had entered an arbitration agreement upon her admission to Hallmark Healthcare Center until after this lawsuit commenced.

4. I have never given my mother authority to act on my behalf or represented to anyone in any way that she had authority to act on my behalf, and she never asked me whether she had authority to act on my behalf.

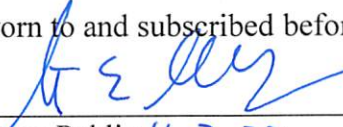
5. No employee of Hallmark Healthcare Center ever asked me if she had authority to act on my behalf. I have never represented to anyone at Hallmark Healthcare Center that my mother had authority to act on my behalf.

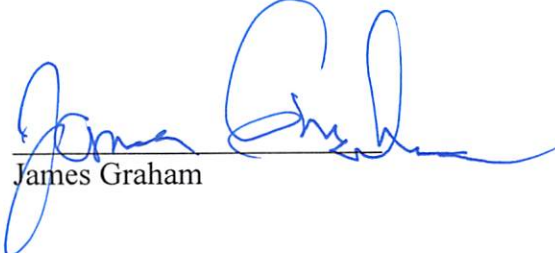
6. I have never ratified an arbitration agreement or intended to convey to Hallmark Healthcare Center or anyone else through my actions or inaction that I assented to the terms of an arbitration agreement as a wrongful death beneficiary of my mother. I had no knowledge that an arbitration agreement existed.

Under penalty of perjury, I declare the foregoing affidavit and facts stated herein are true and accurate to the best of my knowledge.

Further affiant sayeth naught.

Sworn to and subscribed before me:

  
Notary Public 4-7-32  
Date: 8-12-24

  
James Graham

|                                            |   |                                     |
|--------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS        |
|                                            | ) | FIRST JUDICIAL CIRCUIT              |
| COUNTY OF DORCHESTER                       | ) | CASE NO. 2023-CP-18-00758           |
|                                            | ) |                                     |
| JAMES GRAHAM,                              | ) |                                     |
| as Personal Representative of              | ) |                                     |
| the Estate of Phyllis Chestnut,            | ) |                                     |
|                                            | ) |                                     |
| Plaintiff,                                 | ) |                                     |
|                                            | ) |                                     |
| vs.                                        | ) | <b>MEMO IN SUPPORT OF</b>           |
|                                            | ) | <b>MOTION TO COMPEL ARBITRATION</b> |
|                                            | ) | <b>AND MOTIONS TO STAY</b>          |
| HALLMARK OPERATING, LLC                    | ) |                                     |
| d/b/a Hallmark Healthcare Center,          | ) |                                     |
| FUNDAMENTAL LONG TERM CARE,                | ) |                                     |
| INC., THI OF SOUTH CAROLINA, LLC,          | ) |                                     |
| THI OF BALTIMORE, INC., HUNT               | ) |                                     |
| VALLEY HOLDINGS, LLC,                      | ) |                                     |
| FUNDAMENTAL ADMINISTRATIVE                 | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL                 | ) |                                     |
| CLINICAL AND OPERATIONAL                   | ) |                                     |
| SERVICES, LLC, FUNDAMENTAL                 | ) |                                     |
| CLINICAL CONSULTING, LLC, and              | ) |                                     |
| CURANA HEALTH OF SOUTH                     | ) |                                     |
| CAROLINA, P.C. f/k/a Elite Patient Care of | ) |                                     |
| South Carolina, PC,                        | ) |                                     |
|                                            | ) |                                     |
| Defendants.                                | ) |                                     |
|                                            | ) |                                     |

The Facility<sup>1</sup> and the Other Defendants<sup>2</sup> (collectively, “Defendants”), by and through their undersigned counsel, submit this memo in support of the Facility’s motion to compel Plaintiff’s<sup>3</sup> claims against it in this lawsuit to arbitration (the “Motion to Compel Arbitration”) and the Other

---

<sup>1</sup> The “Facility” refers to Defendant Hallmark Operating, LLC d/b/a Hallmark Healthcare Center, which is the operator of the skilled nursing facility known as Hallmark Healthcare Center.

<sup>2</sup> The “Other Defendants” refers to Defendants THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical And Operational Services, LLC, and Fundamental Clinical Consulting, LLC.

<sup>3</sup> “Plaintiff” refers to Plaintiff, James Graham, as Personal Representative of the Estate of Phyllis Chestnut (“Ms. Chestnut”).

Defendants' respective motions to stay the lawsuit as to them pending the outcome of the Motion to Compel Arbitration and any arbitration proceedings (the "Motions to Stay").

### **BACKGROUND**

On April 12, 2019, Ms. Chestnut was admitted to the Facility. At that time, she signed an Admission Agreement and an Arbitration Agreement, copies of which are attached hereto as **Exhibits A** and **B**, respectively. When Ms. Chestnut was briefly discharged and then readmitted to the Facility in March 2020, she signed a Readmission Agreement (a copy of which is attached hereto as **Exhibit C**), the express terms of which "reaffirm[ed] the terms of the original Admission Agreement" and "acknowledge[d] that [it] does not replace or supercede the original Admission Agreement."

Plaintiff has brought this wrongful death and survival action asserting claims against the Facility arising out of Ms. Chestnut's residency; however, Ms. Chestnut entered into an Arbitration Agreement that covers all Plaintiff's claims against the Facility in this action. Accordingly, and for the reasons set forth herein, the Facility respectfully requests that this matter be compelled to arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §1, et seq. (the "FAA").

### **ARGUMENT**

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that to show that the Court should have grant the Motion to Compel Arbitration is, in turn, to show that it should grant the Motions to Stay. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the 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.”).

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. As discussed and further described herein, such a valid, binding and enforceable written agreement to arbitrate disputes exists in this case. Accordingly, the Motion to Compel Arbitration should be granted and, in turn, so should the Motions to Stay.

#### **I. The Arbitration Agreement is governed by the FAA.**

The Arbitration Agreement is governed by the FAA, not South Carolina’s Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 to -240 (the “SCAA”). The Arbitration Agreement expressly states that the FAA applies.<sup>4</sup> 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,”<sup>5</sup> and our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and,

---

<sup>4</sup> In pertinent part, the Arbitration Agreement reads, “the enforcement of this Arbitration Agreement is not subject to the [SCAA] and shall be governed by the [FAA], notwithstanding any contrary provision of this Agreement or contrary state law.”

<sup>5</sup> *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363; *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause).

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”<sup>6</sup> and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] leaves no place for the exercise of discretion by a . . . court, but instead *mandates* that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis added); *see also* 9 U.S.C. § 4 (“The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*”) (emphasis added). While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*” *Concepcion* at 339 (emphasis added); *see*

---

<sup>6</sup> *Allied-Bruce*, 513 U.S. at 270.

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 Ms. Chestnut’s signature, and “one who has signed a contract is presumed to have read, understood, and assented to its terms.” *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). It is countersigned on behalf of 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 arbitration<sup>7</sup> before an arbitrator who is either agreed upon by the parties themselves or selected by the Court, in a proceeding to be conducted pursuant to the South Carolina ADR Rules, which will result in a decision that is enforceable in a court of competent jurisdiction.<sup>8</sup> To require more just because an arbitration agreement is in issue would violate the

---

<sup>7</sup> The parties’ mutual promises to arbitrate constitute sufficient consideration. *O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”) (citing *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) (“[T]he exchange of promises qualified as consideration.”); see also *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) (“Mutual promises also constitute a good consideration.”)).

<sup>8</sup> In this regard, the Court would note that the South Carolina ADR Rules, which do apply to the conduct of arbitration proceedings under the Arbitration Agreement, should not be

FAA's requirement that arbitration agreements be placed on equal footing with all other contracts.  
*Concepcion*, 563 U.S. at 339.

**IV. All of Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement.**

In pertinent part, the Arbitration Agreement reads as follows:

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

This plain language clearly embraces all of Plaintiff's claims against the Facility. 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 not unconscionable.**

To prove that the Arbitration Agreement is unconscionable, Plaintiff must show both (1) an absence of meaningful choice due to one-sided contract provisions and (2) that the terms of the Arbitration Agreement are so oppressive that no reasonable person would make them and no fair

---

confused with the SCAA, which, as addressed above (in explaining the applicability of the FAA), does not apply here.

and honest person would accept them. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 245–46, 877 S.E.2d 486, 491 (Ct. App. 2022). Neither of these can be shown here.

The first part of the test (absence of meaningful choice) is undermined by the express acknowledgement in the Arbitration Agreement itself that Ms. Chestnut “is not required to use the . . . Facility for [her] healthcare needs and . . . there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to [Ms. Chestnut].” It is further undermined by the fact that Ms. Chestnut did not have to sign the Arbitration Agreement to be admitted to the Facility.

