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SC Court of Appeals

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

Appeal from Richland County
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2023-CP-40-02608
Appeal No. 2025-001017

Sallie Wilson
as Guardian for Gladys Graham,

Respondent,

v.

Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast,
Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC),
and Karen Bowman,

Defendants.

Of whom Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC)
and Karen Bowman are

Appellants.

RECORD ON APPEAL

HUGHEY LAW FIRM, LLC
D. Nathan Hughey (SC Bar No. 68409)
A. Stuard Hudson (SC Bar No. 71691)
Bradley H. Banyas (SC Bar No. 101668)
P.O. Box 348
Mount Pleasant, South Carolina 29465
(843) 881-8644

and

MCGOWAN, HOOD, FELDER & PHILLIPS, LLC
Jordan C. Calloway (SC Bar No. 78728)
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800

Attorneys for Respondent

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number: 2023-CP-40-02608
	)	
Sallie Wilson as Guardian for	)	
Gladys Graham,	)	
	)	
Plaintiff,	)	ORDER AMENDING NAME OF
	)	DEFENDANT MEDICAL UNIVERSITY
	)	HOSPITAL AUTHORITY
v.	)	
	)	
Medical University Hospital Authority,	)	
d/b/a MUSC Health Columbia Medical	)	
Center Downtown, Columbia AL	)	
Operations, LLC d/b/a Harmony Collection	)	
at Columbia (AL/MC), and Karen Bowman,	)	
	)	
Defendants.	)	
	)	

Plaintiff and Defendant Medical University Hospital Authority filed a consent motion to correct the d/b/a of Defendant Medical University Hospital Authority. Following a review of the parties' submission, the Court finds it appropriate to amend the caption to reflect the proper d/b/a of Defendant Medical University Hospital Authority. Therefore, "Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast" shall be substituted for "Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Downtown" in this and all previous and future pleadings or designations of the parties concerning this Defendant. Further, pursuant to Rule 15(b) & (c), SCRCF, the proper name of this Defendant shall be treated in all respects as if it had been raised in the original pleadings without the need to re-file the original pleadings.

IT IS SO ORDERED.

(Judicial e-signature page to follow)



Richland Common Pleas

Case Caption: Sallie Wilson , plaintiff, et al vs Medical University Hospital
Authority , defendant, et al
Case Number: 2023CP4002608
Type: Order/Amend

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

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ELECTRONICALLY FILED - 2023 Dec 07 2:18 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002608

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-40-02608
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
	)	ORDER DENYING DEFENDANT
	)	COLUMBIA AL OPERATIONS, LLC D/B/A
Versus	)	HARMONY COLLECTION AT COLUMBIA
	)	(AL/MC), AND KAREN BOWMAN'S
	)	MOTION TO COMPEL ARBITRATION
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Northeast, Columbia AL Operations, LLC	)	
d/b/a Harmony Collection at Columbia	)	
(AL/MC), and Karen Bowman,	)	
	)	
Defendants.	)	

This matter came before the Court for a hearing on the Motion of the Defendants, Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman's motion to compel arbitration. Present at the hearing was Bradley H. Banyas of Mt. Pleasant, SC for the Plaintiff, Matthew O. Riddle of Charleston, SC for the moving Defendants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman, and Austin T. Reed of Columbia, SC for the Defendant Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast. After consideration of arguments put forth by all parties, the Court **DENIES** Defendant's Motion to Compel Arbitration. The Court's basis and reasons are contained within this Order.

FACTS AND PROCEDURAL HISTORY

Gladys Graham was a resident at Defendants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman's [hereinafter referred to as

“Harmony”] facility. The Defendants operate a community residential care facility (commonly known as assisted living), licensed by the South Carolina Department of Health and Environmental Control, R.61-84, *Standards for Community Residential Care Facilities*. While a resident in the Defendants’ facility, Ms. Graham was allowed to at least one fall on April 18, 2022, which resulted in a fractured right hip, and was suspected to suffer multiple other falls. Ms. Graham was transferred to the Medical University of South Carolina in Columbia, South Carolina, where she underwent a hip repair surgery and subsequently developed pressure wounds to her right buttock and heel, which subsequently healed. Sallie Wilson was appointed Guardian and Conservator for Gladys Graham on January 10, 2023, by the Saluda County Probate Court.

Sallie Wilson, as Guardian for Gladys Graham filed a Notice of Intent against Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast [hereinafter referred to as “MUHA”] on March 30, 2023. A pre-suit mediation was held on May 17, 2023, at which the parties reached an impasse. A Summons and Complaint and Amended Summons and Complaint naming the current Defendants was filed on May 18, 2023. Defendant MUHA filed its Answer on June 23, and the Harmony Defendants filed their Answer on June 30, 2023. Harmony also subsequently served discovery on the same date concurrent with their Answer. On August 9, 2023, a Consent Order for Substitution of Counsel was filed for the Harmony Defendants, along with the Defendant’s Motion to Compel Arbitration.

On July 16, 2024, all parties participated in a mediation wherein the Plaintiff settled with MUHA but reached an impasse with Harmony. Gladys Graham passed away on July 30, 2024,

and Rabbani Abu Rashid Muhammad was appointed the Personal Representative of the Estate of Gladys Andrews Graham on September 24, 2024 by the Saluda County Probate Court. Harmony re-filed the present Motion to Compel Arbitration on November 26, 2024.

At the hearing of this matter, there was no evidence presented to the Court that Gladys Graham lacked the requisite capacity to sign Defendant's admission and arbitration agreement, and it is undisputed that Gladys Graham never signed the Defendant's arbitration agreement.

STANDARD OF REVIEW

In determining whether a particular dispute can be compelled into arbitration, this Court must first determine whether a valid agreement to arbitrate exists between the parties. All waivers of trial by jury must be known, voluntary, and intentional. The signatory must have legal authority or legal capacity to sign on behalf of the Plaintiff resident. The burden of proof is on the party attempting to compel the arbitration to prove a valid contract. "A parties' right to a jury trial in South Carolina is governed by state law. See Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978).

In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code

Ann. § 15-48-20(a).

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate.” Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007) (internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013). Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”).

DISCUSSION

I. Defendants’ Admission and Arbitration Agreement is Unenforceable as Sallie Wilson Did Not Have Authority to Sign the Agreement.

A. Defendants Produced No Evidence of Actual Authority

Gladys Graham would only be bound by the admission and arbitration agreement if there was evidence of an express or implied agency relationship between Gladys Graham and her

daughter, Sallie Wilson. Agency may be established with clear evidence of actual or apparent authority conferred by the principal on the alleged agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). The legal consequences of an agent's actions can only be attributed to the principle when the agent has actual or apparent authority. Charleston Registry v. Young Clement, 359 S.C. 635, 598 S.E.2d 717 (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, 473 S.E.2d 865 (Ct. App. 1996). Actual authority is "... expressly conferred upon the agent by the principal." Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). The party asserting an agency relationship has the burden of proof. Pee Dee Nursing Home, Inc. v. Florence Gen. Hosp., 309 S.C. 80, 85, 419 S.E.2d 834, 837 (Ct. App. 1992). The burden is not to make a mere prima facie showing but rather to show that agency is "clearly established by the facts." Id. South Carolina law imposes this weighty burden because a person dealing with an alleged agent has a legal duty of due care to determine the scope of the perceived agent's authority. Id., (citing McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)). 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 Insurance Company, 306 S.C. 423, 412, S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists. Id.

The South Carolina Adult Health Care Consent Act governs "who may make health care decisions for patient[s] who are [unable] to consent" or "appreciate the nature and implications of [their] condition and proposed health care, to make a reasoned decision concerning the

proposed health care, or communicate that decision in an unambiguous manner.” Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 351, 755 S.E.2d 450, 453 (2014) (quoting S.C. Code Ann. § 44-66-20). “A patient’s inability to consent must be certified by two licensed physicians, each of whom have examined the patient.” S.C. Code Ann. § 44-66-20(8).

In the present case, there is no evidence that Gladys Graham lacked capacity or the ability to sign Defendants’ admission and arbitration agreement. Defendants have been unable to demonstrate that two physicians examined Gladys Graham prior to her admission to Defendants’ assisted living facility and certified that she (1) was unable to consent to her own healthcare decisions and (2) was unable to personally sign Defendants’ admission and arbitration agreement. Without the certification of two examining physicians, Defendants’ agreement is unenforceable because Sallie Wilson had no authority to sign the admission and arbitration agreement under the South Carolina Adult Health Care Consent Act. See Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014) (quoting S.C. Code Ann. § 44-66-20). In fact, it is undisputed that Gladys Graham was competent to make her own legal decisions, and that Sallie Wilson did not have any power of attorney or guardianship given to her by Gladys Graham to make legal decisions on her behalf. No evidence was presented by the Defendants to indicate otherwise.

Defendants have produced no evidence indicating that Sallie Wilson had authority to enter a contract on Gladys Graham’s behalf or waive Ms. Graham’s right to a jury trial. The issue of arbitration of arbitration agreements in long term care facilities has been addressed at the South Carolina Court of Appeals and Supreme Court, and the case is very similar to Coleman; Hodge

v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292, 304 (Ct. App. 2018); and Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d, 679 (Ct. App. 2016). In all three of these cases, South Carolina Courts have found Arbitration Agreements to be unenforceable where a family member signed an Arbitration Agreement near the time of admission to a long term care facility for the Decedent and did not have any actual authority to do the same. In all three cases, the Courts found that no implied authority nor estoppel applied. Presently, a review of the admissions and arbitration documents by the Defendants would have informed them that Sallie Wilson did not have actual authority by way of a Durable Power of Attorney, nor Court Appointed Guardianship to bind her mother, nor did she ever indicate that she had any apparent authority to enter contracts on behalf of her mother.

Defendants are a sophisticated business entity frequently interacting with residents and their families during the assisted living admission. Defendants are familiar with the legal concepts of guardianship and powers of attorney and had the ability to ask Sallie Wilson for documentation, and upon learning none, simply had Gladys Graham execute the agreements, but for whatever reason, failed to do so. Because there is no evidence in the record that Gladys Graham lacked the requisite capacity to sign the arbitration agreement, Sallie Wilson had no authority to sign Defendants' admission and arbitration agreement under the theory of actual authority.

B. Defendants Have Produced No Evidence of Apparent Authority.

Defendants have failed to produce sufficient evidence establishing the necessary elements of apparent authority. Apparent authority is based on " . . . representations made by the principal

to [a] third party and reliance by the third party on those representations.” Young v. S.C. Dept. of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). “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.” Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679, 685 (Ct. App. 2016) (quoting Froneberger v. Smith, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013)).

The burden of establishing agency is upon the party asserting a principal-agent relationship exists. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). The party seeking to establish apparent authority must prove “. . . (1) the purported principal consciously or impliedly represented another to be his agent; (2) the proponent relied on the representation; and (3) there was a change of position to the [proponent’s] detriment.” Thompson, 406 S.C. at 54, 748 S.E.2d at 685 (quoting Froneberger v. Smith, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013)).

“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.” R&G Constr., Inc. v. Lowcountry Reg’l Transp. Auth., 343 S.C. 424, 432-33, 540 S.E.2d 113, 118 (Ct. App. 2000) (citing Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991)). “It is the duty of the one dealing with the agent to use due care to ascertain the scope of the agent’s authority.” Justus v. Universal Credit Co., 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939).

In the present case, there is no evidence that Gladys Graham consciously or impliedly made any representations to Defendants’ staff that Sallie Wilson was her agent for purposes of

executing the admission and arbitration agreement. Defendants were required to determine the scope of any agent's authority. There is no evidence Gladys Graham made any representations to the Defendants or was ever even aware of the execution of the admission and arbitration agreement or knew of its existence.

Without proof of representations made by Gladys Graham as to Sallie Wilson's agency, Defendants' admission and arbitration agreement is not enforceable under a theory of apparent agency because the necessary elements have not been satisfied. Thompson, 406 S.C. at 54, 748 S.E.2d at 685 (quoting Froneberger v. Smith, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013)).

II. Plaintiff is Not Equitably Estopped from Denying the Arbitration Agreement.

Defendants argue that Plaintiff should be equitably estopped from denying the enforcement of the arbitration provision contained in the Assisted Living Residency Agreement, and that under the doctrine of equitable estoppel a party should not be permitted to sue under certain provisions of a contract while disclaiming provisions of the same contract. "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.

Defendants have not met their burden to establish these elements. There is no evidence Sallie Wilson acted in a way amounting to a false representation to Defendants regarding Resident's status, or that Sallie Wilson intended for Defendants to act in reliance on her conduct. In fact, Gladys Graham's mental capacity would have enabled Defendants to simply have Gladys Graham sign the Assisted Living Residency Agreement. Additionally, the evidence shows Defendants cannot meet their burden to show they lacked knowledge or 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 exercise of reasonable diligence, could have acquired knowledge to determine the truth of the 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 the present case, Defendants certainly had the capacity to determine whether Sallie Wilson had authority to bind arbitration on Gladys Graham's behalf. Defendants are a sophisticated business entity frequently interacting with residents and their families during the assisted living admissions process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney, and levels of decision-making capacity. Defendants had the ability to ask Sallie Wilson if she was Gladys Graham's guardian or power of attorney and had the ability to request supporting documents. The evidence shows that they failed to do so. Further, given Gladys Graham's mental capacity at the time of admission, Defendants had the

ability to simply ask Gladys Graham to sign the Assisted Living Residency Agreement herself. The evidence again shows that they failed to do this. Since Defendants have not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

III. A Residency Agreement and an Arbitration Agreement Are Two Separate Agreements and One Cannot Be Bound by the Other.

Our South Carolina Supreme Court has ruled the difference between a residency contract and an arbitration agreement, and that just because the two agreements are contained in one document does not make them one in the same. The Supreme Court has ruled that:

Assent to this contract [the admission agreement] was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. The separate arbitration agreement concerned neither health care nor payment but instead provided an optional method for dispute resolution.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). A decision to admit a resident to a community residential care facility such as the Defendants is a healthcare decision. As such, signing an admission agreement to a skilled nursing facility is a healthcare related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the

patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

IV. Defendants Failure to Raise Arbitration as an Affirmative Defense.

This Court need not address Plaintiff's argument as to Defendants Failure to Raise Arbitration as an Affirmative Defense. Plaintiffs have made a sufficient showing that Defendants had the ability to ask Sallie Wilson if she was Gladys Graham's guardian or power of attorney and had the ability to request supporting documents. The evidence shows that they failed to do so. Further, given Gladys Graham's mental capacity at the time of admission, Defendants had the ability to simply ask Gladys Graham to sign the Assisted Living Residency Agreement herself. The evidence again shows that they failed to do this and thus there is no need for the Court to engage in further analysis of these issues.

V. By Participating In Discovery, Defendants Have Waived the Right to Compel Arbitration.

This Court also need not address Plaintiff's argument as to Defendants Waiver of the Right to Compel Arbitration for the same reasons aforementioned.

VI. Federal Arbitration Agreement Act Does Not Mandate Enforcement of this Agreement.

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed above in Section I, there is no valid arbitration agreement because

Ms. Wilson did not have the legal authority to execute a valid arbitration. Second, Plaintiff's claims include negligence, negligence per se, fraud and misrepresentation, and violations of the South Carolina Unfair Trade Practices Act. Nowhere in the Defendants' arbitration agreement are those causes of action listed. Accordingly, the FAA does not apply.

VII. The Proceedings Must Not be Stayed

The Defendants argue that the FAA requires a stay. However, because the FAA does not apply and this case is not subject to arbitration, the proceedings must not be stayed.

CONCLUSION

Therefore, based upon the foregoing reasons, the Defendants' Motion to Compel Arbitration is Denied.

IT IS SO ORDERED.

Presiding Judge

Columbia, South Carolina

Date: _____



Richland Common Pleas

Case Caption: Sallie Wilson , plaintiff, et al vs Medical University Hospital
Authority , defendant, et al
Case Number: 2023CP4002608
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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ELECTRONICALLY FILED - 2025 Mar 26 9:19 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4002608

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4002608

Sallie Wilson et al
 PLAINTIFF(S)

Medical University Hospital Authority 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Defendants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia, and Karen Bowman's Motion to Reconsider is denied.

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 04/23/2025 .

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.



Richland Common Pleas

Case Caption: Sallie Wilson , plaintiff, et al vs Medical University Hospital
Authority , defendant, et al
Case Number: 2023CP4002608
Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2025-04-23 14:06:38 page 3 of 3

ELECTRONICALLY FILED - 2025 Apr 23 4:31 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002608

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
Plaintiff,	)	SUMMONS
	)	(Jury Trial Demanded)
Versus	)	
	)	
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Downtown,	)	
	)	
Defendant.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the said Complaint to said Plaintiff's attorneys D. Nathan Hughey, A. Stuart Hudson and Bradley H. Banyas, at their office located at 1311 Chuck Dawley Blvd, Suite 201, Post Office Box 348, Mt. Pleasant, South Carolina 29465-0348, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
D. Nathan Hughey (SC Bar #68409)
A. Stuart Hudson (SC Bar #71691)
Bradley H. Banyas (SC Bar #101668)
Post Office Box 348
Mount Pleasant, South Carolina 29465
T: (843) 881-8644
F: (888) 884-8311
nate@hugheyfirm.com
stuart@hugheyfirm.com
brad@hugheyfirm.com

Attorneys for Plaintiff

May 18, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Demanded)
Versus	)	
	)	
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Downtown,	)	
	)	
Defendant.	)	

The Plaintiff, Sallie Wilson as Guardian for Gladys Graham, complaining of the Defendant, Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Downtown, alleges as follows:

1. The Plaintiff is a citizen and resident of Pennsylvania.
2. Upon information and belief, the Defendant, Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Downtown, is a business corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.
3. The Defendant had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through health care facilities and they are personally, jointly and severally liable for the acts and omissions committed.
4. The Defendant delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendant's facilities at all times during the admittance of Gladys Graham.
5. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.
6. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

7. The Plaintiff is informed and believes that at all times material to this Complaint the Defendant's employees and/or agents were acting on behalf of or, in place of the Defendant in making decisions regarding the care of the Plaintiff. Additionally, the Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of the Defendant were acting within the course and scope of their employment in regard to their care and treatment of the Plaintiff.

8. On the application for the license in effect at the time of Gladys Graham's injury, the Defendant, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-16 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Gladys Graham's injury.

9. The State of South Carolina Required that the Defendant have a procedure manual written, reviewed at least annually and revised as necessary in accordance with current accepted practices and that a copy was to be available at each nursing station

10. The State of South Carolina required that the Defendant have policies and procedures governing the acceptance and care of patients and that an appropriate record be maintained on Gladys Graham, as well as that the Defendant provide dietary services to meet the daily dietary needs of Gladys Graham in accordance with written dietary policies and procedures.

11. The State of South Carolina required that the Defendant be organized, equipped, manned and administered in order that adequate care be provided to Gladys Graham.

12. The State of South Carolina required that the Defendant employ qualified personnel in sufficient numbers to carry out the functions of the hospital.

13. The State of South Carolina required that the Defendant ensure that its nursing staff was organized and staffed at all times to provide total nursing care to Gladys Graham and that the authority,

responsibility and function of each category of nurse be clearly defined by written hospital regulations.

14. The State of South Carolina required that the Defendant employ a sufficient number of duly licensed registered nurses on duty at all times to plan, assign, supervise, and evaluate nursing care, as well as to give Gladys Graham the nursing care that requires the judgment and specialized skills of a registered nurse.

15. The State of South Carolina required that the Defendant maintain adequate and complete medical records to be written for Gladys Graham and that all notes be legibly written or typed and signed.

16. Gladys Graham was admitted to the Defendant's facility on or about April 18, 2022.

17. The Defendant failed to implement adequate skin management measures for Gladys Graham.

18. While at the facility, the Defendant allowed Ms. Graham to develop preventable injuries which the Defendants had a duty to prevent, caused by a breach of that duty, including but not limited to pressure sores, and suffer horrific, painful, disfiguring, permanent and life threatening injuries which caused great pain and suffering.

19. Upon information and belief, the Defendant was licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent hospital care to the Plaintiff.

20. The Defendant had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of the Plaintiff and in accordance with federal and state regulations as well as the representations made by the Defendant.

21. Additionally, pursuant to South Carolina law, the Defendant had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living shall be provided to residents, as needed.

22. Furthermore, without limitation, the Defendant had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and

privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

23. Upon information and belief, the Defendant failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to the Plaintiff.

24. Upon information and belief, the Defendant failed to ensure that the proper treatment and standard of care was delivered to the Plaintiff.

25. Upon information and belief, the Defendant failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to the Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Negligence)

26. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph and in their entirety.

27. The Defendant undertook the duty to render care to the Plaintiff in accordance with the prevailing and acceptable professional standards of care for hospitals, and their employees and agents in the national community and as further required by the state and federal laws applicable to the same.

28. Notwithstanding undertaking that duty and while the Plaintiff was under the care of the Defendant, the Defendant departed from prevailing and acceptable professional standards of care and treatment of the Plaintiff and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Plaintiff, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to properly monitor the resident's physical well-being while under the care of the Defendant;
- b. In failing to properly supervise the personnel and staff and employees of the Defendant with regard to Gladys Graham's care;

- c. In failing to properly revise and modify plans of care for Gladys Graham in response to Gladys Graham's needs;
- d. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- e. In violating state and/or federal regulations requiring actions to protect the safety and health of Gladys Graham, so as to constitute negligence per se;
- f. In failing to ensure that the Defendant's personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Gladys Graham from suffering from injury and pain;
- g. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of nutritional and infection control issues and pressure ulcer prevention issues, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- h. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and pressure ulcer prevention procedures;
- i. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendant;
- j. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- k. In failing to ensure that Gladys Graham had proper care;
- l. In failing to properly document significant clinical findings;
- m. In failing to properly document the medical records of Gladys Graham;
- n. In failure to provide sufficient number of personnel to meet the needs of residents;
- o. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;
- p. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- q. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;

- r. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- s. In failing to notify family members or authorities after incidents;
- t. In such other particulars as may be ascertained through discovery or shown at trial.

29. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendant and their agents, servants and/or employees, the Plaintiff suffered from severe debilitating injuries which resulted in permanent decline, as a result of which the Plaintiff's has suffered severe and extreme emotional distress, anxiety, physical injuries, medical bills, the likes of which no person should endure, for which the Plaintiff is entitled to recover in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence per se)

30. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in their entirety.

31. The Defendant is a health care provider who has a duty to abide by certain federal and state regulations in the care and treatment of their residents.

32. The federal and state regulations combine to form minimum standards of care which the Defendant must meet and exceed in order to ensure proper treatment of patients, including, specifically, the Plaintiff.

33. The Defendant failed to abide by the standards, rule and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of the Plaintiff.

34. The standards, rule and regulations promulgated by the United States Government and the State of South Carolina were specifically enacted for the benefit of the class of persons for which the Plaintiff was a member.

35. As a direct and proximate result of the Defendant's negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations standards, rule and regulations promulgated by the United States Government and the State of South Carolina, the Plaintiff suffered severe injuries as described above, constituting negligence per se.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

36. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

37. The Defendant, through deception, artifice, and circumvention, successfully defrauded Plaintiff, who trustingly submitted to care at the Defendant's facilities on the basis of explicit and implicit representations:

- a. That the Defendant would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendant would adequately staff the facility and she would enjoy confident and adequately trained employees;
- c. That the Defendant would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to her;
- d. Such other misrepresentations as may are set forth above in this Complaint or as may later be set forth;

38. At the time of the Plaintiff's admission to care, the Defendant promoted and disseminated the above representations and information which would lead the Plaintiff, her family, and other similarly situated consumers to believe the above representations were true.

39. The Defendant purposefully disseminated such representations and promotions in order to induce the Plaintiff, her family, and others like them into placing themselves or their relatives in the exclusive control and custody of the Defendant, and once there, allowing such persons to remain.

40. The Defendant fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendant, and the representations made were false.

41. The representations made and concealments done by the Defendant were material to the Plaintiff and her family.

42. At the time the Defendant made such representations, they knew such affirmative claims of service were false.

43. The Plaintiff and her family were unaware of the falsity of the representations made by the Defendant.

44. The Plaintiff and her family had a right to rely on the representations and concealments made by the Defendant.

45. As a result of the Defendant's fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient of the Defendant.

46. As a proximate cause of the Defendant's fraud and misrepresentation, the Plaintiff suffered physical injuries, pain and suffering as previously alleged.

FOR A FOURTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

47. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

48. The Plaintiff and Defendant are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

49. The Defendant, by conducting business in the state of South Carolina, are engaged in commerce within the meaning of Code Section 39-5-10(b).

50. The Defendant's actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to the Plaintiff and her family: that the Defendant would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care; that they would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to her; and such other particulars as are set forth above in this Complaint or may be shown through discovery or trial;
- b. Further, at the time of the Plaintiff's admission to care, the Defendant promoted and disseminated the above representations and information which would lead the Plaintiff, her family, and other similarly situated consumers to believe the above representations were true. The Defendant purposefully disseminated such representations and promotions in order to induce the Plaintiff, her family, and others like them into placing herself or her relatives in the exclusive control and custody of the Defendant, and once there, allowing such persons to remain.
- c. The Defendant fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendant, and the representations made were false.
- d. The representations made and concealments done by the Defendant were material to the Plaintiff and her family.
- e. At the time the Defendant made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and her family were unaware of the falsity of the representations made by the Defendant.
- g. The Plaintiff and her family had a right to rely on the representations and concealments made by the Defendant.
- h. As a result of the Defendant's fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient of the Defendant.

51. The Defendant's acts are capable of repetition, and, upon information and belief, have been repeated with other residents.

52. The Defendant's conduct adversely affects the public interest of South Carolina.

53. The Defendant knew or reasonably should have known their conduct violated the Unfair Trade Practices Act.

54. As a direct, foreseeable, and proximate result of Defendant's unfair and deceptive practices, the Plaintiff has suffered an ascertainable loss of money, physical injuries, pain and suffering as previously alleged.

55. The Plaintiff is entitled to recover her actual damages, which amount should be trebled, pursuant to South Carolina law, together with interest and attorneys' fees.

WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendant jointly and severally for actual damages, punitive damages, special damages and consequential damages, in an amount to be determined by the jury at the trial of this action, fees, the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
D. Nathan Hughey (SC Bar #68409)
A. Stuart Hudson (SC Bar #71691)
Bradley H. Banyas (SC Bar #101668)
Post Office Box 348
Mount Pleasant, South Carolina 29465
T: (843) 881-8644
F: (888) 884-8311
nate@hugheyfirm.com
stuart@hugheyfirm.com
brad@hugheyfirm.com

Attorneys for Plaintiff

May 18, 2023
Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	C/A No 2023-NI-
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF ALYSSA GOLDSTEIN, RN
	)	
Versus	)	
	)	
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Downtown, Columbia AL Operations, LLC	)	
d/b/a Harmony Collection at Columbia	)	
(AL/MC), and Karen Bowman,	)	
	)	
Defendants	)	

1. My name is Alyssa Goldstein, RN and I am over the age of eighteen, of sound mind and otherwise competent to make this Affidavit, which I make based upon my background, education, training, and experience. This affidavit is also based upon my own personal knowledge.

2. I am a Registered Nurse, licensed in the State of South Carolina. My further qualifications and background are set forth in the attached CV (Exhibit "A"), which is incorporated by reference.

3. I have actual professional knowledge and experience in my area of practice, Registered Nursing. In addition to the above, I have been in the active practice of the area of my specialty, in the profession of Registered Nursing in the State of South Carolina for at least three of the last five years preceding this opinion.

4. I am familiar with the standard of care applicable to the Defendant during the time of Gladys Graham's admission in the Defendant's facility, commonly known as MUSC Health Columbia Medical Center Downtown, and the standard of care and skill exercised by reasonably prudent skilled nursing facilities, management companies, operating companies, and other healthcare providers under similar conditions as those involving Gladys Graham.

5. I have reviewed records and / or documents relating to Gladys Graham from the skilled nursing facilities, as well as hospitals where Gladys Graham was treated. Based on my review of these records, I find that there is at least one deviation from the standard of care on behalf of the Defendant during her admission at MUSC Health Columbia Medical Center Downtown.

6. Without limitation, my review of records and/or documents relating to Gladys Graham show the following.

- Gladys Graham was admitted to MUSC Health Columbia Medical Center Downtown on or about April 18, 2022.
- While at the Defendant's facility, Gladys Graham was allowed to develop pressure sores.

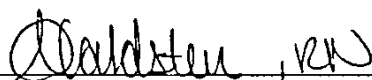
7. In my professional opinion, the Defendant deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding

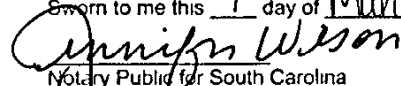
circumstances as those presented by Gladys Graham. In particular, in my opinion, without limitation, they deviated from the standard of care in the following particulars:

- Failing to prevent pressure ulcers
- Failing to develop and maintain an appropriate interim care plan
- Failing to recognize treat and heal pressure ulcers
- Failing to meet the standard care of reasonably prudent skilled nursing facilities, management companies, nurses, owners and operators
- And other particulars

8. Additionally, it is my opinion that Gladys Graham's injuries were proximately caused by the Defendant's deviations.

9. This is not a complete list of all deviations from the standard of care which I have found in reviewing these records. As a result, I reserve the right to modify, change or supplement these opinions in the future.


Alyssa Goldstein, RN

Sworn to me this 7th day of March, 2023

Notary Public for South Carolina
My commission expires: 4/12/2022

Alyssa Goldstein, RN

Alyssa3034@gmail.com

216 Carriage Hill Place
Charleston, SC 29492

Cell 561 271-0815

East Cooper Medical Center, Mount Pleasant, SC

2014- Present

Day Surgery Nurse/Endoscopy Nurse/Preceptor

- Assess and prepare patient in timely manner for scheduled surgery
- Communicate pertinent patient information to OR staff members
- Manage care for post-operative patients through discharge
- Manage / reassess patients for discharge criteria

Windwood Farm, Mount Pleasant, SC

2013- 2014

Residential home for persons who have been placed because of emotional, behavioral, and or psychiatric disorders.

Registered Nurse

- Maintain and monitor medication administration for residents
- Develop and Implement Health and Wellness program for residents and families
- Schedule and maintain medical appointments for residents and coordinate care.

Trident Medical Center, Charleston, SC

2013- April 2014

296- bed hospital providing a range of services, and specialties.

Registered Nurse: Full Time

- Provide direct patient care to patients requiring continuous telemetry monitoring, and medical patients on the heart failure unit.
- Directly supervise and teach student nurses when providing patient care.
- Participate in coordinating discharge planning and home care with doctors, case managers, physical therapists, occupational therapists, nutritionists
- Actively participate in codes and rapid responses on the unit
- Educate all patients on the promotion and maintenance of health and disease prevention.

Franke at Seaside, Mount Pleasant, SC

2012 - 2013

Full-service retirement community branch of Lutheran Homes of SC; provides active lifestyle, assisted living, specialized care and rehabilitation services for 44 residents.

Registered Nurse

- Manage all activities of 22 patients, 1 Licensed Practical Nurse (LPN) and 3 Certified Nurse's Aides (CNA)

- Provide appraisal of patient's condition, distribute medications and update charts
- Schedule, train, motivate, ensure standards and supervise shift medical staff
- Support and educate patients and family in necessary medical procedures
- Utilize McKesson Care Manager Charting System proficiently

Franke at Seaside, Mount Pleasant, SC

2008 - 2010

Lead Certified Nurse's Aide

- Provided assistance to medical professionals in all resident's issues
- Assess patient condition regularly and apprise medical staff

Education

Trident Technical College, North Charleston, SC

2012-2016

Associate in Applied Science - Nursing

Completed 876 hour's training in general / high risk medical and surgical floor, women's health, pediatrics, mental health, cardiac and oncology topics

Palm Beach Community College, Lake Worth, FL

2007

Associate in Arts – general business

Certifications and Licenses

Registered Nurse, License number: 218929, State of South Carolina	2016
Basic Life Support (BLS), American Heart Association- Certification	2015
Advanced Cardiovascular Life Support (ACLS), American Heart Association	2015
Nonviolent crisis Intervention (CPI)	2016
NIH Stroke Scale Certification	2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-40-02608
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
Plaintiff,	)	AMENDED SUMMONS
	)	(Jury Trial Demanded)
Versus	)	
	)	
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Downtown, Columbia AL Operations, LLC d/b/a	)	
Harmony Collection at Columbia (AL/MC), and	)	
Karen Bowman,	)	
	)	
Defendant.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the said Complaint to said Plaintiff's attorneys D. Nathan Hughey, A. Stuart Hudson and Bradley H. Banyas, at their office located at 1311 Chuck Dawley Blvd, Suite 201, Post Office Box 348, Mt. Pleasant, South Carolina 29465-0348, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

HUGHEY LAW FIRM, LLC

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T: (843) 881-8644
F: (888) 884-8311
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brad@hugheylawfirm.com

Attorneys for Plaintiff

May 18, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-40-02608
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
Plaintiff,	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
Versus	)	
	)	
Medical University Hospital Authority d/b/a	)	
MUSC Health Columbia Medical Center	)	
Downtown, Columbia AL Operations, LLC d/b/a	)	
Harmony Collection at Columbia (AL/MC), and	)	
Karen Bowman,	)	
	)	
Defendant.	)	

The Plaintiff, Sallie Wilson as Guardian for Gladys Graham, complaining of the Defendants, Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Downtown, Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman, alleges as follows:

1. The Plaintiff is a citizen and resident of Pennsylvania.
2. Upon information and belief, the Defendant, Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Downtown, is a business corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.
3. Upon information and belief, the Defendant, Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), is a business corporation organized and existing pursuant to the laws of the State of Virginia with its principal place of business located in Richland County, South Carolina.
4. Upon information and belief, Defendant Karen Bowman is a citizen and resident of Richland County, South Carolina and is the administrator of Harmony Collection at Columbia (AL/MC).

5. The Defendants had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through health care facilities and they are personally, jointly and severally liable for the acts and omissions committed.

6. The Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the admittance of Gladys Graham.

7. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.

8. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

9. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants' employees and/or agents were acting on behalf of or, in place of the Defendants in making decisions regarding the care of the Plaintiff. Additionally, the Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of the Defendants were acting within the course and scope of their employment in regard to their care and treatment of the Plaintiff.

10. On the application for the license in effect at the time of Gladys Graham's injury, the Defendants, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-16 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Gladys Graham's injury.

11. The State of South Carolina Required that the Defendants have a procedure manual written, reviewed at least annually and revised as necessary in accordance with current accepted practices and that a copy was to be available at each nursing station

12. The State of South Carolina required that the Defendants have policies and procedures governing the acceptance and care of patients and that an appropriate record be maintained on Gladys

Graham, as well as that the Defendants provide dietary services to meet the daily dietary needs of Gladys Graham in accordance with written dietary policies and procedures.

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15. The State of South Carolina required that the Defendants ensure that its nursing staff was organized and staffed at all times to provide total nursing care to Gladys Graham and that the authority, responsibility and function of each category of nurse be clearly defined by written hospital regulations.