But even assuming, *arguendo*, the first part of the test were somehow met, the second part (unreasonably oppressive terms) is not. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration, and there is nothing about the Arbitration Agreement to suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668–69 (2007) (“In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. It is under this general rubric that we determine whether a contract provision is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms.”). Again, the Arbitration Agreement calls for arbitration conducted pursuant to the South Carolina ADR Rules, Rule 1 of which expressly states, “These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.”

**VI. The Arbitration Agreement applies with equal force to the wrongful death claim.**

The Arbitration Agreement applies with equal force to the wrongful death claim. A wrongful death claim does not belong to the wrongful death beneficiaries. It belongs to the decedent's personal representative, and a specific rule prohibiting enforcement of otherwise valid agreements to arbitrate wrongful death claims would violate the FAA's requirement that arbitration agreements be placed on equal footing with other contracts,<sup>9</sup> as indeed our Supreme Court has already recognized in *Dean*, 408 S.C. at 389, 759 S.E. at 737 n.3 (“[C]ourts *may not* refuse to compel arbitration simply because a wrongful death claim is involved.”) (emphasis added).

“The right of action for wrongful death is purely statutory and did not exist at common law . . . .” *Glenn v. E. I. DuPont Nemours & Co.*, 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970). Per the plain language of the wrongful death statute, a wrongful death claim must be a claim that, had the decedent lived, they could have maintained themselves. S.C. Code Ann. § 15-51-10 (“Whenever the death of a person shall be caused by the wrongful act, neglect or default of another *and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof*, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.”) (emphasis added); *see also Maxey v. Sauls*, 242 S.C. 247, 250, 130 S.E.2d 570, 572 (1963) (“[T]he right to maintain the [wrongful death] action is based upon the condition that ‘the act, neglect or default’ must be ‘such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damage in respect thereof.’ In other

---

<sup>9</sup> *See Concepcion*, 563 U.S. at 339.

words, ‘*if the deceased never had a cause of action, none accrues under the wrongful death statute.*’”) (discussing prior statutory language that is identical to that in present § 15-51-10) (quoting *Scott v. Greenville Pharmacy*, 212 S.C. 485, 489, 48 S.E. 324, 326 (1948) (emphasis added). Accordingly, a claim of wrongful death is derivative in nature, in that it derives from (and does not arise without) a cause of action arising in favor of the *decedent*. See *Id.*; see also 26 S.C. Jur. Limitation of Actions § 32 (“A wrongful death action is derivative in nature . . . .”); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988) (“If the decedent never had a cause of action, none accrues under the wrongful death statute. Furthermore, anything that would have defeated the decedent’s recovery had he survived the accident, such as contributory negligence, a valid release, or similar acts on his part, would defeat the right of recovery in behalf of his family in case of his death. It follows logically that the decedent’s failure to file a timely claim . . . is an act, or omission, on his part which should defeat the right of recovery of his personal representative.”) (internal citations and quotation marks omitted); *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010) (“*Quattlebaum* was correctly decided and adheres to the principle that a decedent’s estate may maintain an action only when the decedent would have been entitled to maintain an action had he survived.”).

“[T]he substantive right to bring . . . a wrongful death action . . . is determined by the Probate Code.” *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018); see also *id.* at 242, 811 S.E.2d at 743 (“The Probate Code defines who may act on behalf of the estate of a deceased person. The Probate Code, therefore, is the substantive law by which the identity of the ‘*real party in interest*’ is determined for all civil actions brought on behalf of the estate of a deceased person.”) (emphasis added). “Under the Probate Code . . . wrongful death actions must be brought by the personal representative . . . .” *Id.*

(emphasis added); *see also* S.C. Code Ann. § 15-51-20 (“Every [wrongful death] action shall be brought by or in the name of the executor or administrator of [the] person [whose death was wrongfully caused].”);<sup>10</sup> *Glenn*, 254 S.C. at 134, 174 S.E.2d at 158 (“If an action for wrongful death is instituted by one other than the personal representative of a decedent, duly appointed by the Probate Court, it should be dismissed.”).

Even though it is for their “benefit,” a wrongful death claim does not belong to the wrongful death beneficiaries themselves. It is a claim that is brought on behalf of the estate of the deceased person. The substantive right to bring the claim belongs to decedent’s personal representative, who must bring the claim and is the real party in interest under South Carolina law. And consistent with Judge Anderson’s correct analysis in *Quattlebaum* (which explains that anything that would have defeated the decedent’s recovery had he survived, such as, for instance, a valid release, will apply to the wrongful death claim), it follows logically that a valid arbitration agreement must also apply to the wrongful death claim, and to the extent that it does so, the Subject Order is erroneous in concluding otherwise.

### **CONCLUSION**

For the reasons set forth herein, the Court should grant the Motion and Compel Arbitration as to all claims against the Facility and the Motions to Stay. Alternatively, to the extent that the Court may not be inclined to grant the Motion to Compel Arbitration as to the wrongful death

---

<sup>10</sup> As explained by the *Fisher* Court, “Under the Probate Code . . . the terms ‘executor’ and ‘administrator’ do not have separate meaning, but are included within the defined term ‘personal representative.’” 422 S.C. at 240, 811 S.E.2d at 742 (citing S.C. Code Ann. § 62-1-201(33) (defining “Personal representative” to “include[] executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.”)). “Therefore, wrongful death actions must be brought by the personal representative, despite the language ‘shall be brought by . . . the executor or administrator’ that still appears in section 15-51-20.” *Id.*

claim, it should grant it as to the survival action and stay all proceedings pending the outcome of arbitration of the survival claim.

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

D. Jay Davis, Jr., SC Bar No.: 12084

Russell G. Hines, SC Bar ID No.: 72100

James D. Gandy, III, SC Bar No.: 11925

P.O. Box 993, Charleston, SC 29402

(843) 577-4000; [jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com),

[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com), [rhines@ycrlaw.com](mailto:rhines@ycrlaw.com)

*Attorneys for Defendants Hallmark Operating, LLC  
d/b/a Hallmark Healthcare Center, THI of South  
Carolina, LLC, THI of Baltimore, Inc., Hunt Valley  
Holdings, LLC, Fundamental Administrative  
Services, LLC, Fundamental Clinical And  
Operational Services, LLC, and Fundamental  
Clinical Consulting, LLC*

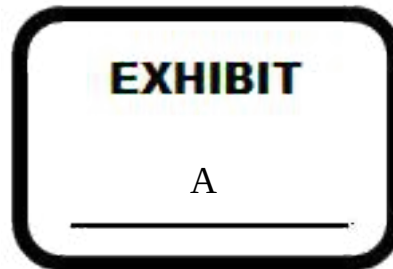
Charleston, South Carolina

September 4, 2024

RESIDENT NAME: *Phyllis Chestnut*

RESIDENT NUMBER:

DATE OF ADMISSION: *4-12-14*



THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among ("Facility"), ("Resident") and/or \_\_\_\_\_ ("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 aids and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.
3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.
4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.
5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

## A. FACILITY AGREES TO:

1. Admit Resident upon receipt of a physician's order; assist in obtaining physician services if personal physician becomes unavailable; obtain emergency physician services when required. *Resident is not deemed admitted until such time as all agreements required by law and Facility have been appropriately executed.* This provision may be waived in writing by Facility, at its sole discretion.
2. Maintain written records of financial transactions with Resident and/or Representative responsible for payment. Resident has the right to have personal funds held in trust in accordance with applicable state and federal law, as may be amended from time-to-time.
3. Furnish room, routine meals, nursing care, personal care, or custodial care to Resident in accordance with applicable State and Federal law. This provision expressly excludes extraordinary services, including but not limited to, physician care, private duty nursing, private sitters, specialty foods and therapies not required by law. Resident will be placed in a semi-private room, absent medical need for a private room as determined by Facility staff. Residents residing in private rooms will be billed accordingly.
4. Assist in applying for private insurance benefits, but not to accept assignment thereof unless otherwise noted as an exception herein.
5. Assist Resident and/or Representative in applying for Medicare or Medicaid benefits where applicable.
6. Provide assistance in daily living and restorative nursing care in accordance with Resident's care plan, where appropriate. Resident and/or Representative reserve the right to refuse said treatment. If said treatment is refused, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
7. Arrange for transfer of Resident to a hospital upon physician's order or in an emergency situation. Expenses of transfer and care of Resident at the hospital are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment of those services.
8. Obtain and administer medication as prescribed. Expenses for the cost of obtaining the medications are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment for the medications. Resident and/or Representative have the right to refuse medication. If Resident refuses medication, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
9. Provide an activities program for Resident, components of which will be at the discretion of Facility.
10. Furnish Resident bed linens and hospital gowns. All personal clothing will be supplied by Resident or Representative and will be properly labeled as outlined in the *Admission Handbook* for identification purposes.

Original: Business File • Photocopy: Resident/Representative

**B. RESIDENT AND/OR REPRESENTATIVE AGREE(S) TO:**

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.
2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.
3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative have the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.
5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the Facility's *Policy and State Requirements for a Temporary Leave Bed-Hold*.
6. Provide and be responsible for personal items of clothing and property.
7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.
8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.
9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

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

Original: Business File • Photocopy: Resident/Representative

20. Resident and/or Representative will be responsible for paying all costs, expenses and reasonable attorneys' fees, whether or not suit is brought, in the event costs, expenses, and/or attorneys' fees are incurred by Facility in the collection of sums due from and owed by Resident or any other party on Resident's behalf to Facility.

### III. FINANCIAL AGREEMENT

Resident and/or Representative will be responsible for immediate payment of all charges incurred as follows:

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) for a basic fee of \$252.00 per day (☐-semi-private) accommodations, for a basic fee of \$221.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

- a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
- b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
- c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.

2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.

3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

Original: Business File • Photocopy: Resident/Representative

4. In the event Resident leaves Facility and has personal funds on account, Facility may deduct any outstanding monies due to Facility from said personal funds. The remainder will be distributed in accordance with applicable state and federal law.

5. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative shall pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

#### IV. TERMINATION

1. Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.

2. Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.

3. This Agreement may be terminate immediately upon the occurrence of any of the following:

- a. Resident's condition has improved sufficiently so that he/she no longer requires the services provided by Facility.
- b. Resident's physical or mental condition changes and he/she requires a higher level of care which cannot be provided by Facility.
- c. Resident's death
- d. The safety or health of individuals in the Facility is endangered.
- e. Resident and/or his/her legal representative have failed to pay for his/her stay.
- f. Facility ceases to operate or is no longer able to provide services to Resident.
- g. Sanctions or remedies imposed by the Department.

4. In the event Facility terminates this Agreement through an involuntary transfer or Discharge, Facility shall provide appropriate notice and discharge planning as required by State and Federal law.

#### V. MEDICAID BENEFICIARIES

1. **Eligibility.** Eligibility for Medicaid-sponsored long-term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

**It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission.** This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The Department may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid-sponsored long-term care services.

Original: Business File • Photocopy: Resident/Representative

2. **Covered Services.** If Resident is a Medicaid recipient, the Medicaid Program will reimburse Facility for certain skilled services ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to: hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, and basic personal laundry.

3. **Non-Covered Services.**

- a. Medicaid is a cost-sharing program. Resident's monthly income must be contributed to the cost of his or her care. Medicaid determines how much of the Resident's monthly income must be paid to the Facility (also called "patient liability"). To the extent permitted by law, Resident's monthly Social Security and pension funds, minus the personal allowance retained by Resident (or other allowance as set by law), will be paid to Facility.
- b. Resident and/or Representative may purchase from Facility certain miscellaneous products and services that are not covered by Medicaid. An itemized list of fees for these additional products and services is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office.

4. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicaid for services rendered by Facility and authorizes Facility to receive payments from Medicaid pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicaid refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative will remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from Medicaid.

5. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

6. **Application/ Appeals.** Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

## VI. MEDICARE BENEFICIARIES

1. **Covered Services.** If Resident is a Medicare recipient, the Medicare Program will reimburse Facility for certain skilled services such as nursing services and certain therapies ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream,

Original: Business File • Photocopy: Resident/Representative

FFSC001 South Carolina Admissions Agreement (Rev. 6/2009)

Page 7 of 12

toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, basic personal laundry and medically related social services.

2. **Non-Covered Services.** Resident and/or Representative will be required to pay certain other "Allowable Charges" which include, but are not limited to:

- a. Fees for certain products and services not covered under the Medicare program. Fees for such services will be identical those charged to private pay residents of Facility for the same products and services.
- b. Fees for certain products and services that are more expensive than the products and services covered under the Medicare program (e.g., a private room), as requested by a Resident and/or Representative. Fees charged for the more expensive products and services will be based on the difference between the fees charged to private pay residents of Facility and the customary charge for the same products and services under Medicare. Facility staff will inform Resident and/or Representative requesting additional or more expensive products or services that there will be a specified charge.
- c. Certain deductibles and co-insurance amounts under the Medicare Program.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicare for services rendered by Facility and authorizes Facility to receive direct payments from Medicare pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicare refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from Medicare.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

## VII. PRIVATE PAY/INSURANCE

1. **Routine Services.** If Resident is paying for his/her stay privately OR if he/she is having his/her stay paid for through a third-party insurance carrier, Resident and/or Representative will reimburse Facility for routine services ("Routine Services") which include: routine nursing services; routine dietary services; routine activities programs; and routine room and bed maintenance services. Beauty shop fees are not included in the daily rate. Resident and/or Representative shall pay a deposit of two months' basic room and board prior to admission. Each subsequent monthly payment is due on or before the 10<sup>th</sup> day of the month.

Original: Business File • Photocopy: Resident/Representative

2. **Ancillary Services.** Resident and/or Representative may purchase services and products that are not included in Routine Services from Facility. An itemized list of fees for these additional services and products is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office. Resident and/or Representative shall pay for ancillary services at the end of the month in which such services are rendered.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from any insurance company paying benefits to Resident for services rendered by Facility and authorizes Facility to receive payments from such insurance company pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent such insurance company refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment for these services to the extent permitted by applicable law. Resident and/or Representative agree to cooperate with Facility in collecting all proceeds due from such insurance company.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not

6. Not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

## VIII. NOTICES

All notices, consents, approvals and the like required to be given hereunder shall be given in writing to Facility to the address below or such other address as Facility may designate:

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:

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

**Original: Business File • Photocopy: Resident/Representative**

## IX. GOVERNING LAW

This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located. This Agreement will be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

## X. SEVERABILITY

If any provision(s) of this Agreement will be deemed to be illegal or otherwise unenforceable, all other provisions will remain in full force and effect as if the invalid provision had not been part of this Agreement.

## XI. CAPTIONS

Captions are for the purpose of reference only and do not govern, limit, modify, enlarge or in any manner affect the scope, meaning and intent of the provisions of this Agreement, nor will such captions be given any legal effect.

## XII. MODIFICATIONS

Facility reserves the right to unilaterally modify this Agreement to conform to law and regulations as may be passed from time to time. Reasonable notice, considering all of the circumstances, will be given to Resident and/or Representative when any change is made in accordance with this paragraph. Any other modification, except as otherwise specifically reserved herein, will be made in writing and signed by all relevant parties.

## XIII. WAIVER

Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by Facility unless in writing, signed by Facility. Any waiver of any provision of this Agreement will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and/or Representative and this Agreement will remain in full force and effect.

## XIV. RESIDENT

Use of the term "Resident" herein includes the Resident and any person with legal authority to handle Resident's funds or property and/or make medical decisions depending on the context in which the term is used.

## XV. ASSIGNABILITY

This Agreement is fully assignable by Facility in the event that Facility is sold and/or the license is transferred such that a new licensee operates Facility. This Agreement, at Facility's option and without notice to Resident and/or Representative, may be automatically assigned to the new licensee and will be fully binding upon Resident and the new licensee.

**Original: Business File • Photocopy: Resident/Representative**

## XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required 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, and durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

Original: Business File • Photocopy: Resident/Representative

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.

X Rhylis Chestnut 4-12-2019  
Signature of Resident Date

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Witness Signature Date

\_\_\_\_\_  
Printed Name of Witness

OR

\_\_\_\_\_  
Signature of Representative, if any Date

\_\_\_\_\_  
Printed Name of Representative

\_\_\_\_\_  
Witness Signature Date

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Representative Social Security No. (Voluntary Info.)

Lucinda Ambrosi  
Signature of Facility Official

Lucinda Ambrose OCP  
Printed Name of Facility Official & Title

4-12-19  
Date

Original: Business File • Photocopy: Resident/Representative

ELECTRONICALLY FILED - 2024 SEP 04 1:27 PM - DORCHESTER - COMMON PLEAS - CASE#2023CP1800758

**EXHIBIT**

C

READMISSION AGREEMENT

RESIDENT NAME:

Phyllis Chestnut

RESIDENT NUMBER:

300110 - 01

DATE OF READMISSION:

March 8, 2020

THIS READMISSION AGREEMENT ("Agreement") is made this 8<sup>th</sup> day of March, 2020, by and between Hallmark ("Facility") AND Phyllis Chestnut ("Resident") AND/OR Phyllis Chestnut ("Resident's Durable Power of Attorney for Health Care"/ "Resident's Legal Guardian"/ "Resident's Responsible Party", hereinafter collectively "Representative").