16. The State of South Carolina required that the Defendants employ a sufficient number of duly licensed registered nurses on duty at all times to plan, assign, supervise, and evaluate nursing care, as well as to give Gladys Graham the nursing care that requires the judgment and specialized skills of a registered nurse.

17. The State of South Carolina required that the Defendants maintain adequate and complete medical records to be written for Gladys Graham and that all notes be legibly written or typed and signed.

18. The State of South Carolina required the Defendants, in order to operate a community residential care facility/assisted living facility in S.C., to obtain and maintain a valid license from the South Carolina Department of Health and Environmental Control. The Defendants were required by the State of South Carolina to maintain compliance with licensing standards, including but not limited to R. 61-84.

19. The State of South Carolina required the Defendants to submit to DHEC a complete and accurate application, and renew it yearly, in order to maintain its license. On each of the applications, the applicants swore under oath assuring that the contents of the application were accurate/true, and that the applicant would comply with R.61-84 *Minimum Standards for Licensing Community Residential Care Facilities*. Specifically, an authorized agent of the Defendants, on each application, swore, subject to penalty of perjury, as follows:

Being duly sworn on my oath, depose and say that I have read the foregoing application (and attachments) and know the contents thereof; that the statements contained are correct and true to the best of my knowledge and belief. Furthermore, I understand that I must comply with standards set forth in South Carolina Regulation 61-84 and that noncompliance with these standards may result in the Department pursuing enforcement actions as provided in regulation 61-84. In addition, I understand that should there be a licensee change from the licensee as identified herein to another entity, I am obligated to inform the proposed licensee at the beginning of the licensee change process of the requirements outlined in Section 103.D of the regulation that involve compliance with structural standards upon change of licensee.

20. The Defendants failed to meet these standards.

21. The facility's license states that it was issued pursuant to the standards contained in R. 61-84, the minimum for licensure. The facility's license states on its face that **the adequacy of the individual care and the personal safety of any resident was the responsibility of the licensee.**

22. The State of South Carolina defined the Defendants' facility as follows: "A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement. Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as "assisted living" provided they meet the above definition of community residential care facility."

23. The State of South Carolina required that, "Should a facility develop "house rules," the rules *shall not* be in conflict with the provisions of the Resident's Bill of Rights or other rights/assurances addressed in this regulation."

24. The State of South Carolina required that "Care/services shall be rendered effectively and safely" by the Defendants.

25. The State of South Carolina required the Defendants to abide by the following:

- a. Individuals seeking admission shall be identified as appropriate for the level of care, services, or assistance offered. The facility shall establish admission criteria that are consistently applied and comply with local, state, and federal laws and regulations.
- b. The facility shall admit and retain only those persons appropriate for placement in a CRCF in compliance with the standards of this regulation.
- c. Persons not eligible for admission/retention are:
 - i. Any person who is likely to endanger him/herself or others as determined by a physician or other authorized healthcare provider;
 - ii. Any person needing hospitalization or nursing home care;
- d. Residents whose condition changes to a degree that nursing home care or the daily attention of a nurse may be required, or have a contagious disease, shall be examined by a physician or other authorized healthcare provider regarding the possible necessity for transfer to a facility where the resident's eligibility for admission is appropriate;
- e. If any resident becomes in need of continuous medical or nursing supervision, or if the facility does not have the capability to provide necessary care/services, the resident shall be transferred within 30 days to a location which shall meet those needs.

26. The State of South Carolina required the Defendants to have policies and procedures which would address the provision of any special care offered by the facility which would include how the facility would meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically/developmentally disabled, in accordance with any laws which pertain to that service offered, *e.g.*, Alzheimer's Special Care Disclosure Act, and for Defendants to establish a time-period for review of all policies and procedures, and for those policies and procedures to be accessible at all times and a hard copy to be available or be readily accessible. The State of South Carolina required the Defendants to have, within its policies and procedures, a description of the means by which the facility would assure that the standards described in the regulation, which the Defendants had agreed to meet, as confirmed by application for licensing, were met.

27. The State of South Carolina required the Defendants to have appropriate staff members/volunteers in numbers and training to perform those duties that result in compliance to R. 61-84, to suit the needs and condition of Gladys Graham, and meet the demands of effective emergency on-site action that might arise, as well as that all training requirements/qualifications for the tasks each

performs be in compliance with all local, state, and federal laws, and current professional organizational standards.

28. The State of South Carolina required the Defendants to have staff members/volunteers who had been provided the necessary training to perform the duties for which they were responsible in an effective manner.

29. The State of South Carolina required the Defendants to have staff members/volunteers with at least the following qualifications:

- a. capable of rendering care/services to Gladys Graham in an understanding and sympathetic manner;
- b. sufficient education to be able to perform their duties, and to speak, read, and write English;
- c. and to demonstrate a working knowledge of regulations.

30. The State of South Carolina required the Defendants to maintain accurate information regarding all staff members/ volunteers of the facility, to include at least current address, phone number, and health and personal/work/training background, as well as current information, and that all staff members/volunteers have assignments for duties and responsibilities in writing and in accordance with the individual's capability.

31. The State of South Carolina required the Defendants to determine the number and qualifications of staff members/volunteers based upon both the number and condition of Gladys Graham, and also to have sufficient staff members/ volunteers to provide supervision, direct care and basic services for Gladys Graham, *e.g.*, those with Alzheimer's disease and/or related dementia or in an Alzheimer's special care unit or program.

32. The State of South Carolina required the Defendants to provide documentation of all in-service training and have it signed and dated by both the individual providing the training and the individual receiving the training, and that the training be provided by provided by appropriate resources, *e.g.*, licensed/registered persons, video tapes, books, *etc.*, to all staff members/direct care volunteers and private

sitters in the context of their job duties and responsibilities, prior to resident contact and at a frequency determined by the facility, but at least annually unless otherwise specified by certificate, *e.g.*, cardiopulmonary resuscitation, including but not limited to care of persons specific to the physical/mental condition being cared for in the facility, *e.g.*, Alzheimer's Disease and/or related dementia, cognitive disability, *etc.*, to include communication techniques (cueing and mirroring), understanding and coping with behaviors, safety, activities, etc.

33. The State of South Carolina required that the Defendants employ a licensed CRCF administrator, and that the administrator ensure that the facility was in compliance with the regulations, and demonstrate adequate knowledge of the regulations.

34. The State of South Carolina required that the Defendants record each incident and/or accident, occurring in the facility or on the facility grounds, and that it be documented, reviewed, investigated, and if necessary, evaluated in accordance with facility policies and procedures, and retained.

35. The State of South Carolina required that the Defendants report serious incidents immediately, to include falls or trauma resulting in fractures, or suspected or confirmed resident abuse, as well as medication errors. Further, abuse or neglect was required to be reported to the South Carolina Long-Term Care Ombudsman Program in accordance with S.C. Code of Law Section 43-35-25.

36. The State of South Carolina required that the Defendants initiate and maintain an organized record for each resident, containing sufficient documented information to identify Gladys Graham and the agency and/or person responsible for each resident; support the diagnosis, secure the appropriate care/services (as needed); justify the care/services provided to include the course-of-action taken and results; the symptoms or other indications of sickness or injury; changes in physical/mental condition; the response/reaction to care, medication, and diet provided; and promote continuity of care among providers, consistent with acceptable standards of practice. All entries in Gladys Graham's chart were to be written legibly in ink or typed, and signed, and dated.

37. The State of South Carolina required the Defendants to enter the following records:

“Notes of observation. In instances that involve significant changes in a resident’s medical condition and/or the occurrence of a serious incident, notes of observation shall be documented at least daily until the condition is stabilized and/or the incident is resolved.”

38. The State of South Carolina required that the Defendants, in Gladys Graham’s chart, include, at a minimum:

- a. Consultations;
- b. Orders and recommendations for all medication, care, services, procedures, and diet from physicians or other authorized healthcare providers;
- c. Care/services provided;
- d. Medications administered and procedures followed if an error is made;
- e. Special procedures and preventive measures performed;
- f. Notes of observation. In instances that involve significant changes in a Gladys Graham’s medical condition and/or the occurrence of a serious incident, notes of observation were to be documented at least daily until the condition is stabilized and/or the incident is resolved;
- g. Time and circumstances of discharge or transfer, including condition at discharge or transfer, or death;
- h. Provisions for routine and emergency medical care, to include the name and telephone number of Gladys Graham’s physician, plan for payment, and plan for securing medications;
- i. Special information, *e.g.*, do-not-resuscitate orders, allergies, etc.;
- j. And a Photograph of Gladys Graham.

39. The incidents involving Gladys Graham constituted serious incidents.

40. The State of South Carolina Required that the Defendants conduct a written assessment of Gladys Graham by a direct care staff member no later than 72 hours after admission.

41. The State of South Carolina required that the Defendants develop an ICP with participation by, as evidenced by their signatures, Gladys Graham, administrator (or designee), and/or the sponsor or responsible party when appropriate, within seven days of admission. The ICP was required to be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-

appropriate individuals.

42. The State of South Carolina required that the Defendants ensure Gladys Graham's ICP describe: the needs of Gladys Graham, including the activities of daily living for which Gladys Graham required assistance, *i.e.*, what assistance, how much, who would provide the assistance, how often, and when.

43. The State of South Carolina required that the Defendants, on the ICP, delineate the responsibilities of the sponsor and of the facility in meeting the needs of Gladys Graham, including provisions for the sponsor to monitor the care and the effectiveness of the facility in meeting those needs and included specific goal-related objectives based on the needs of Gladys Graham as identified during the assessment phase, including adjunct support service needs, other special needs, and the methods for achieving objectives and meeting needs in measurable terms with expected achievement dates.

44. The State of South Carolina required that the Defendants ensure Gladys Graham be identified as appropriate for the level of care, services, or assistance offered and that the Defendants admit and retain only those persons appropriate for placement in a CRCF in compliance with the standards of 61-84.

45. The State of South Carolina required that the Defendants ensure care/services be rendered effectively and safely in accordance with orders from physicians or other authorized healthcare providers, and precautions taken for Gladys Graham's special conditions, *e.g.*, pacemakers, wheelchairs, Alzheimer's disease and/or related dementia, etc. appropriate assistance in activities of daily living was to be provided to Gladys Graham, as needed.

46. At the time of her admission to the Defendant's facility, Gladys Graham was dependent upon the care provided by employees and agents of the Defendants in order to live her life, and the Defendants were required to operate the facility in an appropriate manner, which they failed to do.

47. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and was required to provide reasonable and prudent assisted living care to Gladys Graham.

48. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of Gladys Graham and in accordance with state regulations as well as the representations made by the Defendants.

49. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents such as Gladys Graham with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living to Gladys Graham, as needed.

50. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

51. Upon information and belief, the Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to Gladys Graham.

52. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to Gladys Graham.

53. Upon information and belief, the Defendants failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Gladys Graham.

54. At the time of admittance to the Defendants' facility, it was known to the Defendants that Gladys Graham had diagnoses of conditions which required that the Defendants assist her in activities of daily living and known to the Defendants as indicated on Gladys Graham's paperwork and that she was a fall risk.

55. Gladys Graham was admitted to Harmony Collection at Columbia (AL/MC).

56. On or about April 18, 2022, Ms. Graham was allowed to suffer a fall which resulted in a fractured right hip which required surgical repair.

57. Gladys Graham was admitted to MUSC Health Columbia Medical Center Downtown on or about April 18, 2022.

58. The Defendant failed to implement adequate skin management measures for Gladys Graham.

59. While at the facility, the Defendant allowed Ms. Graham to develop preventable injuries which the Defendants had a duty to prevent, caused by a breach of that duty, including but not limited to pressure sores, and suffer horrific, painful, disfiguring, permanent and life threatening injuries which caused great pain and suffering.

60. Upon information and belief, the Defendant was licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent hospital care to the Plaintiff.

61. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of the Plaintiff and in accordance with federal and state regulations as well as the representations made by the Defendants.

62. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living shall be provided to residents, as needed.

63. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

64. Upon information and belief, the Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to the Plaintiff.

65. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to the Plaintiff.

66. Upon information and belief, the Defendants failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to the Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Negligence)

67. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph and in their entirety.

68. The Defendants undertook the duty to render care to the Plaintiff in accordance with the prevailing and acceptable professional standards of care for hospitals, and their employees and agents in the national community and as further required by the state and federal laws applicable to the same.

69. Notwithstanding undertaking that duty and while the Plaintiff was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of the Plaintiff and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Plaintiff, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to properly monitor the resident's physical well-being while under the care of the Defendants;
- b. In failing to properly supervise the personnel and staff and employees of the Defendants with regard to Gladys Graham's care;
- c. In failing to properly revise and modify plans of care for Gladys Graham in response to Gladys Graham's needs;
- d. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;

- e. In violating state and/or federal regulations requiring actions to protect the safety and health of Gladys Graham, so as to constitute negligence per se;
- f. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Gladys Graham from suffering from injury and pain;
- g. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of nutritional and infection control issues and pressure ulcer prevention issues, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- h. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and pressure ulcer prevention procedures;
- i. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendants;
- j. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- k. In failing to ensure that Gladys Graham had proper care;
- l. In failing to properly document significant clinical findings;
- m. In failing to properly document the medical records of Gladys Graham;
- n. In failure to provide sufficient number of personnel to meet the needs of residents;
- o. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;
- p. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- q. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- r. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- s. In failing to notify family members or authorities after incidents;
- t. In such other particulars as may be ascertained through discovery or shown at trial.

70. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, the Plaintiff suffered from severe debilitating injuries which resulted in permanent decline, as a result of which the Plaintiff's has suffered severe and extreme emotional distress, anxiety, physical injuries, medical bills, the likes of which no person should endure, for which the Plaintiff is entitled to recover in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence per se)

71. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in their entirety.

72. The Defendants is a health care provider who has a duty to abide by certain federal and state regulations in the care and treatment of their residents.

73. The federal and state regulations combine to form minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, the Plaintiff.

74. The Defendants failed to abide by the standards, rule and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of the Plaintiff.

75. The standards, rule and regulations promulgated by the United States Government and the State of South Carolina were specifically enacted for the benefit of the class of persons for which the Plaintiff was a member.

76. As a direct and proximate result of the Defendants' negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations standards, rule and regulations promulgated by the United States Government and the State of South Carolina, the Plaintiff suffered severe injuries as described above, constituting negligence per se.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

77. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

78. The Defendants, through deception, artifice, and circumvention, successfully defrauded Plaintiff, who trustingly submitted to care at the Defendants' facilities on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendants would adequately staff the facility and she would enjoy confident and adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to her;
- d. Such other misrepresentations as may be set forth above in this Complaint or as may later be set forth;

79. At the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, her family, and other similarly situated consumers to believe the above representations were true.

80. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, her family, and others like them into placing themselves or their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

81. The Defendants fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.

82. The representations made and concealments done by the Defendants were material to the Plaintiff and her family.

83. At the time the Defendants made such representations, they knew such affirmative claims of service were false.

84. The Plaintiff and her family were unaware of the falsity of the representations made by the Defendants.

85. The Plaintiff and her family had a right to rely on the representations and concealments made by the Defendants.

86. As a result of the Defendants' fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient of the Defendants.

87. As a proximate cause of the Defendants' fraud and misrepresentation, the Plaintiff suffered physical injuries, pain and suffering as previously alleged.

FOR A FOURTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

88. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

89. The Plaintiff and Defendants are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

90. The Defendants, by conducting business in the state of South Carolina, are engaged in commerce within the meaning of Code Section 39-5-10(b).

91. The Defendants' actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to the Plaintiff and her family: that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care; that they would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to her; and such other particulars as are set forth above in this Complaint or may be shown through discovery or trial;
- b. Further, at the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, her family, and other similarly situated consumers to believe the above

representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, her family, and others like them into placing herself or her relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

- c. The Defendants fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by the Defendants were material to the Plaintiff and her family.
- e. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and her family were unaware of the falsity of the representations made by the Defendants.
- g. The Plaintiff and her family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient of the Defendants.

92. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated with other residents.

93. The Defendants' conduct adversely affects the public interest of South Carolina.

94. The Defendants knew or reasonably should have known their conduct violated the Unfair Trade Practices Act.

95. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, the Plaintiff has suffered an ascertainable loss of money, physical injuries, pain and suffering as previously alleged.

96. The Plaintiff is entitled to recover her actual damages, which amount should be trebled, pursuant to South Carolina law, together with interest and attorneys' fees.

WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendants jointly and severally for actual damages, punitive damages, special damages and consequential damages, in an amount

to be determined by the jury at the trial of this action, fees, the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

HUGHEY LAW FIRM, LLC

s/ D. Nathan Hughey
D. Nathan Hughey (SC Bar #68409)
A. Stuart Hudson (SC Bar #71691)
Bradley H. Banyas (SC Bar #101668)
Post Office Box 348
Mount Pleasant, South Carolina 29465
T: (843) 881-8644
F: (888) 884-8311
nate@hugheyfirm.com
stuart@hugheyfirm.com
brad@hugheyfirm.com

Attorneys for Plaintiff

May 18, 2023
Mount Pleasant, South Carolina

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

-----X		
SALLIE WILSON, as Guardian for	*	
Gladys Graham,	*	
	*	
Plaintiff,	*	
vs.	*	Case No. 2023-CP-40-2608
	*	
MEDICAL UNIVERSITY HOSPITAL	*	
AUTHORITY d/b/a MUSC HEALTH	*	
COLUMBIA MEDICAL CENTER	*	
NORTHEAST; COLUMBIA AL	*	
OPERATIONS, LLC d/b/a HARMONY	*	
COLLECTIONS AT COLUMBIA	*	
(AL/MC); and KAREN BOWMAN,	*	
	*	
Defendants.	*	
-----X		

March 6, 2025

B E F O R E:

The Honorable Robert Hood, Presiding Judge

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

Bradley H. Banyas, Esq.
Attorney for the Plaintiff

Matthew Riddle, Esq.
Attorney for Defendant Harmony Collections

Austin Reed, Esq.
Attorney for Defendant MUSC

Recorded by: TEC Courtroom

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

Bobbi Fisher, RPR -- SC Official Court Reporter III

ROA 055

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)[Transcription]	Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE COURT: Okay. First one up this morning is Sallie Wilson as guardian for Gladys Graham against MUSC and others. And this is 2023-CP-40-2608.