For the purposes of readmitting Resident to the Facility and in consideration of the mutual promises contained in this Agreement and the original Admission Agreement by and between the parties, executed by the undersigned on APRIL 12, 2019, the parties agree as follows:

1. By execution of this Readmission Agreement, the parties acknowledge and reaffirm the terms of the original Admission Agreement between the parties and acknowledge that this Readmission Agreement does not replace or supercede the original Admission Agreement.

2. The terms, conditions, and obligations of the parties as stated in the original Admission Agreement, along with each of its attachments, are incorporated in this Readmission Agreement by reference thereto and shall be effective as if rewritten fully herein.

3. **THIS READMISSION AGREEMENT IS TO BE USED ONLY WHEN RESIDENT WAS AN OCCUPANT OF THE FACILITY WITHIN THE LAST THIRTY (30) DAYS, WHERE SUCH RESIDENT HAS BEEN ABSENT FROM THE FACILITY AND FOR WHICH AN ADMISSION AGREEMENT AND RELATED DOCUMENTS WERE PREVIOUSLY COMPLETED AND SIGNED.**

4. The undersigned may review the original Admission Agreement and its attachments thereto which were signed/reviewed by the undersigned at the time of Resident's initial admission AND the undersigned may request additional copies of same.

5. The undersigned acknowledges that, as part of Resident's initial admission, he/she received the following documents, in addition to the Admission Agreement:

- Admission Handbook, outlining the Facility's rules and regulations along with written explanations of the following:
  - ◆ Admission, Discharge and Readmission policies
  - ◆ Bed assignment, reservation, and refund policies
  - ◆ Protection of resident funds
  - ◆ Resident's rights under federal law
  - ◆ Bed hold policies
  - ◆ Policies/procedures for bringing personal items into the Facility, such as food, appliances, furniture, valuables, etc.
  - ◆ Policies for securing personal belongings, valuables and money
  - ◆ Special services available, such as laundry, barbers and activities
  - ◆ Resident's right to choose their own care providers
  - ◆ Policies/procedures for filing grievances
  - ◆ Medicare/Medicaid Funding
  - ◆ Smoking policies

Original: Business File • Photocopy: Resident/Representative

- Resident's rights under applicable state laws.
- Information and policies regarding Advance Directives
- Outline of Services available at the Facility and accompanying price list
- Listing of local and governmental resources/ advocacy groups
- Listing of all medical professionals available to provide on-site services
- Information and policies for the use of physical/chemical restraints, including bed rails.

6. This Readmission Agreement is being provided at the convenience of the undersigned and the undersigned may request that a new admission be processed, which would entail the execution of all Facility admission forms.

7. The undersigned has been orally informed of the current ancillary prices, the current charges of the Facility's services and the Resident's rights at the Facility. Copies of all related documents have been provided herewith.

**THE UNDERSIGNED ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT AND AFFIRMS THAT HE/SHE IS EXECUTING THE INSTRUMENT VOLUNTARILY AND FREELY, WITH A FULL UNDERSTANDING AND IN AGREEMENT OF ITS TERMS.**

X Phyllis Chestnut  
Signature of Resident Date

Phyllis Chestnut  
Printed Name of Resident

Resident Social Security Number

Witness Signature Date

Printed Name of Witness

AND/OR

Signature of Representative, if any Date

Printed Name of Representative

Witness Signature Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

JANICE M. ONUSKO  
Signature of Facility Official Date

JANICE M. ONUSKO AD.  
Printed Name of Facility Official & Title

Original: Business File • Photocopy: Resident/Representative

|                                            |   |                                        |
|--------------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS           |
|                                            | ) | FIRST JUDICIAL CIRCUIT                 |
| COUNTY OF DORCHESTER                       | ) | CASE NO. 2023-CP-18-00758              |
|                                            | ) |                                        |
| JAMES GRAHAM,                              | ) |                                        |
| as Personal Representative of              | ) |                                        |
| the Estate of Phyllis Chestnut,            | ) |                                        |
|                                            | ) |                                        |
| Plaintiff,                                 | ) |                                        |
|                                            | ) |                                        |
| vs.                                        | ) | <b>MOTION TO ALTER, AMEND, AND/OR</b>  |
|                                            | ) | <b>RECONSIDER MOTION TO COMPEL</b>     |
|                                            | ) | <b>ARBITRATION AND MOTIONS TO STAY</b> |
| HALLMARK OPERATING, LLC                    | ) |                                        |
| d/b/a Hallmark Healthcare Center,          | ) |                                        |
| FUNDAMENTAL LONG TERM CARE,                | ) |                                        |
| INC., THI OF SOUTH CAROLINA, LLC,          | ) |                                        |
| THI OF BALTIMORE, INC., HUNT               | ) |                                        |
| VALLEY HOLDINGS, LLC,                      | ) |                                        |
| FUNDAMENTAL ADMINISTRATIVE                 | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL                 | ) |                                        |
| CLINICAL AND OPERATIONAL                   | ) |                                        |
| SERVICES, LLC, FUNDAMENTAL                 | ) |                                        |
| CLINICAL CONSULTING, LLC, and              | ) |                                        |
| CURANA HEALTH OF SOUTH                     | ) |                                        |
| CAROLINA, P.C. f/k/a Elite Patient Care of | ) |                                        |
| South Carolina, PC,                        | ) |                                        |
|                                            | ) |                                        |
| Defendants.                                | ) |                                        |
|                                            | ) |                                        |

TO: THE HONORABLE MAITE MURPHY, Presiding Judge, and PLAINTIFF’S COUNSEL OF RECORD

NOW COME the Facility<sup>1</sup> and the Other Defendants<sup>2</sup> (collectively, “Defendants”), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCPP, and, on the grounds set forth

---

<sup>1</sup> The “Facility” refers to Defendant Hallmark Operating, LLC d/b/a Hallmark Healthcare Center, which is the operator of the skilled nursing facility known as Hallmark Healthcare Center.

<sup>2</sup> The “Other Defendants” refers to Defendants THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical And Operational Services, LLC, and Fundamental Clinical Consulting, LLC.

below, hereby most respectfully move this Honorable Court to alter, amend, and/or reconsider its order filed November 21, 2024 (the “Subject Order”), granting the Facility’s motion to compel arbitration (the “Motion to Compel Arbitration”) only as to Plaintiff’s<sup>3</sup> survival claims and denying it as to Plaintiff’s wrongful death claims and denying the Other Defendants’ respective motions to stay the lawsuit as to them pending the outcome of the Motion to Compel Arbitration and the outcome of the arbitration proceedings (of Plaintiff’s survival and wrongful death claims) that the Facility sought to compel (the “Motions to Stay”) (collectively, the “Underlying Motions”).<sup>4</sup>

**I. Contending, most respectfully, that the Underlying Motions should have been (and should now be) granted, Defendants ask the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Underlying Motions, i.e., each and every distinct issue/argument set forth in the Underlying Motion themselves; in Defendants briefing 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).

---

<sup>3</sup> “Plaintiff” refers to Plaintiff, James Graham, as Personal Representative of the Estate of Phyllis Chestnut (“Ms. Chestnut”).

<sup>4</sup> To be clear, the instant motion does not challenge the Court’s grant of the Motion to Compel Arbitration as to Plaintiff’s survival claims.

**II. Without waiving or otherwise lessening the all-encompassing scope of the foregoing (i.e., I. above), Defendants 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 Arbitration Agreement applies with equal force to the wrongful death claims.**

“The right of action for wrongful death is purely statutory and did not exist at common law . . . .” *Glenn v. E. I. DuPont Nemours & Co.*, 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970). Per the plain language of the wrongful death statute, a wrongful death claim must be a claim that, had the decedent lived, they could have maintained themselves. S.C. Code Ann. § 15-51-10 (“Whenever the death of a person shall be caused by the wrongful act, neglect or default of another *and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof*, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.”) (emphasis added); *see also Maxey v. Sauls*, 242 S.C. 247, 250, 130 S.E.2d 570, 572 (1963) (“[T]he right to maintain the [wrongful death] action is based upon the condition that ‘the act, neglect or default’ must be ‘such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damage in respect thereof.’ In other words, ‘*if the deceased never had a cause of action, none accrues under the wrongful death statute.*’”) (discussing prior statutory language that is identical to that in present § 15-51-10) (quoting *Scott v. Greenville Pharmacy*, 212 S.C. 485, 489, 48 S.E. 324, 326 (1948) (emphasis added)).

Accordingly, a claim of wrongful death is derivative in nature, in that it derives from (and does not arise without) a cause of action arising in favor of the *decedent*. *See Id.*; *see also* 26 S.C. Jur. Limitation of Actions § 32 (“A wrongful death action is derivative in nature . . . .”); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988) (“If the decedent never

had a cause of action, none accrues under the wrongful death statute. Furthermore, anything that would have defeated the decedent's recovery had he survived the accident, such as contributory negligence, a valid release, or similar acts on his part, would defeat the right of recovery in behalf of his family in case of his death. It follows logically that the decedent's failure to file a timely claim . . . is an act, or omission, on his part which should defeat the right of recovery of his personal representative.") (internal citations and quotation marks omitted); *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010) ("Quattlebaum was correctly decided and adheres to the principle that a decedent's estate may maintain an action only when the decedent would have been entitled to maintain an action had he survived.").

"[T]he substantive right to bring . . . a wrongful death action . . . is determined by the Probate Code." *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018); *see also id.* at 242, 811 S.E.2d at 743 ("The Probate Code defines who may act on behalf of the estate of a deceased person. The Probate Code, therefore, is the substantive law by which the identity of the 'real party in interest' is determined for all civil actions brought on behalf of the estate of a deceased person.") (emphasis added). "Under the Probate Code . . . wrongful death actions must be brought by the personal representative . . ." *Id.* (emphasis added); *see also* S.C. Code Ann. § 15-51-20 ("Every [wrongful death] action shall be brought by or in the name of the executor or administrator of [the] person [whose death was wrongfully caused].");<sup>5</sup> *Glenn*, 254 S.C. at 134, 174 S.E.2d at 158 ("If an action for wrongful death

---

<sup>5</sup> As explained by the *Fisher* Court, "Under the Probate Code . . . the terms 'executor' and 'administrator' do not have separate meaning, but are included within the defined term 'personal representative.'" 422 S.C. at 240, 811 S.E.2d at 742 (citing S.C. Code Ann. § 62-1-201(33) (defining "Personal representative" to "include[] executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.")). "Therefore, wrongful death actions must be

is instituted by one other than the personal representative of a decedent, duly appointed by the Probate Court, it should be dismissed.”).

Even though it is for their “benefit,” a wrongful death claim does not belong to the wrongful death beneficiaries themselves. It is a claim that is brought on behalf of the estate of the deceased person. The substantive right to bring the claim belongs to decedent’s personal representative, who must bring the claim and is the real party in interest under South Carolina law. And consistent with Judge Anderson’s correct analysis in *Quattlebaum* (which explains that anything that would have defeated the decedent’s recovery had he survived, such as, for instance, a valid release, will apply to the wrongful death claim), it follows logically that a valid arbitration agreement must also apply to the wrongful death claim, and to the extent that it does so, the Subject Order is erroneous in concluding otherwise.

Most respectfully, the Court’s analysis of *Quattlebaum* and *Stokes* is erroneous. The fact that these cases did not expressly address arbitration is beside the point and overlooks the import of the principal, which the *Stokes* Court expressly confirmed to be good South Carolina law, that “a decedent’s estate *may maintain an action only when the decedent would have been entitled to maintain an action* had he survived.” *Stokes*, 389 S.C. at 349, 699 S.E.2d at 146 (emphasis added). By conceding that the Arbitration Agreement is valid and enforceable to require arbitration of the survival claims, Plaintiff concedes that the decedent, Ms. Chestnut, would not have been entitled to “maintain a [civil court] action” against the Facility had she survived, but instead would have had to arbitrate. Indeed, the Subject Order itself acknowledges that, “[h]ad Ms. Chestnut settled any claims against the Defendants before her death, . . . the Estate’s Personal Representative could

---

brought by the personal representative, despite the language ‘shall be brought by . . . the executor or administrator’ that still appears in section 15-51-20.” *Id.*

not now bring a wrongful death claim on behalf of the statutory beneficiaries because under section 15-51-10, there would not be an action the decedent could have maintained if death had not ensued.” (Subject Order p. 10.) To acknowledge this is to acknowledge that the relationship between survival and wrongful death claims is not such that one has no bearing on the other and that a decedent may, during their lifetime, enter into a contract that affects their estate’s ability to maintain an action for wrongful death after the decedent’s death. As recognized in *Quattlebaum* and *Stokes*, and, indeed, in the Subject Order, a decedent may validly waive their estate’s right to maintain an action for wrongful death—which necessarily effects a waiver of their estate’s right to a jury trial on a claim for wrongful death—via settlement, i.e., via contract, that outright releases any and all claims for wrongful death. Properly applying this principal to the present context, Ms. Chestnut, via the Arbitration Agreement, validly waived her estate’s right to maintain an action for wrongful death against the Facility in court and instead required that the instant claim for wrongful death be pursued against the Facility in arbitration.

**B. The Court should have found (and should now find) that the Motions to Stay should be granted.**

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that to show that the Court should have granted the Motion to Compel Arbitration is, in turn, to show that it should have granted the Motions to Stay. *See* 9 U.S.C. § 3 (“If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the 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.”).

While, of course, the Facility maintains the survival and wrongful death claims should be compelled to arbitration, the very fact that the survival claims have been compelled to arbitration is enough to require granting the Motions to Stay. The *Metro Life* case explains that 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.” 351 S.C. at 612, 571 S.E.2d at 715 (emphasis added). Most respectfully, in the Subject Order, the Court never addresses this.

Moreover, the Court’s reliance on *Moses H. Cone Mem’l Hospital v. Mercury Construction Corporation*, 460 U.S. 1, 20, 103 S. Ct. 927, 939 n.23 (1983), for the proposition that “it is in the Court’s discretion whether to stay for considerations of economy and efficiency, including issues not arbitrable, pending arbitration” (Subject Order pp. 11–12) is misplaced. It is true that footnote 23 in the *Moses Cone* opinion states, “In some cases, of course, it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration. That decision is one left to the district court (or to the state trial court under applicable state procedural rules) as a matter of its discretion to control its docket.” But the Court follows this statement with citation to *Landis v. North American Co.*, 299 U.S. 248, 254–255, 57 S.Ct. 163, 165–66, 81 L.Ed. 153 (1936), and *Landis* “hinges upon the power of a court to stay proceedings in *one suit* until the decision of *another*, and upon the propriety of using such a power in a given situation.” 299 U.S. at 249, 57 S. Ct. at 163 (emphasis added). The reference in footnote 23 in *Moses Cone* does not

appear to refer to the situation we have in the instant case (where there is one lawsuit and arbitration is compelled as to an issue(s) therein) but rather a situation where no issue(s) in a given case is/are compelled to arbitration but there is another, separate proceeding the decision of which might potentially impact the case.

And in any event, the circumstances here do not favor denial of a discretionary stay. As explained above, the Subject Order itself acknowledges that the relationship between survival and wrongful death claims is such is not such that one has no bearing on the other. Plaintiff's complaint asserts one cause of action against all of the defendants for negligence, the allegations of which do not attribute specific acts to specific defendants but rather refer to the "negligent acts of the Defendants, combining and concurring." (Compl. ¶ 22.) To prevail on the survival claims against the Facility, Plaintiff will have to show negligence as to the care/treatment Ms. Chestnut received at the Facility, which Plaintiff will also have to show to prevail on the survival claim against the Other Defendants and the wrongful death claims against all Defendants. Given this overlap, and the accompanying risk of duplicative proceedings and inconsistent outcomes, the Court's determination to deny the Motions to Stay is erroneous. Indeed, the risk of inconsistent determinations is alone inconsistent with the Court's "desir[e] of bringing to a conclusion all the litigation" (Subject Order p. 13), because inconsistent determinations stand to promote further disputes, not finality.

WHEREFORE, for the foregoing reasons (and, again, for that matter, for all of the reasons previously advanced to the Court in and in support of the Underlying Motions (both those advanced in writing and those advanced via oral argument), all of which Defendants incorporate by reference herein and asks the Court to (re)consider and expressly rule upon in full), Defendants

ask that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Underlying Motions in full.