And Mr. Banyas?

MR. BANYAS: Yes, sir. Good morning.

THE COURT: How are you? Good morning.

MR. BANYAS: Doing well. Here for the plaintiff.

THE COURT: All right. And who is here for the defendants?

MR. RIDDLE: Good morning, Your Honor. Matt Riddle on behalf of Harmony at Columbia.

THE COURT: Okay.

MR. REED: Good morning, Your Honor. Austin Reed on behalf of the Medical University Hospital Authority.

THE COURT: All right. Very good. All right. And then this is the defendant's Motion to Compel Arbitration; is that right?

MR. RIDDLE: Yes, Your Honor.

THE COURT: Okay. And who is arguing?

MR. RIDDLE: Me, Your Honor. Matt Riddle.

THE COURT: All right. Whenever you're ready, Mr. Riddle.

MR. RIDDLE: Thank you, Your Honor. May it please the Court. Again, Matt Riddle on behalf of Harmony at Columbia.

1 Harmony is an assisted living facility where Gladys Graham was
2 a resident, and her daughter, Sallie Wilson, assisted with her
3 admission to Harmony. Ms. Wilson assisted Ms. Graham with her
4 admission to the assisted living facility.

5 And the plaintiff's claims in this case arise from her
6 residency at the assisted living facility, and our motion here
7 today is to enforce an arbitration provision as contained
8 within the residency agreement that was signed by Ms. Wilson,
9 who also signed Ms. Graham's name to the agreement and added
10 her initials.

11 Ms. Graham was, at the time of her admission to the
12 facility, 102 years old, but she was deemed appropriate for
13 admission to assisted living, meaning she did not require
14 daily skilled nursing. She had not been deemed incompetent to
15 handle her own affairs at the time of her admission, and
16 therefore, our position, Your Honor, is that she was able to
17 authorize her daughter, and she was able to assure the
18 facility staff that her daughter, Ms. Wilson, was authorized
19 to sign the residency agreement on her behalf, including the
20 arbitration provision.

21 And so, Your Honor, the arbitration provision is
22 enforceable, and we're asking that this claim be moved to
23 arbitration for purposes of determining the claims as to
24 Harmony at Columbia.

25 THE COURT: All right. Mr. Reed, do you need to jump

1 in?

2 MR. REED: No, sir, Your Honor. Just briefly, my client
3 takes no position in this motion. This is Harmony's motion.

4 Just a little background, however; my client has settled
5 with Plaintiff. However, Ms. Graham has since passed away.
6 So we're sort of waiting in the wings to amend or substitute
7 for the PR so we can petition the Court for settlement.

8 THE COURT: Okay. And she passed away unrelated to the
9 underlying action, is that correct, or...

10 MR. REED: Yeah, Your Honor. I mean, she was well into
11 her 100s. And I can kind of explain a little bit more
12 background.

13 THE COURT: But you don't expect it to turn into a
14 wrongful death case.

15 MR. REED: And I would certainly like to include that
16 when I amend, to at least plead that, you know, whether or not
17 that's something that can be proven. It will, of course,
18 require expert --

19 THE COURT: Thank you, Mr. Reed.

20 Mr. Riddle, did I cut you off? I'm sorry. I didn't mean
21 to.

22 MR. RIDDLE: That's all right.

23 THE COURT: I thought you were --

24 MR. RIDDLE: I'll very brief.

25 THE COURT: That's okay.

1 MR. RIDDLE: You've got a long docket.

2 THE COURT: No, you can finish what -- I thought you were
3 finished. I apologize. You may continue as you need to. I
4 sincerely apologize.

5 MR. RIDDLE: No, it's fine, Your Honor. And we have
6 submitted a memo.

7 THE COURT: We have that. Thank you.

8 MR. RIDDLE: We have a copy of it here. Do you need it?

9 THE COURT: Yeah. Why don't you give us the paper copy.
10 That would be great.

11 MR. RIDDLE: And this has our exhibits as well, including
12 Exhibit 1 (indiscernible).

13 THE COURT: All right. Thank you.

14 MR. RIDDLE: There's a few documents there for Your Honor
15 from her admission at the facility, including the physician's
16 determination that she was appropriate for assisted living,
17 meaning Ms. Graham. There are admission assessments that
18 indicate that she was oriented, with some periodic confusion
19 and disorientation.

20 But our position, Your Honor, based on these documents
21 and the fact that she was deemed appropriate for admission to
22 assisted living, is that she was competent to authorize her
23 daughter to sign the arbitration agreement -- admission
24 agreement on her behalf.

25 And then, additionally, Your Honor, we have made an

1 argument that, as set forth in the brief regarding equitable
2 estoppel -- and the long and short of that, Your Honor, is
3 that the -- Ms. Graham, the resident, accepted the benefits of
4 the residency agreement, meaning she received room and care
5 provided at the facility, meals, and other benefits under the
6 contract, and so she's estopped from denying the
7 enforceability of one provision of the contract when she
8 accepted the benefits of all the other provisions.

9 The case law that Plaintiff cited in his Memo in
10 Opposition doesn't apply to the situation we have here. There
11 are a line of cases -- Coleman, Thompson, others -- that
12 address equitable estoppel. Those cases involve a situation
13 where we have an admission agreement on the one hand and a
14 separate arbitration agreement -- two separate documents. So
15 those cases involve an argument of merger and estoppel.

16 And the courts in those cases address the merger piece of
17 it and say that those two agreements did not merge for one
18 reason or another. And so they don't even get to the estoppel
19 piece of the argument in Coleman and Thompson, in those cases
20 that are cited by the plaintiff.

21 And so, Your Honor, we've got a different situation here.
22 We've got one agreement, one document that contains the
23 admission information, residency information. It also
24 contains the arbitration provision that's very well-stated and
25 clear -- clearly stated in the document itself multiple times,

1 that it's subject to arbitration.

2 And so our argument is that those cases address equitable
3 estoppel in the context of merger do not apply here because we
4 only have one document that we're talking about in this case.
5 We're not asking the Court to merge the documents and find the
6 plaintiff estopped. We only have one document so those cases
7 don't apply.

8 Your Honor, there's been no waiver of arbitration rights
9 in this case, contrary to the plaintiff's position. There was
10 prior defense counsel who filed an Answer before the case was
11 referred to my firm for defense. In that Answer, they did not
12 raise -- the prior defense counsel didn't raise arbitration.
13 That's not a waiver of arbitration rights.

14 Plaintiff cites the Rules of Civil Procedure regarding
15 affirmative defenses, but our position, Your Honor, is that
16 arbitration is not an affirmative defense that's waived by a
17 failure to raise in the initial Answer.

18 In the case referred to us, Your Honor, we filed a Motion
19 to Compel Arbitration within three months of the date that the
20 Complaint had been filed.

21 Prior defense counsel did serve discovery on Plaintiff.
22 We immediately withdrew those discovery requests. And one of
23 the exhibits that we attach with our memo is my email
24 contemporaneous with our filing the Motion to Compel
25 Arbitration withdrawing those discovery requests before they

1 could even answer.

2 So there hasn't been any discovery done. There's been
3 nothing done to prejudice the plaintiff. To the extent
4 there's been a delay in bringing this motion before the Court,
5 (indiscernible) the plaintiff's consent. And we also
6 submitted our letter to the Court when this hearing was
7 previous scheduled, (indiscernible) withdraw with leave to
8 re-file based on Plaintiff's consent and for the purpose of
9 scheduled mediation.

10 And so when we reached an impasse in mediation as to
11 Harmony, we immediately sought to bring the motion back before
12 the Court, and here we are today. So there hasn't been any
13 waiver of any arbitration rights on behalf of Harmony. We
14 haven't engaged the Court in any way, and there's no basis to
15 the plaintiff's arguments in that regard as well, Your Honor.

16 The agreement is enforceable. Ms. Wilson had authority
17 to sign the agreement on behalf of her mother, and she's
18 estopped from denying that she had that authority, and she's
19 also estopped from denying enforceability of the arbitration
20 agreement based on Ms. Graham accepting the benefits of the
21 other terms of the contract. So we would ask the Court to
22 refer this claim to arbitration and to stay the matter in its
23 entirety until arbitration is complete.

24 THE COURT: Thank you, Mr. Riddle.

25 MR. RIDDLE: Thank you, Judge.

1 THE COURT: Mr. Banyas?

2 MR. BANYAS: Thank you, Judge. And I've got a copy of my
3 memo here, if you want to pass that up.

4 THE COURT: Sure.

5 MR. BANYAS: If I may approach.

6 To be very brief, I think the main thing that we're here
7 to really talk about is that Ms. Wilson didn't have the
8 authority to bind her mother (indiscernible).

9 As Mr. Riddle pointed out, despite Ms. Graham being
10 102 years old when she was admitted to the facility, she was
11 appropriate to be admitted to the facility. She did not have
12 -- she had not granted Ms. Wilson any sort of court -- any
13 sort of power of attorney.

14 Ms. Wilson was later appointed as her guardian and her
15 conservator by the Saluda County Probate Court, but that
16 happened after she had been admitted to the defendant's
17 facility and after she had suffered a fall where she fractured
18 her hip.

19 So I want to give a little bit of background to kind of
20 just lay this out on a timeline, and I will be relatively
21 brief. But that's the main thing here. All of this could
22 have been absolved had Harmony simply had Ms. Graham sign the
23 arbitration agreement that they're purporting would be valid.
24 Clearly, Ms. Graham had the capacity to do so. She didn't.
25 They're trying to back-door this through with Ms. Wilson, who

1 may have signed as her, you know, healthcare proxy to admit
2 her into the facility, which our legislature, under the Adult
3 Healthcare Consent Act, has said is totally fine but does not
4 extend to binding arbitration agreements or waiver of a jury
5 trial.

6 So during the week of March the 25th of 2022, this
7 residency agreement with Harmony that contains the arbitration
8 agreement was signed by Sallie Jean Wilson, Ms. Graham's
9 daughter. Nowhere -- she did not have a power of attorney,
10 which is evidenced by the guardianship and conservatorship
11 being established later.

12 On April the 18th of 2022, while she was admitted to
13 Harmony, she suffered a fall where she fractured her hip. She
14 eventually goes to the Medical University and suffers a
15 decline.

16 On January the 10th of 2023, that Saluda County Probate
17 Court appoints Ms. Wilson as the guardian and conservator for
18 Ms. Graham. Our Notice of Intent follows where we filed and
19 then filed the Summons and Complaint shortly after that.

20 In June of 2023, Harmony files their Answer with prior
21 defense counsel, represented by Baker Donelson, and does not
22 raise the arbitration agreement as any sort of affirmative
23 offense and then serves discovery.

24 And then several months goes by. Mr. Riddle's firm is
25 substituted in and attempts to withdraw the discovery that's

1 already been served and filed this Motion to Compel
2 arbitration.

3 I don't have any issue with the waiver where Mr. Riddle
4 and I discussed setting the mediation. I'm not saying that
5 their participation in mediation any way waives their right.
6 I want to be very clear about that. But I think that the
7 waiver had occurred well before that.

8 The failure to raise that as an affirmative defense would
9 be like me trying to argue a wrongful death claim in a case
10 where I didn't plead -- you just can't do that. It's a very
11 simple thing to plead as an affirmative offense. And here,
12 they just missed it.

13 Despite the fact that they missed it, even if they hadn't
14 -- that's the important thing here. Even if they had not,
15 even if they had raised it, even if they had done everything
16 timely that typically occurs in cases like this, it's still --
17 the arbitration agreement still wouldn't be valid because it
18 was signed by Ms. Wilson, who was Ms. Graham's daughter, and
19 did not have any authority to bind her or her heirs,
20 successors, or anything like that, to arbitration.

21 Had Ms. Graham simply signed the arbitration agreement --
22 it's a very simple thing to do. It's a one-page document that
23 they can sign one signature if they want to enforce to make
24 sure that we don't end up in this mess that we're in right
25 now.

1 It's a very simple thing to do, and they failed to do it.
2 And because they failed to do it, that's on them, and this
3 case should not be compelled to arbitration.

4 You know, I referenced a couple of the cases in here.
5 Judge, I was looking back through. I've argued these
6 arbitration motions with probably half of the judiciary. I
7 don't know that I've had one with you, but I'm sure that you
8 have seen them. And so if I'm telling you something --

9 THE COURT: And I've seen more of them than I care to
10 remember.

11 MR. BANYAS: I'm sure that you know what they --

12 THE COURT: They all have a little tweak in them. They
13 all have a little tweak.

14 MR. BANYAS: So, you know, I've argued these in the Court
15 of Appeals and Supreme Court, and I will stand here to say
16 that I'm always ready and willing to consent to arbitration
17 when it's valid, but in this case, it's just clearly not and
18 it's --

19 THE COURT: What about this argument that she got all the
20 benefits of being in the nursing home -- or whatever it was
21 called -- for a certain period of time? So she accepted all
22 those benefits so how can she come back and say, "Well, I
23 don't want this other term in the contract which -- but I'm
24 going to accept all the other ones"?

25 MR. BANYAS: Well, the estoppel argument has been dealt

1 with by the appellate courts, and in this case, that's just a
2 mistake that Harmony has to deal with because they -- she did
3 not consent to arbitrate her claims.

4 Arbitration is voluntary. It's not conditioned upon
5 admission. It cannot be forced. You can't say, "If you don't
6 sign this arbitration agreement..." and that's -- and I think
7 that's where the appellate courts have kind of drawn that
8 distinction.

9 It's not a mandatory condition for acceptance into a
10 long-term care facility because it's -- you can't keep
11 somebody out of a facility because they don't want to agree to
12 the arbitration agreement. And so this sort of -- this
13 estoppel argument, I think, fails really because there's no --
14 there's no sort of -- there's no valid arbitration agreement
15 to begin with. It would be like --

16 THE COURT: We don't even need to get to that issue
17 because Ms. Wilson didn't have the authority -- or legal
18 authority to sign for Ms. Graham when she signed the documents
19 that admitted her into the facility.

20 MR. BANYAS: Absolutely, Your Honor.

21 THE COURT: All right. What else?

22 MR. BANYAS: It's as simple as that.

23 THE COURT: Anything else from the plaintiff?

24 MR. BANYAS: Nothing else from me.

25 THE COURT: Now, Mr. Riddle, yes, you may respond.

1 Sorry.

2 MR. RIDDLE: Thank you, Judge. Just briefly, I did want
3 to address Plaintiff's reference to the South Carolina Bill of
4 (indiscernible) Act and the Bill of Rights for (indiscernible)
5 for long-term care facilities. I think it's accurate that
6 those provisions don't, in and them themselves, give
7 Ms. Wilson authority to sign on behalf of her mother.

8 The Adult Health Care Consent Act involves a situation
9 where the patient is deemed unable to consent to treatment,
10 and we're not -- we're not addressing -- I mean, we're not
11 relying on those provisions to provide authority to
12 Ms. Wilson.

13 Our argument is that those provisions do not bar
14 Ms. Wilson from signing on behalf of her mother. They simply
15 -- it grants certain authority to family members of
16 (indiscernible) as it relates to health care decisions, but it
17 doesn't bar Ms. Wilson from signing an arbitration agreement
18 on behalf of her mother where we have circumstances like we
19 have where there is apparent and inherent authority of agency
20 by estoppel or equitable estoppel when it comes to the
21 contract.

22 And, Your Honor, the representative of the facility who
23 signs the contract being assisted with the admission of
24 Ms. Graham did submit an affidavit, and it's Exhibit 5 to our
25 memo. And that further supports our argument that Ms. Graham

1 authorized her daughter to sign this document on her behalf.
2 And there's not any contrary evidence in the record, Your
3 Honor. So I did want to draw your attention to that.

4 And, again, part of the waiver argument -- the prior
5 defense counsel's omission of any reference to arbitration in
6 their Answer is not a waiver. Plaintiff hasn't cited any case
7 law to support that argument. And I didn't see arbitration
8 referenced in the Civil Procedure rules regarding affirmative
9 defenses, and I don't believe it's waived by failure to answer
10 -- for failure to include an initial answer.

11 All of the case law addresses the fact that the party
12 asserting waiver has the burden to prove prejudice, and the
13 plaintiff can't assert prejudice here where we have not
14 answered discovery, we haven't asked Plaintiff to answer
15 discovery, we haven't asked the Court to do anything in
16 this --

17 THE COURT: It's not like we're on the eve of trial and
18 you walk in and say, "We've got to go to arbitration."

19 MR. RIDDLE: And we filed our motion three months after
20 the Complaint was filed.

21 THE COURT: I got it.

22 MR. RIDDLE: So there's no waiver here.

23 Thank you, Judge.

24 THE COURT: Anything else?

25 MR. BANYAS: Well, we could come up on Judge Coble's

1 trial roster.

2 THE COURT: Well, let's not pick on Judge Coble.

3 MR. BANYAS: I'm not picking on Judge Coble at all.

4 THE COURT: Let's not pick on Coble for trying to get
5 some work done. Okay?

6 MR. BANYAS: No, I'm not at all.

7 THE COURT: We can pick on him about other things, but
8 I'm with you. Okay. I've got it.

9 MR. BANYAS: The only last thing is, you know, in
10 reference to Mr. Riddle's affidavit that the admissions
11 director or whoever that may have been that provided that, you
12 know, if she's sitting there, willing to sign the affidavit
13 that says that Ms. Graham, who now, you know, has passed away
14 and is no longer able to say one way or the other, actually
15 did give authority.

16 If Ms. Graham is sitting there, why can't she just get
17 Ms. Graham to sign this arbitration agreement? The facility
18 knows --

19 THE COURT: Every one of these I do, I wonder --

20 MR. BANYAS: The facility --

21 THE COURT: I had one a couple of weeks ago, and they
22 said this woman signed. And the woman said, "I'm deaf and
23 blind. How could I have signed?" I mean, you know, every
24 time, there's some tweak. Okay. I got it. All right.

25 Both sides get me proposed orders. How long do you need

1 to do that? I don't know what your schedules are, so I'm
2 not --

3 MR. BANYAS: Ten days, Your Honor?

4 THE COURT: Ten?

5 MR. RIDDLE: Works for me.

6 THE COURT: 10, 15 days. Get it to us in the next 10, 15
7 days. Okay? Thank you. Appreciate you. Good to see you.

8 MR. BANYAS: Thank you, Your Honor.

9 THE COURT: If you need more time or something happens,
10 just email and say, "Hey, can we have a little bit more time?"
11 I'm perfectly fine with those things. Just don't ghost me on
12 where the orders are.

13 (The above hearing concluded.)
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Certificate of Transcriber

CASE NAME: Wilson/Estate of Graham v. MUHA/MUSC

DATE OF HEARING: 3/6/25

RECORDING METHOD: TEC Courtroom

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



/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 7/2/25

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

Bobbi Fisher, RPR -- SC Official Court Reporter III

ROA 073

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
SALLIE WILSON AS GUARDIAN FOR	)	CASE NO. 2023-CP-40-02608
GLADYS GRAHAM,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT COLUMBIA AL
	)	OPERATIONS, LLC D/B/A HARMONY
MEDICAL UNIVERSITY HOSPITAL	)	COLLECTION AT COLUMBIA (AL/MC),
AUTHORITY D/B/A MUSC HEALTH	)	AND KAREN BOWMAN’S MOTION TO
COLUMBIA MEDICAL CENTER	)	COMPEL ARBITRATION
DOWNTOWN, COLUMBIA AL	)	
OPERATIONS, LLC D/B/A HARMONY	)	
COLLECTION AT COLUMBIA	)	
(AL/MC), AND KAREN BOWMAN, ,	)	
	)	
DEFENDANT.	)	
	)	

TO: D. NATHAN HUGHEY, A. STUART HUDSON, AND BRADLEY H. BANYAS,
ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendants Columbia AL Operations, LLC d/b/a Harmony Collections at Columbia (AL/MC) (“the Facility”) and Karen Bowman (jointly “these Defendants”), by and through their undersigned attorneys, will move before this Honorable Court at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action and compelling arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* and South Carolina Rules of Civil Procedure 12(b)(1) and (6). These Defendants base this Motion on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Gladys Graham’s admission to the Facility. (See “Assisted Living Residency Agreement,” attached as **Exhibit A.**) The Arbitration Agreement is expressly binding on these Defendants and Plaintiff and requires that Plaintiff’s claims be submitted to arbitration.

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

CLEMENT RIVERS, LLP

By: /s/ D. Jay Davis, Jr.

D. Jay Davis, Jr

Matthew O. Riddle

Gaillard T. Dotterer, III

P.O. Box 993, Charleston, SC 29402

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

mriddle@ycrlaw.com; gdotterer@ycrlaw.com

Attorneys for the Defendant Columbia AL

Operations, LLC D/B/A Harmony Collection at

Columbia (AL/MC) and Karen Bowman

Charleston, South Carolina

Dated: August 9, 2023

NOTICE REQUIRED BY SECTION 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, IS HEREBY GIVEN THAT THE FOLLOWING AGREEMENT IS SUBJECT TO ARBITRATION.

HARMONY AT COLUMBIA

**Assisted Living Residency Agreement
Columbia, South Carolina**

This Agreement ("Agreement") is made this 25th of March, and effective on March 31st, 2022 (the "Effective Date") by and between Columbia AL Operations LLC, a Virginia limited liability company, d/b/a Harmony at Columbia ("Community" or "Facility") and Gladys Graham ("Resident").

I. PURPOSE

A. Community agrees to furnish Resident with an assisted living apartment. Community is located at 2300 Clemson Rd. Columbia, SC 29229. The services that are available to Resident pursuant to this Agreement are described herein and may, in certain circumstances, require additional payment by Resident.

B. Community assisted living units are licensed by the South Carolina Department of Health and Environmental Control ("DHEC") as an assisted living community.

C. Resident's preadmission screening determined that the needs of Resident can be met by the services provided at Community pursuant to this Agreement.

D. The Resident Physical Examination must be completed by a South Carolina licensed Physician within 30 days prior to date of admission. Community shall develop and implement an initial individual care plan within seventy-two (72) hours after admission and a follow-up individual care plan within seven (7) days after admission.

E. Resident has completed the application forms referred to in this Agreement, and warrants that all responses contained in the application forms are true, correct and complete.

In consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

II. DESCRIPTION OF LEASED PREMISES

A. Premises

Community leases to Resident and Resident leases from Community Apartment¹ REDACTED (hereinafter "Apartment"). Resident shall have the right to occupy and use Apartment for Resident's private use, subject to the terms of this Agreement. Occupancy shall be solely for residential purposes and not for any commercial purpose or any other purpose that is unlawful, disrespectful or adversely affects the operations of The Community. The buildings,

REV 7.6.20

Harmony Graham 193

ROA 076

land and all common areas operated by Community are hereinafter referred to as the "Community."

2. When two (2) residents reside together in an Apartment, they are considered to be Joint Residents. Each Joint Resident is required to meet the Community's financial obligations for entrance to the Community.

B. Accommodations

1. Resident shall be provided with a description of the dimensions of the Apartment upon execution of this Agreement.

2. Resident may have and use television(s), radio(s) and a microwave oven (if approved by the Healthcare Coordinator) in the Apartment. Space heaters, kerosene burning heaters, hot-plates or similar devices are prohibited. Community may limit the number of personal possessions that Resident retains in Apartment for the health and safety of other residents.

3. Community shall furnish electricity, heating/ventilation/air conditioning and hot and cold water for Apartment at no additional expense to Resident.

4. Community shall provide wiring within Resident's Apartment for a private telephone and cable television accessibility. The purchase of private telephone service and/or cable television service is at the option and at the sole cost and expense of Resident. Community is not responsible for loss of service relating to telephone and/or cable television. Long-distance telephone call charges are Resident's responsibility. If the need arises to use a Community phone line for long distance calls, the charges will be captured on the Resident's monthly bill.

5. Community is not responsible for any of the following costs that may be incurred by Resident: beauty / barber shop visits; pharmaceutical prescriptions, durable medical equipment and personal care supplies; physician visits and other healthcare providers; licensed physical, occupational and speech therapy; other personal expenses not included in Community Fee; and, all other services accessible to Resident but not provided by Community.

6. Resident shall properly respect and maintain Apartment in a clean and orderly condition. Upon written notification to Resident of any unsanitary or unsafe conditions Community may, at Resident's expense, enter the Apartment and remedy such conditions. Written approval from Community must be obtained for the placement of any personal items outside Apartment. Inappropriate items outside an Apartment, as determined at the sole discretion of The Community, must be removed at Resident's expense.

7. In addition to entrances, hallways, and stairways, Resident has the right to use Community common areas.

C. Services

Community will provide the Resident with the following Services as part of the Resident's monthly fee:

- Assistance with activities of daily living, including personal hygiene and instrumental activities of daily living as indicated in Resident's assessment and individualized service plan (an associated "Level of Care" charge and/or other care charges may be assessed as indicated on Attachment A);
- Assistance, as needed, with medication prescribed for Resident's self-administration. If Resident is able to self-administer medications, as determined by Resident's physician and community assessment, medication must be kept locked in a safe and secure location in Apartment (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- Administration of medication prescribed for those residents unable to self-administer medications (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- 24-hour emergency call response;
- Monitoring and supervision of Resident per individual service plan;
- Assistance with securing medical care if Resident's health status declines;
- Arranging emergency health care services. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) at Resident's expense, whenever such services are deemed appropriate and necessary by Community. If possible, this will be with Resident's or authorized legal representative's choice and consent. However, in an emergency Community has the right to transfer the Resident immediately to a health care facility it deems appropriate for the type of care required.
- Assistance, as requested, with making appointments for medical, dental, nursing or mental health services;
- Assistance with scheduling transportation to and from medical and dental appointments;
- Scheduled transportation on community transportation days (additional transportation will require an additional fee per Attachment A);
- Breakfast, lunch and dinner served each day in Community's dining room;
- Daily snacks;
- Weekly housekeeping of Apartment consisting of vacuuming and dusting cleared surfaces and cleaning bathroom and kitchenette areas;
- Regular trash removal of up to two trash containers per Apartment, not to include disposal of large items bigger than Apartment's trash containers (additional trash will require an additional fee per Attachment A);
- Laundry services for bed linens, towels and personal clothing up to two loads per week (additional laundry will require an additional fee per Attachment A);
- Social, cultural, and recreational activities at Community (some of which require additional fees, if a Resident chooses to participate); and
- Utilities excluding private phone and cable TV / Internet.

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REV 7.6.20

Harmony Graham 193

ROA 079

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- Assistance with securing medical care if Resident's health status declines;
- Arranging emergency health care services. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) at Resident's expense, whenever such services are deemed appropriate and necessary by Community. If possible, this will be with Resident's or authorized legal representative's choice and consent. However, in an emergency Community has the right to transfer the Resident immediately to a health care facility it deems appropriate for the type of care required.
- Assistance, as requested, with making appointments for medical, dental, nursing or mental health services;
- Assistance with scheduling transportation to and from medical and dental appointments;
- Scheduled transportation on community transportation days (additional transportation will require an additional fee per Attachment A);
- Breakfast, lunch and dinner served each day in Community's dining room;
- Daily snacks;
- Weekly housekeeping of Apartment consisting of vacuuming and dusting cleared surfaces and cleaning bathroom and kitchenette areas;
- Regular trash removal of up to two trash containers per Apartment, not to include disposal of large items bigger than Apartment's trash containers (additional trash will require an additional fee per Attachment A);
- Laundry services for bed linens, towels and personal clothing up to two loads per week (additional laundry will require an additional fee per Attachment A);
- Social, cultural, and recreational activities at Community (some of which require additional fees, if a Resident chooses to participate); and
- Utilities excluding private phone and cable TV / Internet.

D. Additional Services

Community also agrees to provide the following additional services for Resident:

1. **Parking** One (1) above ground parking space is available, at no additional charge, for each resident with a car who is able to drive his or her own vehicle. A resident with more than one (1) car who would like to park in the Community shall be assessed an additional monthly fee as described in Attachment A. Resident shall maintain each vehicle in operable condition and keep current all registrations, licenses, insurance and inspections as required by law. Abandoned and/or unauthorized vehicles may be towed from the Community at Resident's expense.

2. **Maintenance and Repairs** Community is responsible for necessary repairs, maintenance, and replacement of The Community's property and equipment due to reasonable wear and tear. Maintenance, repair, or replacement of any property damaged through the damage or neglect of Resident will be the sole responsibility of Resident. Any reasonable costs associated with Resident's damage or neglect will be billed to Resident directly.

3. **Personal Property** Community does not provide personal property insurance for Resident's belongings or liability insurance for Resident's actions. It is recommended that Resident obtain property and liability insurance coverage to protect his/her personal belongings and against claims regarding his/her actions. Resident has the right to place personal property in the Unit at his/her own risk. *The Facility shall not be liable for lost, stolen, or damaged personal property or for loss due to fire, windstorms, or any other hazard, unless the loss of such property is due to the Facility's willful misconduct, or negligence, or as required by law.* It is recommended that Resident obtain insurance coverage (commonly referred to as "renter's insurance"), naming the Facility as an "additional insured," with minimum limits of \$100,000 for liability insurance coverage and minimum limits of \$15,000 for contents coverage.


Resident Initials

2nd Resident initials

4. **Security** Community shall provide reasonable security for the Facility on a twenty-four (24) hours, seven (7) days a week basis. The Community is equipped with exterior lockable doors and windows and may have interior and exterior video surveillance in some areas. Community staff are available at all times to request emergency medical and protective services such as 911; police and ambulance service. Community does not furnish emergency medical and protective services, and any costs related thereto are the sole responsibility of the Resident.

5. **Local Transportation** Community will furnish pre-scheduled transportation to pre-determined local areas. Transportation costs other than those incurred for regularly scheduled activities, are the responsibility of Resident, and shall be assessed according to the Schedule of Costs, included in this Agreement as Attachment A and incorporated herein.

6. **Building and Grounds** Community will maintain all buildings and grounds, lighted parking facilities, and outdoor recreational facilities.

7. **Changes to Miscellaneous Items and Charges** Community reserves the right to amend or delete items in Attachment A upon thirty (30) days prior written notice to Resident.

E. Health Services

1. The services provided to Resident pursuant to this Agreement are regulated by DHEC as an assisted living community. In addition to the physical examination which shall be completed thirty (30) days prior to the Resident's admission to The Community, Resident shall have a physical examination at least annually or sooner if the Resident's medical condition changes prior to the annual physical examination.

2. Resident agrees to retain, at Resident's cost, a physician or other appropriate medical practitioner to care for Resident's health. Community may facilitate access to this personal physician and such other specialty health and social work services as Resident may require for cognitive impairment. The costs of these services are excluded from Community's monthly fee and are the sole responsibility of Resident.

3. Community shall assist Resident with securing medical care if Resident's health status declines.

4. If Resident has a serious medical or dental condition, Community shall make reasonable efforts to obtain consent for treatment from Resident or his/her authorized legal representative, if any.

5. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) whenever it is deemed necessary at the reasonable discretion of Community's staff. The staff will attempt to discuss this choice with the Resident, if possible. In an emergency, Community may transfer Resident immediately to a health care facility that it deems more appropriate for the type of care required. The Resident shall be solely responsible for the cost of any emergency health care services.

III. FINANCIAL AGREEMENT

A. Community Fee

Resident will pay a one-time Community Fee of \$3,000.00 three -thousand and 00/100 dollars) that secures the reservation of an Apartment at Community. This payment is refundable minus a \$500.00 (five-hundred and 00/100 dollars) processing fee if Resident never moves into Community or if Resident elects to move out of Community within the first 30 days of residency. If Resident death occurs prior to move-in or within the first 30 days of residency, the entire Community Fee is refundable.

B. Rates

Commencing on the Effective Date, Resident agrees to pay Community a monthly fee of \$3,895.00 (the "Fee"). In addition to the Fee, Resident shall be responsible for each of the miscellaneous charges incurred by Resident that are described in Attachment A.

C. Billing Payment Procedures

Community will bill Resident each month *in advance* for the Fee and miscellaneous charges due and owing under this Agreement. Additional miscellaneous charges, if any, will be added to the subsequent monthly bill. Resident agrees to pay the Fee and any miscellaneous charges covered under this Agreement *on the first day of the month following receipt of the invoice* from The Community.

D. Responsibility for Payment of Needed Services

If Community is required to perform any services on Resident's behalf that are listed on the Schedule of Costs (Attachment A), or if Community incurs reasonable charges for items or services not listed on the Schedule of Costs that are necessary for Resident's continued health or safety, Resident agrees to reimburse Community any sums paid for the charges or obligations incurred.

E. Late Payments

If a Fee or miscellaneous charge incurred and billed on the monthly statement is not paid by the fifth (5th) day of the month it is due, the owed amount will be subject to interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted under South Carolina law, whichever is greater. If Resident defaults on paying any of the fees or charges billed on the monthly statement, Community may, at its discretion, refer the unpaid invoices for collection. If this occurs, Resident shall also be liable for the payment of all court costs, services of process, litigation expenses and/or reasonable attorney's fees incurred for the collection of the debt. Bounced checks and/or insufficient funds requiring further Community follow up will incur a miscellaneous charge as described in Attachment A. All payments received will first be applied towards interest and collection costs, if any.

F. Increase in Fees and Charges

The Community may increase the Monthly Fee and/or any or all of the miscellaneous charges described in Attachment A with thirty (30) days advance written notice to Resident (and Resident's authorized legal representative, if applicable), *subject to F(i)-(iii) below*:

(i) The nature and amount of care service provided to Resident is based upon the Resident's current care needs.

(ii) Whenever Resident's level of care is increased or decreased due to a reassessment of need, Resident will be charged for the new level of care beginning on the date

the increased care is (a) provided to Resident and (b) documented in Resident's individualized service plan.

(iii) Whenever Resident's medication management level is increased or decreased due to a reassessment of need, Resident will be charged for the new medication management level beginning on the date the new medication management level is (a) provided to Resident and (b) documented in Resident's individualized service plan.

G. Responsibility for the Fee and Charges while a Resident

The Resident hereby acknowledges and agrees that the Resident is liable for the Fee and all miscellaneous charges accrued or incurred for as long as the Resident resides in the Apartment. For purposes of this Agreement, the Resident will be considered to reside in the Apartment until each of the following take place: (A) the Resident vacates the community, (B) the Resident removes all personal possessions from the Apartment and storage area, and (C) the Apartment is in good condition. If the Apartment requires repair, cleaning, or other maintenance because the Resident failed to vacate the Apartment in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear, The Crossings will take reasonable and prompt action to restore the Apartment to good condition.