PLEASE NOTE: Defendants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Russell G. Hines  
D. Jay Davis, Jr. (SC Bar No. 12084)  
[jdavis@ycrlaw.com](mailto:jdavis@ycrlaw.com)  
James D. Gandy III (SC State Bar No. 11925)  
[tgandy@ycrlaw.com](mailto:tgandy@ycrlaw.com)  
Russell G. Hines (SC State Bar No. 72100)  
[rhines@ycrlaw.com](mailto:rhines@ycrlaw.com)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5406  
*Attorneys for Defendants Hallmark  
Operating, LLC d/b/a Hallmark Healthcare  
Center, THI of South Carolina, LLC, THI of  
Baltimore, Inc., Hunt Valley Holdings, LLC,  
Fundamental Administrative Services, LLC,  
Fundamental Clinical And Operational  
Services, LLC, and Fundamental Clinical  
Consulting, LLC*

Charleston, South Carolina

December 2, 2024

|                                |   |                                         |
|--------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS            |
|                                | ) |                                         |
| COUNTY OF DORCHESTER           | ) | CIVIL ACTION NO.: 2023-CP-18-00758      |
|                                | ) |                                         |
| JAMES GRAHAM, AS PERSONAL      | ) |                                         |
| REPRESENTATIVE OF THE ESTATE   | ) |                                         |
| OF PHYLLIS CHESTNUT,           | ) |                                         |
|                                | ) |                                         |
| Plaintiff,                     | ) |                                         |
|                                | ) |                                         |
| v.                             | ) |                                         |
|                                | ) |                                         |
| HALLMARK LONG TERM CARE, LLC   | ) | <b>PLAINTIFF’S MEMORANDUM IN</b>        |
| D/B/A HALLMARK HEALTHCARE      | ) | <b>OPPOSITION TO DEFENDANT’S MOTION</b> |
| CENTER, FUNDAMENTAL LONG       | ) | <b>FOR RECONSIDERATION</b>              |
| TERM CARE, INC., THI OF SOUTH  | ) |                                         |
| CAROLINA, LLC, THI OF          | ) |                                         |
| BALTIMORE, INC., HUNT VALLEY   | ) |                                         |
| HOLDINGS, LLC, FUNDAMENTAL     | ) |                                         |
| ADMINISTRATIVE SERVICES, LLC,  | ) |                                         |
| FUNDAMENTAL CLINICAL AND       | ) |                                         |
| OPERATIONAL SERVICES, LLC,     | ) |                                         |
| FUNDAMENTAL CLINICAL           | ) |                                         |
| CONSULTING, LLC, and CURANA    | ) |                                         |
| HEALTH OF SOUTH CAROLINA, P.C. | ) |                                         |
| F/K/A ELITE PATIENT CARE OF    | ) |                                         |
| SOUTH CAROLINA, PC             | ) |                                         |
|                                | ) |                                         |
| Defendants.                    | ) |                                         |

Plaintiff James Graham, as Personal Representative of the Estate of Phyllis Chestnut, submits this Memorandum in Opposition to Defendants Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center, THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC’s (“Defendants”) Motion for Reconsideration. The Court should deny Defendants’ motion on two independent grounds. First, it appears that Defendants have failed to provide a copy of their motion to the Court within 10 days as required by Rule 59(g), SCRCP. Second, Defendants have failed to point to a clear error of law.

## **MOTION FOR RECONSIDERATION STANDARD**

Motions for reconsideration will not be granted absent “highly unusual circumstances.” *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).<sup>1</sup> Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” *Dash v. Mayweather*, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, \*2 (D.S.C. Sept. 13, 2010) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)).

In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F. Supp. 3d 685, 691 (D.S.C. 2017); *see also Lyons v. Fid. Nat’l Title Ins. Co.*, 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

## **ARGUMENT**

Rule 59(g), SCRCP states that “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule

---

<sup>1</sup> The Court may rely on federal precedent when interpreting a South Carolina Rule of Civil Procedure that is substantially the same as a federal rule.

59(g), SCRCRCP (emphasis added). Thus, under the plain language of the Rule it is mandatory that a party wishing to seek reconsideration must not only file its motion within ten days of the contested order but must also serve a copy of the motion upon the judge who signed the order within ten days of filing the motion. “Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule.” *Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017). A trial court may deny a motion to reconsider based solely on noncompliance with Rule 59(g). *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002).

Defendants’ Motion was filed on December 2, 2024. However, a copy of the motion was not provided to the judge until December 13, 2024. (Ex. A, Email). Accordingly, Defendant’s motion may be and should be denied by the Court for failure to timely comply with Rule 59(g), SCRCRCP. Attached as Exhibit B are orders from other Circuit Courts denying motions for reconsideration under Rule 59(g), SCRCRCP. Additionally, Defendants’ Motion either attempts to relitigate issues that were decided by the Court with supporting law or raises new issues that Defendants could have and did not raise prior to the Court’s Order denying their Motion to Compel Arbitration.

For example, Defendants now argue that the Court does not have discretion not to stay the wrongful death claim while the survival claim is compelled into arbitration. In their Memorandum in Support of their Motion to Compel Arbitration, Defendants argued that the wrongful death claim could not be severed from the survival claim and were aware that Plaintiff was making this argument, but they never precisely argued that the Court did not have discretion not to stay the wrongful death claim if this were to happen. Instead, Defendants merely argued in conclusory fashion that the Court should have granted the Motions to Stay for the same reasons it should have granted the Motion to Compel Arbitration, and that it *should* have stayed the wrongful death claim.

(Mem. in Supp. of Mot. Compel 2-3); *see also* (Nov. 21, 2024 Order 12) (“Hallmark and the remaining Defendants have not demonstrated or argued why a Motion to Stay is justified other than to argue they are entitled to one under 9 U.S.C. § 3 because the entirety of Plaintiff’s claims are arbitrable, nor have the remaining Defendants demonstrated as non-parties to the relevant Arbitration Agreement why they are entitled to a stay under 9 U.S.C. § 3, or that it is not feasible to proceed with the litigation”). Defendants cannot use a Motion for Reconsideration to present an issue they could have raised prior to the entry of the Court’s Order.

For the foregoing reasons and those raised by Plaintiff in his Memorandum in Opposition to Defendants’ Motion to Compel Arbitration and at the hearing, Plaintiff respectfully requests that the Court deny Defendants’ Motion for Reconsideration.

PARKER LAW GROUP, LLP

BY: s/John E. Parker, Jr.

Lee D. Cope  
SC Bar # 14361  
John E. Parker, Jr.  
SC Bar # 104225  
P.O. Box 487  
Hampton, SC 29924  
(803) 903-1781

AND

The Steinberg Law Firm, LLP  
Steven E. Goldberg, Esquire  
SC Bar #66446  
Post Office Box 2670  
Summerville, SC 29484

ATTORNEYS FOR THE PLAINTIFF

December 20, 2024  
Hampton, South Carolina

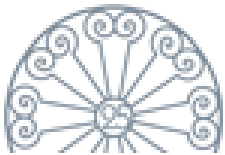
**Jay Parker**

**From:** Hines, Russell <RHines@ycrlaw.com>  
**Sent:** Friday, December 13, 2024 12:23 AM  
**To:** Murphy, Maite; Murphy, Maite Secretary (Robin Dukes); Murphy, Maite Law Clerk (Ashley Errett)  
**Cc:** Davis, Jay; Lee Cope; kthompson@csvg.law; lweatherly@csvg.law; Gandy, III, James D. (Tripp); Jay Parker; Peterson, Susan; Preiser, Skyla; Bell, Pollyana (Polly)  
**Subject:** Graham v. Hallmark (2023-CP-18-00758) -- Motion to Reconsider  
**Attachments:** Graham v. Hallmark (2023-CP-18-00758) -- Motion to Reconsider.pdf

**Caution:** This email came from outside the ParkerLaw network. Use caution when clicking on links and attachments.

Judge Murphy,  
Pursuant to Rule 59(g), SCRPC (which directs that a motion to reconsider should be provided directly to the presiding judge), attached please find a filed copy of our **motion to reconsider**, which was filed in the above-referenced matter on December 2, 2024.  
As always, thank you very much for your attention to this matter.

Russell G. Hines  
CLEMENT RIVERS, LLP  
[www.ycrlaw.com](http://www.ycrlaw.com)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
Phone: (843) 720-5488  
Fax: (843) 579-1327  
Email: [rhines@ycrlaw.com](mailto:rhines@ycrlaw.com)



CLEMENT RIVERS, LLP  
25 Calhoun Street • Suite 400

Clement Rivers, LLP  
<http://www.ycrlaw.com>  
Charleston: (843) 577-4000

Attachments larger than 40MB may be rejected by the firm's server. If you are sending an attachment of this size or larger, please contact the intended recipient to inform him/her of your transmission.

"ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION." The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If

you have received this communication in error, please notify us immediately by telephone or by email to email@ycrlaw.com or by replying to this message and destroy all copies of this message and all attachments.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )  
 )  
LARRY RAHN, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BARBARA SMITH, )  
 )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2019-CP-15-00218

**ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER**

This matter came before the Court on Defendant's Motion to Reconsider the Court's Order granting Plaintiff's motion for summary judgment, dated December 3, 2019. Defendant's Motion for Reconsideration was filed on December 13, 2020. However, pursuant to Rule 59(g), SCRC, Defendant was required to provide a copy of the Motion to the judge within ten (10) days after the filing of the Motion to Reconsider. No such copy was provided within the ten (10) days.