IV. TERMINATION AND ROOM HOLD POLICY

A. Term

The Initial Term of this Agreement is for one (1) year beginning on the Effective Date, unless terminated by either party in accordance with the provisions of this Agreement. This Agreement shall automatically continue in effect for subsequent one (1) year terms (each a "Renewal Term") unless either party provides thirty (30) days written notice that it does not wish to renew this Agreement.

B. Termination by Community

1. Community may terminate this Agreement prior to the expiration of its then current term upon thirty (30) days prior written notice to Resident and the Resident's legal representative (if any) for any of the following reasons:

- a. Resident is a danger to herself or others;
- b. Community chooses to close as an assisted living community;
- c. Community determines that Resident's functional level has advanced or declined so that Resident's needs cannot be met at Community in an assisted living facility environment;
- d. If meeting Resident's needs would require a fundamental alteration in Community's program or building site, or would create an undue financial or programmatic burden on the Community;

e. If Resident fails to pay by the due date the Fee and/or any other charge or expense due pursuant to this Agreement; or

f. DHEC initiates proceedings to close Community.

Thirty (30) days advance notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well-being of the Resident or others at Community, as certified by a physician or DHEC.

2. Community will state the reason(s) for termination in the written notice.

C. Rescission of Agreement

Resident or his/her legal representative (if any) may rescind this Agreement up to seventy-two (72) hours after the initial dated signature and pay only for services received. Rescission of the Agreement must be in writing, addressed to Community's Executive Director, and received by Community within the 72-hour rescission period.

D. Termination by Resident

1. Resident may terminate this Agreement for any reason upon thirty (30) days' prior written notice to The Community.

2. If a Resident or authorized legal representative chooses to voluntarily relocate the Resident from the Community, the Resident or authorized legal representative must give Community written notice of this intent to relocate and terminate the Agreement not less than fourteen (14) days before the Resident's relocation becomes effective. Voluntary relocation does not occur when a Resident seeks to be discharged because a higher level of care is required or because the Resident's health, safety, or welfare is endangered. If the Resident or legal representative fails to give timely notice, Community may charge the Resident, and the Resident agrees to pay, the equivalent of fourteen (14) days occupancy from the earlier of the date of the relocation or the date Community received proper notice of the Resident's intent to relocate. However, if Community is able to fill the bed vacated by the Resident, Community shall cease charging the Resident regardless of the notice given. Community shall notify the Resident in writing as soon as it fills the bed with a new resident. Residents participating in the Optional State Supplementation Program are excluded from the requirements of advance notice as set forth in this paragraph. Any applicable refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

E. Death or Medical Emergency

1. In the event of Resident's death, this Agreement shall terminate effective on the day that the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

2. In the event of a medical emergency requiring Resident to leave Community for an indefinite period of time due to the need for a higher level of care as evidenced by a physician's notice provided to Community, unless an Apartment-hold agreement is reached between Resident and the Community (see Section IV.G below) this Agreement shall terminate on the day the Resident no longer resides in the Apartment as set forth in Section III.G. Resident or Resident's authorized legal representative shall notify Community in writing of the date it intends to terminate this Agreement pursuant to this provision. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

F. Effect of Termination

1. Community retains all other rights and remedies provided under this Agreement or by law upon termination of this Agreement.

2. Resident is liable for the Fee and all miscellaneous charges accrued or incurred prior to the effective date of termination regardless of who terminated the Agreement or, if later, until the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

3. Upon termination, the Apartment will be inspected by Community staff.

4. Resident will be responsible for the following in the event of a termination of this Agreement: (a) all belongings shall be removed by the Resident at Resident's sole cost and expense; (b) in the event of a transfer to another Apartment within the Community, Resident shall sign a new residency agreement for the new Apartment and will begin paying the Fee and any incurred charges equal to the current rate and fee structure for that Apartment; (c) Resident is responsible for all costs incurred by Community to prepare the vacated apartment for occupancy, reasonable wear and tear excepted, and for ensuring the separate storage area, if applicable, is clean and ready to be rented; and, (d) the Fee will discontinue on the effective date of termination or, if later, the day the Resident no longer resides in the Apartment as set forth in Section III.G. If the Resident has personal possessions in two Apartments on the day of the move to another Apartment within the Community, he/she will be responsible for the Fee and any miscellaneous charges for both Apartments until the initial Apartment is fully vacated and surrendered in the condition required by this Agreement.

5. Upon vacating Apartment, Resident shall surrender Apartment (and storage area, if applicable) in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear. In the event that Apartment (or storage area, if applicable) has been left in a state of repair less than that at the time of move-in, Resident shall promptly remit any costs assessed by Community that are necessary to return Apartment to its pre-move-in condition (excepting any normal wear and tear). A charge for each unreturned key (including mailbox key, if applicable) will be made and a charge for replacing locks will be assessed if not all keys to Apartment are returned to The Community. Any property abandoned by Resident (whether in Apartment or in a separate storage area) shall be disposed of by Community after thirty (30) days of the Apartment being vacated at Resident's expense.

NOTICE REQUIRED BY SECTION 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, IS HEREBY GIVEN THAT THE FOLLOWING AGREEMENT IS SUBJECT TO ARBITRATION.

HARMONY AT COLUMBIA

**Assisted Living Residency Agreement
Columbia, South Carolina**

This Agreement ("Agreement") is made this 25th of March, and effective on March 31st, 2022 (the "Effective Date") by and between Columbia AL Operations LLC, a Virginia limited liability company, d/b/a Harmony at Columbia ("Community" or "Facility") and Gladys Graham ("Resident").

I. PURPOSE

A. Community agrees to furnish Resident with an assisted living apartment. Community is located at 2300 Clemson Rd. Columbia, SC 29229. The services that are available to Resident pursuant to this Agreement are described herein and may, in certain circumstances, require additional payment by Resident.

B. Community assisted living units are licensed by the South Carolina Department of Health and Environmental Control ("DHEC") as an assisted living community.

C. Resident's preadmission screening determined that the needs of Resident can be met by the services provided at Community pursuant to this Agreement.

D. The Resident Physical Examination must be completed by a South Carolina licensed Physician within 30 days prior to date of admission. Community shall develop and implement an initial individual care plan within seventy-two (72) hours after admission and a follow-up individual care plan within seven (7) days after admission.

E. Resident has completed the application forms referred to in this Agreement, and warrants that all responses contained in the application forms are true, correct and complete.

In consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

II. DESCRIPTION OF LEASED PREMISES

A. Premises

1. Community leases to Resident and Resident leases from Community Apartment H-19B (hereinafter "Apartment"). Resident shall have the right to occupy and use Apartment for Resident's private use, subject to the terms of this Agreement. Occupancy shall be solely for residential purposes and not for any commercial purpose or any other purpose that is unlawful, disrespectful or adversely affects the operations of The Community. The buildings,

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land and all common areas operated by Community are hereinafter referred to as the "Community."

2. When two (2) residents reside together in an Apartment, they are considered to be Joint Residents. Each Joint Resident is required to meet the Community's financial obligations for entrance to the Community.

B. Accommodations

1. Resident shall be provided with a description of the dimensions of the Apartment upon execution of this Agreement.

2. Resident may have and use television(s), radio(s) and a microwave oven (if approved by the Healthcare Coordinator) in the Apartment. Space heaters, kerosene burning heaters, hot-plates or similar devices are prohibited. Community may limit the number of personal possessions that Resident retains in Apartment for the health and safety of other residents.

3. Community shall furnish electricity, heating/ventilation/air conditioning and hot and cold water for Apartment at no additional expense to Resident.

4. Community shall provide wiring within Resident's Apartment for a private telephone and cable television accessibility. The purchase of private telephone service and/or cable television service is at the option and at the sole cost and expense of Resident. Community is not responsible for loss of service relating to telephone and/or cable television. Long-distance telephone call charges are Resident's responsibility. If the need arises to use a Community phone line for long distance calls, the charges will be captured on the Resident's monthly bill.

5. Community is not responsible for any of the following costs that may be incurred by Resident: beauty / barber shop visits; pharmaceutical prescriptions, durable medical equipment and personal care supplies; physician visits and other healthcare providers; licensed physical, occupational and speech therapy; other personal expenses not included in Community Fee; and, all other services accessible to Resident but not provided by Community.

6. Resident shall properly respect and maintain Apartment in a clean and orderly condition. Upon written notification to Resident of any unsanitary or unsafe conditions Community may, at Resident's expense, enter the Apartment and remedy such conditions. Written approval from Community must be obtained for the placement of any personal items outside Apartment. Inappropriate items outside an Apartment, as determined at the sole discretion of The Community, must be removed at Resident's expense.

7. In addition to entrances, hallways, and stairways, Resident has the right to use Community common areas.

C. Services

Community will provide the Resident with the following Services as part of the Resident's monthly fee:

- Assistance with activities of daily living, including personal hygiene and instrumental activities of daily living as indicated in Resident's assessment and individualized service plan (an associated "Level of Care" charge and/or other care charges may be assessed as indicated on Attachment A);
- Assistance, as needed, with medication prescribed for Resident's self-administration. If Resident is able to self-administer medications, as determined by Resident's physician and community assessment, medication must be kept locked in a safe and secure location in Apartment (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- Administration of medication prescribed for those residents unable to self-administer medications (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- 24-hour emergency call response;
- Monitoring and supervision of Resident per individual service plan;
- Assistance with securing medical care if Resident's health status declines;
- Arranging emergency health care services. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) at Resident's expense, whenever such services are deemed appropriate and necessary by Community. If possible, this will be with Resident's or authorized legal representative's choice and consent. However, in an emergency Community has the right to transfer the Resident immediately to a health care facility it deems appropriate for the type of care required.
- Assistance, as requested, with making appointments for medical, dental, nursing or mental health services;
- Assistance with scheduling transportation to and from medical and dental appointments;
- Scheduled transportation on community transportation days (additional transportation will require an additional fee per Attachment A);
- Breakfast, lunch and dinner served each day in Community's dining room;
- Daily snacks;
- Weekly housekeeping of Apartment consisting of vacuuming and dusting cleared surfaces and cleaning bathroom and kitchenette areas;
- Regular trash removal of up to two trash containers per Apartment, not to include disposal of large items bigger than Apartment's trash containers (additional trash will require an additional fee per Attachment A);
- Laundry services for bed linens, towels and personal clothing up to two loads per week (additional laundry will require an additional fee per Attachment A);
- Social, cultural, and recreational activities at Community (some of which require additional fees, if a Resident chooses to participate); and
- Utilities excluding private phone and cable TV / Internet.

D. Additional Services

Community also agrees to provide the following additional services for Resident:

1. **Parking** One (1) above ground parking space is available, at no additional charge, for each resident with a car who is able to drive his or her own vehicle. A resident with more than one (1) car who would like to park in the Community shall be assessed an additional monthly fee as described in Attachment A. Resident shall maintain each vehicle in operable condition and keep current all registrations, licenses, insurance and inspections as required by law. Abandoned and/or unauthorized vehicles may be towed from the Community at Resident's expense.

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2. Resident agrees to retain, at Resident's cost, a physician or other appropriate medical practitioner to care for Resident's health. Community may facilitate access to this personal physician and such other specialty health and social work services as Resident may require for cognitive impairment. The costs of these services are excluded from Community's monthly fee and are the sole responsibility of Resident.

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Resident will pay a one-time Community Fee of \$3,000.00 three -thousand and 00/100 dollars) that secures the reservation of an Apartment at Community. This payment is refundable minus a \$500.00 (five-hundred and 00/100 dollars) processing fee if Resident never moves into Community or if Resident elects to move out of Community within the first 30 days of residency. If Resident death occurs prior to move-in or within the first 30 days of residency, the entire Community Fee is refundable.

B. Rates

Commencing on the Effective Date, Resident agrees to pay Community a monthly fee of \$3,895.00 (the "Fee"). In addition to the Fee, Resident shall be responsible for each of the miscellaneous charges incurred by Resident that are described in Attachment A.

C. Billing Payment Procedures

Community will bill Resident each month *in advance* for the Fee and miscellaneous charges due and owing under this Agreement. Additional miscellaneous charges, if any, will be added to the subsequent monthly bill. Resident agrees to pay the Fee and any miscellaneous charges covered under this Agreement *on the first day of the month following receipt of the invoice* from The Community.

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If Community is required to perform any services on Resident's behalf that are listed on the Schedule of Costs (Attachment A), or if Community incurs reasonable charges for items or services not listed on the Schedule of Costs that are necessary for Resident's continued health or safety, Resident agrees to reimburse Community any sums paid for the charges or obligations incurred.

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F. Increase in Fees and Charges

The Community may increase the Monthly Fee and/or any or all of the miscellaneous charges described in Attachment A with thirty (30) days advance written notice to Resident (and Resident's authorized legal representative, if applicable), *subject to F(i)-(iii) below*:

(i) The nature and amount of care service provided to Resident is based upon the Resident's current care needs.

(ii) Whenever Resident's level of care is increased or decreased due to a reassessment of need, Resident will be charged for the new level of care beginning on the date

the increased care is (a) provided to Resident and (b) documented in Resident's individualized service plan.

(iii) Whenever Resident's medication management level is increased or decreased due to a reassessment of need, Resident will be charged for the new medication management level beginning on the date the new medication management level is (a) provided to Resident and (b) documented in Resident's individualized service plan.

G. Responsibility for the Fee and Charges while a Resident

The Resident hereby acknowledges and agrees that the Resident is liable for the Fee and all miscellaneous charges accrued or incurred for as long as the Resident resides in the Apartment. For purposes of this Agreement, the Resident will be considered to reside in the Apartment until each of the following take place: (A) the Resident vacates the community, (B) the Resident removes all personal possessions from the Apartment and storage area, and (C) the Apartment is in good condition. If the Apartment requires repair, cleaning, or other maintenance because the Resident failed to vacate the Apartment in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear, The Crossings will take reasonable and prompt action to restore the Apartment to good condition.

IV. TERMINATION AND ROOM HOLD POLICY

A. Term

The Initial Term of this Agreement is for one (1) year beginning on the Effective Date, unless terminated by either party in accordance with the provisions of this Agreement. This Agreement shall automatically continue in effect for subsequent one (1) year terms (each a "Renewal Term") unless either party provides thirty (30) days written notice that it does not wish to renew this Agreement.

B. Termination by Community

1. Community may terminate this Agreement prior to the expiration of its then current term upon thirty (30) days prior written notice to Resident and the Resident's legal representative (if any) for any of the following reasons:

- a. Resident is a danger to herself or others;
- b. Community chooses to close as an assisted living community;
- c. Community determines that Resident's functional level has advanced or declined so that Resident's needs cannot be met at Community in an assisted living facility environment;
- d. If meeting Resident's needs would require a fundamental alteration in Community's program or building site, or would create an undue financial or programmatic burden on the Community;

e. If Resident fails to pay by the due date the Fee and/or any other charge or expense due pursuant to this Agreement; or

f. DHEC initiates proceedings to close Community.

Thirty (30) days advance notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well-being of the Resident or others at Community, as certified by a physician or DHEC.

2. Community will state the reason(s) for termination in the written notice.

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Resident or his/her legal representative (if any) may rescind this Agreement up to seventy-two (72) hours after the initial dated signature and pay only for services received. Rescission of the Agreement must be in writing, addressed to Community's Executive Director, and received by Community within the 72-hour rescission period.

D. Termination by Resident

1. Resident may terminate this Agreement for any reason upon thirty (30) days' prior written notice to The Community.

2. If a Resident or authorized legal representative chooses to voluntarily relocate the Resident from the Community, the Resident or authorized legal representative must give Community written notice of this intent to relocate and terminate the Agreement not less than fourteen (14) days before the Resident's relocation becomes effective. Voluntary relocation does not occur when a Resident seeks to be discharged because a higher level of care is required or because the Resident's health, safety, or welfare is endangered. If the Resident or legal representative fails to give timely notice, Community may charge the Resident, and the Resident agrees to pay, the equivalent of fourteen (14) days occupancy from the earlier of the date of the relocation or the date Community received proper notice of the Resident's intent to relocate. However, if Community is able to fill the bed vacated by the Resident, Community shall cease charging the Resident regardless of the notice given. Community shall notify the Resident in writing as soon as it fills the bed with a new resident. Residents participating in the Optional State Supplementation Program are excluded from the requirements of advance notice as set forth in this paragraph. Any applicable refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

E. Death or Medical Emergency

1. In the event of Resident's death, this Agreement shall terminate effective on the day that the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

2. In the event of a medical emergency requiring Resident to leave Community for an indefinite period of time due to the need for a higher level of care as evidenced by a physician's notice provided to Community, unless an Apartment-hold agreement is reached between Resident and the Community (see Section IV.G below) this Agreement shall terminate on the day the Resident no longer resides in the Apartment as set forth in Section III.G. Resident or Resident's authorized legal representative shall notify Community in writing of the date it intends to terminate this Agreement pursuant to this provision. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

F. Effect of Termination

1. Community retains all other rights and remedies provided under this Agreement or by law upon termination of this Agreement.

2. Resident is liable for the Fee and all miscellaneous charges accrued or incurred prior to the effective date of termination regardless of who terminated the Agreement or, if later, until the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

3. Upon termination, the Apartment will be inspected by Community staff.

4. Resident will be responsible for the following in the event of a termination of this Agreement: (a) all belongings shall be removed by the Resident at Resident's sole cost and expense; (b) in the event of a transfer to another Apartment within the Community, Resident shall sign a new residency agreement for the new Apartment and will begin paying the Fee and any incurred charges equal to the current rate and fee structure for that Apartment; (c) Resident is responsible for all costs incurred by Community to prepare the vacated apartment for occupancy, reasonable wear and tear excepted, and for ensuring the separate storage area, if applicable, is clean and ready to be rented; and, (d) the Fee will discontinue on the effective date of termination or, if later, the day the Resident no longer resides in the Apartment as set forth in Section III.G. If the Resident has personal possessions in two Apartments on the day of the move to another Apartment within the Community, he/she will be responsible for the Fee and any miscellaneous charges for both Apartments until the initial Apartment is fully vacated and surrendered in the condition required by this Agreement.

5. Upon vacating Apartment, Resident shall surrender Apartment (and storage area, if applicable) in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear. In the event that Apartment (or storage area, if applicable) has been left in a state of repair less than that at the time of move-in, Resident shall promptly remit any costs assessed by Community that are necessary to return Apartment to its pre-move-in condition (excepting any normal wear and tear). A charge for each unreturned key (including mailbox key, if applicable) will be made and a charge for replacing locks will be assessed if not all keys to Apartment are returned to The Community. Any property abandoned by Resident (whether in Apartment or in a separate storage area) shall be disposed of by Community after thirty (30) days of the Apartment being vacated at Resident's expense.

Resident shall be responsible for any costs or charges incurred by Community for the removal or disposal of such abandoned items.

6. If, after this Agreement is terminated, Community intends to make a claim against a Resident for damages and/or expenses related to the Apartment or a storage area, then Community must notify Resident in writing of the claim and shall provide a reasonable time period of not less than fourteen (14) calendar days to respond. Resident's response to Community must include payment of any non-disputed amounts.

7. Within thirty (30) days of the effective date of termination or discharge, Community shall give Resident or Resident's authorized legal representative a final statement of accounts. Any amount due or to be refunded pursuant to the Refund Policy set forth in Section IV.H and Attachment F will be issued at that time.

G. Apartment Hold Policy

If Resident leaves Community for an extended period, including, but not limited to times when Resident is on vacation or is transferred to an outside health care facility, and Resident intends to return to the Apartment, Resident must submit a written request to Community to "hold" the Apartment. During these hold periods, Community shall hold the Apartment for the Resident and the Resident shall remain responsible for the Fee and any miscellaneous charges incurred due and owing pursuant to this Agreement.

H. Refund Policy

It is the refund policy of Community to base refunds upon the actual number of days the Resident resides in Community and a reasonable number of bed-hold days (also referred to as Apartment-hold days), except in applicable cases where the Resident or legal representative does not provide timely notice of voluntary relocation. The Refund Policy is included in this Agreement as Attachment F.

V. RESIDENT'S RIGHTS AND OBLIGATIONS

A. Condition of Premises

1. Resident has the right to inspect Apartment prior to execution of this Agreement. At the inspection, Resident and Community's representative shall write a report of any defects and pre-existing damages in the Apartment and specify any actions that will be taken by Community to correct defects or damages. Material defects affecting the habitability of the Apartment shall be corrected prior to occupancy. Failure of Resident to note in writing any defects or damages indicates Resident's acknowledgment that the Apartment is in good repair and accepted in "as is" condition.

2. Any redecoration of Resident's living space, except for redecoration scheduled and performed by Community, must be approved in writing in advance by Community's Executive Director. Any such redecoration is the responsibility of Resident and is solely at Resident's expense. Redecoration includes, but is not limited to, painting, wallpapering

and applying other cosmetic materials. No other changes to the walls, floors or other structures are permitted unless the Executive Director approves them in writing in advance.

B. Right of Entry

In order to maintain the Apartment in a safe and habitable condition, Community reserves the right to enter the Apartment at any time with reasonable notification to Resident for inspection or servicing, or without notification to respond to an emergency. Community's staff will knock, announce himself/herself, and receive permission to enter before entering the Apartment, if possible. Community's staff will also schedule entry in advance, if possible.

Resident is not permitted to change the entry locks for the Apartment, and Resident is required to cooperate with Community to permit entry as necessary. If Resident has a storage space at Community and Community has a need to enter the space, Resident shall cooperate with Community to facilitate such entry. In the event of a health or safety concern, Resident agrees and understands that Community may break the lock to the storage space if Resident is not immediately available to unlock the storage space.

C. Shared Unit

In the event that a shared Apartment is a two-bedroom apartment subject to two (2) Residency Agreements and one (1) Resident vacates the Apartment, the remaining Resident may either (i) continue to reside in the same Apartment, excluding the second bedroom, provided that the Resident continues to pay the full price applicable to the bedroom occupied and subject to the rights of Community to lease the unused bedroom to a third party; or (ii) upon thirty (30) day written notice from Community, Resident may move to an apartment of Community's choosing that is designed for only one (1) resident. In the event Resident elects option (ii), Resident shall execute a new residency agreement for such apartment and Community shall transport Resident's belongings to the new apartment at no cost to Resident. If Resident does not choose option (i) and there is no other single apartment available in Community, Resident understands and agrees that Resident may be asked to vacate the Apartment. Resident acknowledges that choosing option (i) may result in a second Resident moving into the apartment to occupy the second bedroom.

D. Responsibility for Damages

1. Resident shall be responsible for maintaining at all times his or her own insurance coverage, including health, personal property, renter's, liability, automobile (if applicable), and any other insurance coverage in adequate amounts.

2. Any loss to real or personal property of Community due to the fault, negligence or misconduct of Resident, or Resident's guests, invitees or visitors, shall be paid for by Resident upon presentation of a suitable written invoice. Resident is financially responsible for any injury, illness or damage to any other Resident due to the fault, negligence or intentional misconduct of Resident, or Resident's guests, invitees or visitors. The Community assumes no responsibility for the actions or omissions of Resident, whether intentional or unintentional. Resident also releases and holds Community harmless from any injury or damage to Resident or

his/her personal property caused by the actions or omissions of other residents, whether intentional or unintentional.

E. Damage to Premises or Injury to Persons; Disruption of Service

1. Community shall not have any liability to Resident for any damages to or inconvenience experienced by Resident of whatever nature, unless solely caused by negligent act of The Community.

2. In the event Apartment (or Resident's storage area) is damaged (expressly excluding Resident's personal property), and/or fire, floods, windstorm disrupt services, or in the event of other events categorized as "Acts of God," Community shall effect repairs and restore services within a reasonable period of time and at its own expense. If any damage is so extensive as to render the Apartment uninhabitable, the Fee for Apartment shall cease to be applicable until restoration is accomplished. Community shall not be responsible for providing alternative living arrangements during such period of restoration. Should restoration of Apartment not be economically feasible, this Agreement may be immediately terminated upon written notice from Community to Resident at the sole option of Community.

F. No Smoking Policy

Resident shall not smoke in Community, including in the Resident's apartment or anywhere on the Community premises. This prohibition on smoking includes, but is not limited to, cigarettes, e-cigarettes ("vaping"), cigars, hookahs, and the like. *To protect the health and safety of Community's residents and employees, smoking is prohibited in both the indoor or outdoor areas of Community.* Failure to comply with this policy may result in Community's termination of your residency agreement.

G. Resident Rights and Complaint Procedures

Each Resident and the Resident's legal representative (if any) shall know that Resident has the right to lodge a complaint without intimidation, retaliation or threats of retaliation by Community or its staff. A complaint may be filed with parties other than Community including, but not limited to, the DHEC regional office. DHEC may be contacted at the following address and phone number: South Carolina Department of Health & Environmental Control, Health Licensing, 2600 Bull Street, Columbia, SC 29201; (803) 545-4370.

Prior to admission, the Community's management team shall inform the Resident and the Resident's authorized legal representative of the right to file and the procedure for filing a complaint with the DHEC regional office, local ombudsman or protective services unit in the area agency on aging, or law enforcement agency. Community shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter without retaliation or the threat of retaliation.

If a Resident indicates that he/she wishes to make a written complaint, but needs assistance in reducing the complaint to writing, the Community's Executive Director shall assist the Resident with writing the complaint.

The Community's Executive Director shall ensure investigation and resolution of complaints. The Executive Director is the designated staff person responsible for receiving complaints and determining the outcome of the complaint. Within two (2) business days after the submission of a written complaint, a status report shall be provided by Community to the complainant. If the Resident is not the complainant, the Resident and/or the Resident's legal representative shall receive the status report unless contraindicated by a support plan developed by the Executive Director. The status report must indicate the steps the Executive Director is taking to investigate and address the complaint. Within seven (7) days after the submission of a written complaint, the Executive Director shall give the complainant and, if applicable, his/her authorized legal representative, a written decision explaining the Executive Director's investigation findings and the action the Executive Director plans to take to resolve the complaint. If the Resident is not the complainant, the affected Resident shall receive a copy of the decision unless contraindicated by the support plan. If the Executive Director's investigation validates the complaint allegations, a Resident who could potentially be harmed or his/her authorized legal representative shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan. The telephone number of the DHEC regional office, the local ombudsman or protective services unit in the area agency on aging, and the local law enforcement agency shall be posted in large print in a conspicuous and public place in the Community.

A copy of the Resident's Rights is posted in Community and is attached hereto as Attachment D. The complaint procedure in this Section V.G. is applicable to any complaint regarding the enforcement of the Resident's Rights attached hereto as Attachment D. A copy and explanation of the complaint procedure is attached hereto as Attachment E.

VI. MISCELLANEOUS

A. Agreement Personal and Non-Assignable

This Agreement is between Resident and Community. The rights and privileges contained herein shall not be subleased, transferred, or assigned by Resident. No person other than the Resident shall reside in the Apartment without the prior written approval of Community. Community's rights and obligations under this Agreement are transferable and consent of the Resident is not required for the transfer of such rights and obligations.

B. Forms Made as Part of This Agreement

The information submitted by Resident to Community in applying to live in the Apartment are a part of this Agreement, including but not limited to Resident's application, medical information, confidential financial statement, and, if necessary, personal guaranty. Resident acknowledges that Community relies on Resident's statements made on these forms, and warrants that all statements are true, complete and accurate to the best of his or her knowledge.

C. Non-Discrimination

Community operates under the laws that state no distinction will be made on the grounds of sex, religion, creed, handicap, national origin, or any characteristic protected by law in the admission of residents.

D. Guardianship and Powers of Attorney

The Community' owners, directors or employees will not seek and may not be assigned power of attorney or guardianship for a Resident.

E. Notice

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received only when personally delivered or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service, addressed as set forth below:

Harmony at Columbia:

2300 Clemson Rd.
Columbia, SC 29229

Resident:

2300 Clemson Rd.
Ap REDACTED
Columbia, SC 29229

Legal Representative
(contact information provided below)

F. Interpretation and Venue

This Agreement shall be interpreted pursuant to the laws of the State of South Carolina. In the event of a dispute, Community and Resident agree that venue is proper in the courts of Richland County, South Carolina without regard to any conflict of law provisions.

G. Arbitration

Any controversy, dispute or disagreement arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, not resolved by or ineligible for the complaint resolution procedures set forth in Section V.G and Attachment E (Complaint Procedure) of this Agreement shall be settled exclusively by binding arbitration, which shall be conducted in Columbia, South Carolina in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

H. Liability and Release

Resident acknowledges that Community is not an insurer of Resident's person or property. Resident agrees that Community will not be liable to Resident for any personal injury or property damage (including, without limitation, damage to, or loss or theft of, automobiles or personal property of Resident) suffered by Resident or Resident's agents, guests, or invitees, unless the injury or damage is caused by the negligence of Community or its employees or agents. Resident hereby releases Community from liability for any personal injury or property damage suffered by Resident or Resident's agents, guests, or invitees, unless caused by the negligence of Community or its employees or agents. Notwithstanding anything contained in this Agreement to the contrary, no personal liability shall accrue against any agent, subsidiary, or affiliate of Community or any individual, officer, director, member, partner, or fiduciary of the Community, or any heir, personal representative, successor, or assign of the foregoing, nor shall their respective personally owned property be used for the satisfaction of any claims, it being expressly understood and agreed that Resident shall look solely to the assets of Community for the satisfaction of any and all claims arising out of or relating to this Agreement.

I. Other Releases

1. Consent for Audio & Image. Unless otherwise requested in writing by Resident, Resident hereby consents to use of Resident's photograph by Community for promotional purposes, and to be involved in a quality review of Community that may involve taping of voice and image.

2. Consent for Outings. Resident and/or Resident's authorized legal representative, if applicable, hereby consents that Resident is permitted to accompany other residents and staff for outings and events outside of the building.

J. Pet Addendum

If Resident wishes to have a pet at the Community, Resident shall execute the Pet Addendum, Attachment B to this Agreement and incorporated herein by reference. Resident agrees to comply with all of Community's rules regarding the maintenance of such pets, and shall hold Community harmless from any damage or injuries caused by such pet. Notwithstanding any provision to the contrary in such Pet Addendum, Resident shall be solely responsible for all care and costs associated with his/her pet.

K. Policies and Procedures

1. Community shall have the right to issue general rules for the well-being of Community's Residents. It is Community's intent that any general rules issued will not conflict with the Resident's Rights at Attachment D, or other rights and assurances addressed in state regulation. Nevertheless, if a conflict arises between any general rules and the Resident's Rights at Attachment D or other rights and assurances in state regulation, the Resident's Rights and state regulation shall control. Community may amend the rules and will notify Resident of any amendments or modifications thirty (30) days prior to the effective date of such change. Resident agrees to observe the regulations, policies and procedures that Community may from

time to time adopt. Community and Resident agree that such regulations, policies and procedures shall be treated as if expressly incorporated into this Agreement. Community may make reasonable rule changes in writing, which will be distributed to all residents with reasonable notice prior to implementation of the change. Resident shall be provided the opportunity to provide input into any changes in rules, regulations, policies and procedures adopted pursuant to this Section VI.K. Community reserves the right to control the method, manner, and times of operation for the general parking areas and the entry by privately employed personnel, agents, furniture movers, solicitors, and delivery personnel.

2. **Resident shall not give gifts, personal property, or money to employees of the Community.** Also, Resident shall not make private or separate contractual arrangements with Community's employees or give gratuities to Community's employees.

3. All maintenance work requests must come through the Community's Concierge Desk.

L. Recording Devices

Resident and/or Resident's authorized legal representative, if applicable, acknowledges and agrees a recording device such as a "nanny cam" or other recording device shall not be installed in Resident's apartment without prior written consent of Community's Executive Director, General Manager or designee. Resident and/or Resident's authorized legal representative also acknowledges and agrees any use of such a recording device must comply in all respects with applicable state and federal law. Resident and/or Resident's authorized legal representative further acknowledges and agrees Resident and/or Resident's authorized legal representative is solely liable for use of a recording device in Resident's apartment that is not in accordance with applicable state and federal law.

M. Entire Agreement

This Agreement, any exhibits and addenda to this Agreement, including those identified below and which are incorporated herein, and related application forms, shall constitute the entire understanding of the terms and conditions governing Resident's residency in Apartment. No person has the power to make oral modifications, amendments, or additions to this Agreement. If this Agreement is to be amended, such amendment must be reduced to writing, executed by Resident and Community, and attached to all copies of the Agreement. Community will provide at least thirty (30) days' advance notice, in writing, if it proposes to amend the Agreement. The exception to the foregoing shall be if DHEC or another state agency changes the regulations governing Community as an assisted living community, or if there are any other federal or state changes. In either event, Community shall modify this Agreement to comport with those requirements.

 X Attachment A (Schedule of Costs)
 N/A Pet Maintenance Addendum (attached)
 N/A Attachment C (List of Services)

☒ Addendum D (Resident's Rights)
☒ Addendum E (Complaint Procedures)
☒ Addendum F (Refund Policy)
☐ Additional Vehicle Parking Addendum
☐ Service Animal Addendum
☐ Motorized Cart Addendum
☒ _____ Addendum

VII. SIGNATURES

The undersigned, having read the foregoing Agreement, along with all exhibits and attachments thereto, states he/she/they understand and agree to the terms and conditions set forth in this Agreement, and acknowledge the receipt of a copy of this Agreement. An authorized Community staff person reviewed the contents of this Agreement with Resident and Resident's authorized legal representative, if any, prior to its execution.

VIII. RESIDENT'S LEGAL REPRESENTATIVE AND/OR DESIGNATED PERSON

Resident's legal representative, if applicable, is to be notified in the event of an emergency, termination of services by Community, closure of Community as an assisted living facility, or other situations designated by Resident. In addition, Resident and/or Resident's legal representative has also identified a Designated Person to be so notified (this is optional).

Contact Information of Authorized Legal Representative:

Name: *A. Juan Wilson*

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Street:

City:

E-Mail:

Primary:

Contact Information of Designated Person (at option of Resident and/or Legal Representative):

Name: _____

Street: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

Primary Telephone: _____ Alternative Telephone: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
SALLIE WILSON AS GUARDIAN FOR	)	CASE NO. 2023-CP-40-02608
GLADYS GRAHAM,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT COLUMBIA AL
	)	OPERATIONS, LLC D/B/A HARMONY
MEDICAL UNIVERSITY HOSPITAL	)	COLLECTION AT COLUMBIA (AL/MC),
AUTHORITY D/B/A MUSC HEALTH	)	AND KAREN BOWMAN’S MOTION TO
COLUMBIA MEDICAL CENTER	)	COMPEL ARBITRATION
DOWNTOWN, COLUMBIA AL	)	
OPERATIONS, LLC D/B/A HARMONY	)	
COLLECTION AT COLUMBIA	)	
(AL/MC), AND KAREN BOWMAN,	)	
	)	
DEFENDANT.	)	
	)	

TO: D. NATHAN HUGHEY, A. STUART HUDSON, AND BRADLEY H. BANYAS,
ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendants Columbia AL Operations, LLC d/b/a Harmony Collections at Columbia (AL/MC) (“the Facility”) and Karen Bowman (jointly “these Defendants”), by and through their undersigned attorneys, will move before this Honorable Court at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action and compelling arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* and South Carolina Rules of Civil Procedure 12(b)(1) and (6). These Defendants base this Motion on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Gladys Graham’s admission to the Facility. (See “Assisted Living Residency Agreement,” attached as **Exhibit A.**) The Arbitration Agreement is expressly binding on these Defendants and Plaintiff and requires that Plaintiff’s claims be submitted to arbitration.