As such, this Court respectfully denies Defendant's Motion to Reconsider.

IT IS SO ORDERED.

Walterboro, SC

Judge Perry M. Buckner, III

FILED ELECTRONICALLY FILED - 2020/12/16/11:11 AM - E-COURT ENGINEER - COMMON PLEAS CASES, 2019-CP-15-00218, 2020-12-16, 11:11 AM



Colleton Common Pleas

**Case Caption:** Larry Rahn VS Barbara Smith

**Case Number:** 2019CP1500218

**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2020-03-18 11:03:41 page 2 of 2

ELECTRONICALLY FILED 2020 MAR 18 07:17 PM DOBCHESNE R COURT REPORTER RELEASE CASE #2019CP1500218

|                                 |   |                                   |
|---------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS      |
|                                 | ) | FOURTEENTH JUDICIAL CIRCUIT       |
| COUNTY OF BEAUFORT              | ) |                                   |
|                                 | ) | Case No.: 2019-CP-07-02270        |
| ERIC CHASE WILLIAMSON,          | ) |                                   |
| Plaintiff,                      | ) |                                   |
|                                 | ) | <b>ORDER ON DEFENDANT LG CHEM</b> |
|                                 | ) | <b>AMERICA, INC.'S MOTION</b>     |
| v.                              | ) | <b>FOR RECONSIDERATION</b>        |
|                                 | ) |                                   |
| PIRATES COVE VAPOR LOUNGE, LLC, | ) |                                   |
| ET. AL.,                        | ) |                                   |
| Defendants.                     | ) |                                   |

|                       |                          |
|-----------------------|--------------------------|
| Presiding Judge:      | Hon. Perry M. Buckner    |
|                       | Hon. Deadra L. Jefferson |
| Plaintiff's Attorney: | Harris Yegelwel, Esq.    |
| Defendant's Attorney: | Rachel Hedley, Esq.      |
| Date of Hearing:      | May 28, 2020             |
| Court Reporter:       | Karen Andersen           |

This matter came before the Court on Defendant LG Chem America, Inc.'s Motion for Reconsideration, filed June 18, 2020. The Defendant asks the Honorable Perry M. Buckner to reconsider his June 8, 2020 Order Denying Defendant's Motion to Dismiss for Lack of Personal Jurisdiction. The Court received a copy of the Defendant's Motion for Reconsideration via email from counsel for the Defendant on September 24, 2020. The Plaintiff advised the Court that it did not intend to file a response to the Defendant's Motion for Reconsideration. After consideration of the record, the Defendant's Motion for Reconsideration is heard and respectfully Denied.<sup>1</sup>

### **CONCLUSIONS OF LAW**

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she

---

<sup>1</sup> This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRPC. “[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion.” Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)).

**I. The Defendant’s Motion for Reconsideration pursuant to Rule 54(b), SCRPC is Denied.**

The Defendant seeks reconsideration of Judge Buckner’s June 8, 2020 Order Denying the Defendant’s Motion to Dismiss for lack of personal jurisdiction. The Defendant filed its Motion for Reconsideration on June 18, 2020. Judge Buckner retired on August 15, 2020. It is uncontroverted that Judge Buckner was never served with a copy of the Defendant’s Motion for Reconsideration prior to his retirement. This Court certifies that it is familiar with the record and finds that the Court’s disposition of the Motion for Reconsideration will not result in any prejudice to the parties. Moreover, the parties concede this Court’s jurisdiction pursuant to Rule 63 to bring

resolution to the outstanding Motion for Reconsideration.<sup>2</sup> Therefore, pursuant to Rule 63, SCRCP, as mandated, this Court shall consider the Defendant’s Motion for Reconsideration.<sup>3</sup>

“[A] successor judge may not substitute his own judgment for that of the trial judge....”  
Charleston County Dept. of Social Services v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). The Defendant’s Motion for Reconsideration is purportedly made pursuant to Rule 54(b), SCRCP. Rule 54(b), SCRCP provides, in relevant part,

When more than one claim for relief is presented in an action... or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 54(b), SCRCP. Moreover, Rule 54(a), SCRCP, provides, “[j]udgment’ as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.” Rule 54(b), SCRCP permits a court to entry final judgment as to fewer than all of the claims pending in an action, provided that the court “certify” that there is no reason for just delay and upon an express direction for the entry of a final judgment. See Link v. School Dist. of Pickens County, 302 S.C. 1, 4, 393 S.E.2d 176, 177 (1990). In the absence of such

---

<sup>2</sup> The parties sought the Court’s assistance in resolving the outstanding Motion for Reconsideration upon realizing that the Motion was not resolved prior to Judge Buckner’s retirement.

<sup>3</sup> Rule 63, SCRCP provides, “[i]f at any time after a trial or hearing has been commenced, but before the final order or judgment has been issued, the judge is unable to proceed, a successor judge shall be assigned. The successor judge may proceed upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties....”); see also Supreme Court Order 2019-06-28-02 Re. Duties of Circuit Court Chief Judges for Administrative Purposes (“if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. If the chief administrative judge has a conflict and is thereby prevented from performing this duty, the matter shall be referred to the Chief Justice to assign a successor judge. The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties....”).

certification, Rule 54(b), SCRCP permits a court to review, at any time before the entry of judgment adjudicating all of the claims in a case, any order which adjudicates fewer than all of the claims in a case.<sup>4</sup>

The Court finds that Rule 54(b), SCRCP is an improper procedural vehicle for bringing a Motion for Reconsideration in the present case. Judge Buckner's June 8, 2020 Order Denying Defendant's Motion to Dismiss for lack of personal jurisdiction is not "any order or other form of decision... which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties..." as contemplated by Rule 54(b), SCRCP. Judge Buckner's June 8, 2020 Order does not adjudicate any of the claims or the rights and liabilities of any of the parties in this case. Judge Buckner's Order simply determines that this Court can properly exercise personal jurisdiction over the Defendant such that the Court, at a later date, may properly adjudicate the claims or the rights and liabilities of the parties.

Accordingly, the Defendant's Motion for Reconsideration pursuant to Rule 54, SCRCP is Denied.

## **II. The Defendant's Motion for Reconsideration is Denied pursuant to Rules 59(e), SCRCP and 59(g), SCRCP.**

Although the Defendant's Motion for Reconsideration is made pursuant to Rule 54(b), SCRCP, the substance of the Defendant's Motion is a Motion for Reconsideration pursuant to Rule 59, SCRCP. "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." Rule 59(g), SCRCP; See also Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017) ("Rule 59(g) would lack any

---

<sup>4</sup> Moreover, it is well settled that the primary purpose of Rule 54(b), SCRCP is to limit successive or piecemeal appeals. See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 466-67, 570 S.E.2d 197, 200-01 (Ct. App. 2002).

purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.”).

The Defendant concedes that it never served Judge Buckner with a copy of its Motion for Reconsideration as required by Rule 59(g), SCRCF.<sup>5</sup> Moreover, the Court confirmed with Judge Buckner’s former staff members that Judge Buckner did not receive a copy of, nor was Judge Buckner’s office aware of, a pending Motion for Reconsideration in this case. Accordingly, pursuant to Rule 59(g), SCRCF, the Defendant’s Motion for Reconsideration is Denied.

Moreover, the Court cannot substitute its judgment for that of Judge Buckner. Judge Buckner, after a thorough review of the record, made detailed findings of fact and conclusions of law supporting his ruling Denying Defendant’s Motion to Dismiss for lack of personal jurisdiction. The Defendant’s motion merely seeks to reargue the issues on the same basis previously presented to Judge Buckner and presents no novel facts, arguments, or theories in support of its position. The Defendant has not highlighted any portions of the record that Judge Buckner may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, pursuant to Rule 59(e), SCRCF, the Defendant’s Motion for Reconsideration is Denied.

---

<sup>5</sup> Counsel for the Defendant stated in a letter to the Court, dated September 24, 2020, “[t]he Motion was filed under SCRCF 54(b) and was provided to the Court by electronic filing. We did not understand that there was any requirement under Rule 54 to provide a separate email copy to the Court....”

**CONCLUSION**

Accordingly, the Motion to Reconsider is heard and respectfully Denied pursuant to Rule 54(b), SCRCP, Rule 59(e), SCRCP, and Rule 59(g), SCRCP.

**AND IT IS SO ORDERED.**

---

Hon. Deadra L. Jefferson  
Chief Administrative Judge  
Fourteenth Judicial Circuit

December \_\_\_\_\_, 2020  
Charleston, South Carolina  
At Chambers



## Beaufort Common Pleas

**Case Caption:** Eric Chase Williamson VS Pirates Cove Vapor Lounge Llc ,  
defendant, et al

**Case Number:** 2019CP0702270

**Type:** Order/Other

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-12-04 13:07:36 page 7 of 7

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

---

Appeal from Dorchester County  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

---

Case No. 2023-CP-18-00758

---

James Graham,  
as Personal Representative of the Estate of Phyllis Chestnut,

Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc.,  
Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC,  
Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC,  
and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC,

Defendants,

Of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC,  
Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services,  
LLC, and Fundamental Clinical Consulting, LLC, are the

Appellants.

---

**NOTICE OF APPEAL**

---

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis Jr. (SC Bar No. 12084)  
James D. Gandy III (SC Bar No. 11925)  
Russell G. Hines (SC Bar No. 72100)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Appellants*

Other Counsel of Record:

Lee D. Cope (SC Bar No. 14361)

[lcope@parkerlawgroupsc.com](mailto:lcope@parkerlawgroupsc.com)

John E. Parker, Jr. (SC Bar No. 104225)

[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

PARKER LAW GROUP, LLP

101 Mulberry Street East

Hampton, South Carolina 29924

P.O. Box 487 (29924)

(803) 903-1781

-and-

Steven E. Goldberg (SC Bar No. 66446)

[sgoldberg@steinberglawfirm.com](mailto:sgoldberg@steinberglawfirm.com)

THE STEINBERG LAW FIRM, LLP

103 Grandview Drive, Suite A

Summerville, South Carolina 29483

P.O. Box 2670 (29484)

(843) 871-6522

*Attorneys for Respondent*

Lee C. Weatherly (SC Bar No. 71109)

[lweatherly@csvl.law](mailto:lweatherly@csvl.law)

Kristen K. Thompson (SC Bar No. 100659)

[kthompson@csvl.law](mailto:kthompson@csvl.law)

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400

Charleston, South Carolina 29401

(843) 727-0307

*Attorneys for Defendant*

*Curana Health of South Carolina, PC*

*f/k/a Elite Patient Care of South Carolina, PC*

Defendants/Appellants, Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center, THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC, (“Appellants”), hereby appeal the following orders of the Honorable Maite Murphy, Circuit Court Judge:

- **Order filed November 21, 2024;** and
- **Order filed January 14, 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 14, 2025.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Russell G. Hines  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis, Jr. (SC Bar No. 12084)  
James D. Gandy III (SC Bar No. 11925)  
Russell G. Hines (SC Bar No. 72100)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488  
*Attorneys for Appellants*

Charleston, South Carolina

February 13, 2025

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

Appeal from Dorchester County  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2023-CP-18-00758

James Graham,  
as Personal Representative of the Estate of Phyllis Chestnut,

Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc.,  
Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC,  
Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC,  
and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC,

Defendants,

Of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,  
THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC,  
Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services,  
LLC, and Fundamental Clinical Consulting, LLC, are the

Appellants.

**PROOF OF SERVICE**

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis Jr. (SC Bar No. 12084)  
James D. Gandy III (SC Bar No. 11925)  
Russell G. Hines (SC Bar No. 72100)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Appellants*

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on Respondent, as well as Defendant Curana Health of South Carolina, PC f/k/a Elite Patient Care of South Carolina, PC, on February 13, 2025, by emailing (see attached email) a copy of the same to their counsel of record:

Lee D. Cope, Esquire  
[lcope@parkerlawgroupsc.com](mailto:lcope@parkerlawgroupsc.com)  
John E. Parker, Jr., Esquire  
[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)  
PARKER LAW GROUP, LLP

*-and-*

Steven E. Goldberg (SC Bar No. 66446)  
[sgoldberg@steinberglawfirm.com](mailto:sgoldberg@steinberglawfirm.com)

*Attorneys for Respondent*

Lee C. Weatherly, Esquire  
[lweatherly@csvl.law](mailto:lweatherly@csvl.law)  
Kristen K. Thompson, Esquire  
[kthompson@csvl.law](mailto:kthompson@csvl.law)  
COPELAND, STAIR, VALZ & LOVELL, LLP

*Attorneys for Defendant  
Curana Health of South Carolina, PC  
f/k/a Elite Patient Care of South Carolina, PC*

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, February 13, 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

By: s/Russell G. Hines  
Russell G. Hines (SC Bar No. 72100)  
*Attorneys for Appellants*

Charleston, South Carolina

February 13, 2025

**From:** [Hines, Russell](#)  
**To:** [Lee Cope](#); [Jay Parker](#); [sgoldberg@steinberglawfirm.com](mailto:sgoldberg@steinberglawfirm.com); [Weatherly, Lee C.](#); [Thompson, Kristen K.](#)  
**Cc:** [Davis, Jay](#); [Shanna Jarrell](#); [Richards, Cierra](#); [Gandy, III, James D. \(Tripp\)](#); [Caitlin Ball](#); [Becky Chapin](#); [Brown, Stephen L.](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#); [Preiser, Skyla](#); [Peterson, Susan](#)  
**Subject:** Graham v. Hallmark (Case No. 2023-CP-18-00758) -- Notice of Appeal  
**Date:** Thursday, February 13, 2025 1:35:18 PM  
**Attachments:** [image001.png](#)  
[Graham v. Hallmark \(Case No. 2023-CP-18-00758\) -- Notice of Appeal.pdf](#)  
[Appealed Order 1 -- 2024 11-21 -- Order Denying MTCA and Stay.pdf](#)  
[Appealed Order 2 -- 2025 01-14 -- Order Denying MTR.pdf](#)

---

Attached for service in the above-referenced matter please find our **Notice of Appeal** and copies of the **appealed orders** attached thereto.

Russell G. Hines  
CLEMENT RIVERS, LLP  
[www.ycrlaw.com](http://www.ycrlaw.com)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
Phone: (843) 720-5488  
Fax: (843) 579-1327  
Email: [rhines@ycrlaw.com](mailto:rhines@ycrlaw.com)



**CLEMENT RIVERS, LLP**  
25 Calhoun Street • Suite 400 • Charleston, SC 29401  
[ycrlaw.com](http://ycrlaw.com)



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

---

**A filing has been submitted to the court RE:** 2023CP1800758

**Official File Stamp:** 02-13-2025 01:30:57 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Dorchester  
**Case Caption:** James Graham , plaintiff, et al VS Hallmark Long Term Care 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:**

Virginia Caitlin Ball for James Graham, Phyllis Chestnut  
Russell Grainger Hines for Fundamental Long Term Care Inc, Fundamental Clinical Consulting Llc, Hallmark Healthcare Center, Hallmark Long Term Care Llc, Fundamental Clinical And Operational Services Llc, Fundamental Administrative Services Llc, Hunt Valley Holdings Llc, Thi Of Baltimore Inc, Thi Of South Carolina Llc  
Kristen Kelley Thompson for Curana Health Of South Carolina Pc, Elite Patient Care Of South Carolina Pc  
Lee Cannon Weatherly for Curana Health Of South Carolina Pc, Elite Patient Care Of South Carolina Pc  
Donald Jay Davis, Jr. for Fundamental Clinical Consulting Llc  
John Elliott Parker, Jr. for James Graham, Phyllis Chestnut  
Steven Eric Goldberg for James Graham, Phyllis Chestnut  
James D. Gandy, III for Fundamental Long Term Care Inc, Fundamental Clinical Consulting Llc, Hallmark Healthcare Center, Hallmark Long Term Care Llc, Fundamental Clinical And Operational Services Llc, Fundamental Administrative Services Llc, Hunt Valley Holdings Llc, Thi Of Baltimore Inc, Thi Of South Carolina Llc  
Lee Deer Cope for James Graham, Phyllis Chestnut

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

Phyllis Chestnut Estate  
James Graham Pr  
Donald Jay Davis, Jr. for Fundamental Long Term Care Inc, Fundamental Clinical Consulting Llc, Hallmark Healthcare Center, Hallmark Long Term Care Llc, Fundamental Clinical And Operational Services Llc, Fundamental Administrative Services Llc, Hunt Valley Holdings Llc, Thi Of Baltimore Inc, Thi Of South Carolina Llc  
James D. Gandy, III for Fundamental Long Term Care Inc  
Donald Jay Davis, Jr. for Fundamental Long Term Care Inc  
James D. Gandy, III for Fundamental Clinical Consulting Llc

Nov 24 2025

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Russell G. Hines  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis, Jr. (SC Bar No. 12084)  
James D. Gandy III (SC Bar No. 11925)  
Russell G. Hines (SC Bar No. 72100)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488  
*Attorneys for Appellants*

Charleston, South Carolina

November 24, 2025