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

CLEMENT RIVERS, LLP

By: /s/ D. Jay Davis, Jr.

D. Jay Davis, Jr

SC Bar No. 12084

Matthew O. Riddle

SC Bar No. 76650

P.O. Box 993, Charleston, SC 29402

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

mriddle@ycrlaw.com; gdotterer@ycrlaw.com

Attorneys for the Defendant Columbia AL

Operations, LLC D/B/A Harmony Collection at

Columbia (AL/MC) and Karen Bowman

Charleston, South Carolina

Dated: November 26, 2024

NOTICE REQUIRED BY SECTION 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS, 1976. IS HEREBY GIVEN THAT THE FOLLOWING AGREEMENT IS SUBJECT TO ARBITRATION.

HARMONY AT COLUMBIA

**Assisted Living Residency Agreement
Columbia, South Carolina**

This Agreement ("Agreement") is made this 25th of March, and effective on March 31st, 2022 (the "Effective Date") by and between Columbia AL Operations LLC, a Virginia limited liability company, d/b/a Harmony at Columbia ("Community" or "Facility") and Gladys Graham ("Resident").

I. PURPOSE

A. Community agrees to furnish Resident with an assisted living apartment. Community is located at 2300 Clemson Rd. Columbia, SC 29229. The services that are available to Resident pursuant to this Agreement are described herein and may, in certain circumstances, require additional payment by Resident.

B. Community assisted living units are licensed by the South Carolina Department of Health and Environmental Control ("DHEC") as an assisted living community.

C. Resident's preadmission screening determined that the needs of Resident can be met by the services provided at Community pursuant to this Agreement.

D. The Resident Physical Examination must be completed by a South Carolina licensed Physician within 30 days prior to date of admission. Community shall develop and implement an initial individual care plan within seventy-two (72) hours after admission and a follow-up individual care plan within seven (7) days after admission.

E. Resident has completed the application forms referred to in this Agreement, and warrants that all responses contained in the application forms are true, correct and complete.

In consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

II. DESCRIPTION OF LEASED PREMISES

A. Premises

Community leases to Resident and Resident leases from Community Apartment¹ (hereinafter "Apartment"). Resident shall have the right to occupy and use Apartment for Resident's private use, subject to the terms of this Agreement. Occupancy shall be solely for residential purposes and not for any commercial purpose or any other purpose that is unlawful, disrespectful or adversely affects the operations of The Community. The buildings,

REDACTED

land and all common areas operated by Community are hereinafter referred to as the "Community."

2. When two (2) residents reside together in an Apartment, they are considered to be Joint Residents. Each Joint Resident is required to meet the Community's financial obligations for entrance to the Community.

B. Accommodations

1. Resident shall be provided with a description of the dimensions of the Apartment upon execution of this Agreement.

2. Resident may have and use television(s), radio(s) and a microwave oven (if approved by the Healthcare Coordinator) in the Apartment. Space heaters, kerosene burning heaters, hot-plates or similar devices are prohibited. Community may limit the number of personal possessions that Resident retains in Apartment for the health and safety of other residents.

3. Community shall furnish electricity, heating/ventilation/air conditioning and hot and cold water for Apartment at no additional expense to Resident.

4. Community shall provide wiring within Resident's Apartment for a private telephone and cable television accessibility. The purchase of private telephone service and/or cable television service is at the option and at the sole cost and expense of Resident. Community is not responsible for loss of service relating to telephone and/or cable television. Long-distance telephone call charges are Resident's responsibility. If the need arises to use a Community phone line for long distance calls, the charges will be captured on the Resident's monthly bill.

5. Community is not responsible for any of the following costs that may be incurred by Resident: beauty / barber shop visits; pharmaceutical prescriptions, durable medical equipment and personal care supplies; physician visits and other healthcare providers; licensed physical, occupational and speech therapy; other personal expenses not included in Community Fee; and, all other services accessible to Resident but not provided by Community.

6. Resident shall properly respect and maintain Apartment in a clean and orderly condition. Upon written notification to Resident of any unsanitary or unsafe conditions Community may, at Resident's expense, enter the Apartment and remedy such conditions. Written approval from Community must be obtained for the placement of any personal items outside Apartment. Inappropriate items outside an Apartment, as determined at the sole discretion of The Community, must be removed at Resident's expense.

7. In addition to entrances, hallways, and stairways, Resident has the right to use Community common areas.

C. Services

Community will provide the Resident with the following Services as part of the Resident's monthly fee:

- Assistance with activities of daily living, including personal hygiene and instrumental activities of daily living as indicated in Resident's assessment and individualized service plan (an associated "Level of Care" charge and/or other care charges may be assessed as indicated on Attachment A);
- Assistance, as needed, with medication prescribed for Resident's self-administration. If Resident is able to self-administer medications, as determined by Resident's physician and community assessment, medication must be kept locked in a safe and secure location in Apartment (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- Administration of medication prescribed for those residents unable to self-administer medications (an associated "Medication Management" charge may be assessed as indicated on Attachment A);
- 24-hour emergency call response;
- Monitoring and supervision of Resident per individual service plan;
- Assistance with securing medical care if Resident's health status declines;
- Arranging emergency health care services. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) at Resident's expense, whenever such services are deemed appropriate and necessary by Community. If possible, this will be with Resident's or authorized legal representative's choice and consent. However, in an emergency Community has the right to transfer the Resident immediately to a health care facility it deems appropriate for the type of care required.
- Assistance, as requested, with making appointments for medical, dental, nursing or mental health services;
- Assistance with scheduling transportation to and from medical and dental appointments;
- Scheduled transportation on community transportation days (additional transportation will require an additional fee per Attachment A);
- Breakfast, lunch and dinner served each day in Community's dining room;
- Daily snacks;
- Weekly housekeeping of Apartment consisting of vacuuming and dusting cleared surfaces and cleaning bathroom and kitchenette areas;
- Regular trash removal of up to two trash containers per Apartment, not to include disposal of large items bigger than Apartment's trash containers (additional trash will require an additional fee per Attachment A);
- Laundry services for bed linens, towels and personal clothing up to two loads per week (additional laundry will require an additional fee per Attachment A);
- Social, cultural, and recreational activities at Community (some of which require additional fees, if a Resident chooses to participate); and
- Utilities excluding private phone and cable TV / Internet.

D. Additional Services

Community also agrees to provide the following additional services for Resident:

1. **Parking** One (1) above ground parking space is available, at no additional charge, for each resident with a car who is able to drive his or her own vehicle. A resident with more than one (1) car who would like to park in the Community shall be assessed an additional monthly fee as described in Attachment A. Resident shall maintain each vehicle in operable condition and keep current all registrations, licenses, insurance and inspections as required by law. Abandoned and/or unauthorized vehicles may be towed from the Community at Resident's expense.

2. **Maintenance and Repairs** Community is responsible for necessary repairs, maintenance, and replacement of The Community's property and equipment due to reasonable wear and tear. Maintenance, repair, or replacement of any property damaged through the damage or neglect of Resident will be the sole responsibility of Resident. Any reasonable costs associated with Resident's damage or neglect will be billed to Resident directly.

3. **Personal Property** Community does not provide personal property insurance for Resident's belongings or liability insurance for Resident's actions. It is recommended that Resident obtain property and liability insurance coverage to protect his/her personal belongings and against claims regarding his/her actions. Resident has the right to place personal property in the Unit at his/her own risk. *The Facility shall not be liable for lost, stolen, or damaged personal property or for loss due to fire, windstorms, or any other hazard, unless the loss of such property is due to the Facility's willful misconduct, or negligence, or as required by law.* It is recommended that Resident obtain insurance coverage (commonly referred to as "renter's insurance"), naming the Facility as an "additional insured," with minimum limits of \$100,000 for liability insurance coverage and minimum limits of \$15,000 for contents coverage.


Resident Initials

2nd Resident initials

4. **Security** Community shall provide reasonable security for the Facility on a twenty-four (24) hours, seven (7) days a week basis. The Community is equipped with exterior lockable doors and windows and may have interior and exterior video surveillance in some areas. Community staff are available at all times to request emergency medical and protective services such as 911; police and ambulance service. Community does not furnish emergency medical and protective services, and any costs related thereto are the sole responsibility of the Resident.

5. **Local Transportation** Community will furnish pre-scheduled transportation to pre-determined local areas. Transportation costs other than those incurred for regularly scheduled activities, are the responsibility of Resident, and shall be assessed according to the Schedule of Costs, included in this Agreement as Attachment A and incorporated herein.

6. **Building and Grounds** Community will maintain all buildings and grounds, lighted parking facilities, and outdoor recreational facilities.

7. **Changes to Miscellaneous Items and Charges** Community reserves the right to amend or delete items in Attachment A upon thirty (30) days prior written notice to Resident.

E. Health Services

1. The services provided to Resident pursuant to this Agreement are regulated by DHEC as an assisted living community. In addition to the physical examination which shall be completed thirty (30) days prior to the Resident's admission to The Community, Resident shall have a physical examination at least annually or sooner if the Resident's medical condition changes prior to the annual physical examination.

2. Resident agrees to retain, at Resident's cost, a physician or other appropriate medical practitioner to care for Resident's health. Community may facilitate access to this personal physician and such other specialty health and social work services as Resident may require for cognitive impairment. The costs of these services are excluded from Community's monthly fee and are the sole responsibility of Resident.

3. Community shall assist Resident with securing medical care if Resident's health status declines.

4. If Resident has a serious medical or dental condition, Community shall make reasonable efforts to obtain consent for treatment from Resident or his/her authorized legal representative, if any.

5. Resident hereby authorizes Community to obtain emergency health care services (including ambulance transportation) whenever it is deemed necessary at the reasonable discretion of Community's staff. The staff will attempt to discuss this choice with the Resident, if possible. In an emergency, Community may transfer Resident immediately to a health care facility that it deems more appropriate for the type of care required. The Resident shall be solely responsible for the cost of any emergency health care services.

III. FINANCIAL AGREEMENT

A. Community Fee

Resident will pay a one-time Community Fee of \$3,000.00 three -thousand and 00/100 dollars) that secures the reservation of an Apartment at Community. This payment is refundable minus a \$500.00 (five-hundred and 00/100 dollars) processing fee if Resident never moves into Community or if Resident elects to move out of Community within the first 30 days of residency. If Resident death occurs prior to move-in or within the first 30 days of residency, the entire Community Fee is refundable.

B. Rates

Commencing on the Effective Date, Resident agrees to pay Community a monthly fee of \$3,895.00 (the "Fee"). In addition to the Fee, Resident shall be responsible for each of the miscellaneous charges incurred by Resident that are described in Attachment A.

C. Billing Payment Procedures

Community will bill Resident each month *in advance* for the Fee and miscellaneous charges due and owing under this Agreement. Additional miscellaneous charges, if any, will be added to the subsequent monthly bill. Resident agrees to pay the Fee and any miscellaneous charges covered under this Agreement *on the first day of the month following receipt of the invoice* from The Community.

D. Responsibility for Payment of Needed Services

If Community is required to perform any services on Resident's behalf that are listed on the Schedule of Costs (Attachment A), or if Community incurs reasonable charges for items or services not listed on the Schedule of Costs that are necessary for Resident's continued health or safety, Resident agrees to reimburse Community any sums paid for the charges or obligations incurred.

E. Late Payments

If a Fee or miscellaneous charge incurred and billed on the monthly statement is not paid by the fifth (5th) day of the month it is due, the owed amount will be subject to interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted under South Carolina law, whichever is greater. If Resident defaults on paying any of the fees or charges billed on the monthly statement, Community may, at its discretion, refer the unpaid invoices for collection. If this occurs, Resident shall also be liable for the payment of all court costs, services of process, litigation expenses and/or reasonable attorney's fees incurred for the collection of the debt. Bounced checks and/or insufficient funds requiring further Community follow up will incur a miscellaneous charge as described in Attachment A. All payments received will first be applied towards interest and collection costs, if any.

F. Increase in Fees and Charges

The Community may increase the Monthly Fee and/or any or all of the miscellaneous charges described in Attachment A with thirty (30) days advance written notice to Resident (and Resident's authorized legal representative, if applicable), *subject to F(i)-(iii) below*:

(i) The nature and amount of care service provided to Resident is based upon the Resident's current care needs.

(ii) Whenever Resident's level of care is increased or decreased due to a reassessment of need, Resident will be charged for the new level of care beginning on the date

the increased care is (a) provided to Resident and (b) documented in Resident's individualized service plan.

(iii) Whenever Resident's medication management level is increased or decreased due to a reassessment of need, Resident will be charged for the new medication management level beginning on the date the new medication management level is (a) provided to Resident and (b) documented in Resident's individualized service plan.

G. Responsibility for the Fee and Charges while a Resident

The Resident hereby acknowledges and agrees that the Resident is liable for the Fee and all miscellaneous charges accrued or incurred for as long as the Resident resides in the Apartment. For purposes of this Agreement, the Resident will be considered to reside in the Apartment until each of the following take place: (A) the Resident vacates the community, (B) the Resident removes all personal possessions from the Apartment and storage area, and (C) the Apartment is in good condition. If the Apartment requires repair, cleaning, or other maintenance because the Resident failed to vacate the Apartment in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear, The Crossings will take reasonable and prompt action to restore the Apartment to good condition.

IV. TERMINATION AND ROOM HOLD POLICY

A. Term

The Initial Term of this Agreement is for one (1) year beginning on the Effective Date, unless terminated by either party in accordance with the provisions of this Agreement. This Agreement shall automatically continue in effect for subsequent one (1) year terms (each a "Renewal Term") unless either party provides thirty (30) days written notice that it does not wish to renew this Agreement.

B. Termination by Community

1. Community may terminate this Agreement prior to the expiration of its then current term upon thirty (30) days prior written notice to Resident and the Resident's legal representative (if any) for any of the following reasons:

- a. Resident is a danger to herself or others;
- b. Community chooses to close as an assisted living community;
- c. Community determines that Resident's functional level has advanced or declined so that Resident's needs cannot be met at Community in an assisted living facility environment;
- d. If meeting Resident's needs would require a fundamental alteration in Community's program or building site, or would create an undue financial or programmatic burden on the Community;

e. If Resident fails to pay by the due date the Fee and/or any other charge or expense due pursuant to this Agreement; or

f. DHEC initiates proceedings to close Community.

Thirty (30) days advance notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well-being of the Resident or others at Community, as certified by a physician or DHEC.

2. Community will state the reason(s) for termination in the written notice.

C. Rescission of Agreement

Resident or his/her legal representative (if any) may rescind this Agreement up to seventy-two (72) hours after the initial dated signature and pay only for services received. Rescission of the Agreement must be in writing, addressed to Community's Executive Director, and received by Community within the 72-hour rescission period.

D. Termination by Resident

1. Resident may terminate this Agreement for any reason upon thirty (30) days' prior written notice to The Community.

2. If a Resident or authorized legal representative chooses to voluntarily relocate the Resident from the Community, the Resident or authorized legal representative must give Community written notice of this intent to relocate and terminate the Agreement not less than fourteen (14) days before the Resident's relocation becomes effective. Voluntary relocation does not occur when a Resident seeks to be discharged because a higher level of care is required or because the Resident's health, safety, or welfare is endangered. If the Resident or legal representative fails to give timely notice, Community may charge the Resident, and the Resident agrees to pay, the equivalent of fourteen (14) days occupancy from the earlier of the date of the relocation or the date Community received proper notice of the Resident's intent to relocate. However, if Community is able to fill the bed vacated by the Resident, Community shall cease charging the Resident regardless of the notice given. Community shall notify the Resident in writing as soon as it fills the bed with a new resident. Residents participating in the Optional State Supplementation Program are excluded from the requirements of advance notice as set forth in this paragraph. Any applicable refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

E. Death or Medical Emergency

1. In the event of Resident's death, this Agreement shall terminate effective on the day that the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

2. In the event of a medical emergency requiring Resident to leave Community for an indefinite period of time due to the need for a higher level of care as evidenced by a physician's notice provided to Community, unless an Apartment-hold agreement is reached between Resident and the Community (see Section IV.G below) this Agreement shall terminate on the day the Resident no longer resides in the Apartment as set forth in Section III.G. Resident or Resident's authorized legal representative shall notify Community in writing of the date it intends to terminate this Agreement pursuant to this provision. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

F. Effect of Termination

1. Community retains all other rights and remedies provided under this Agreement or by law upon termination of this Agreement.

2. Resident is liable for the Fee and all miscellaneous charges accrued or incurred prior to the effective date of termination regardless of who terminated the Agreement or, if later, until the Resident no longer resides in the Apartment as set forth in Section III.G. Refunds will be made consistent with the Refund Policy as set forth in Section IV.H and Attachment F.

3. Upon termination, the Apartment will be inspected by Community staff.

4. Resident will be responsible for the following in the event of a termination of this Agreement: (a) all belongings shall be removed by the Resident at Resident's sole cost and expense; (b) in the event of a transfer to another Apartment within the Community, Resident shall sign a new residency agreement for the new Apartment and will begin paying the Fee and any incurred charges equal to the current rate and fee structure for that Apartment; (c) Resident is responsible for all costs incurred by Community to prepare the vacated apartment for occupancy, reasonable wear and tear excepted, and for ensuring the separate storage area, if applicable, is clean and ready to be rented; and, (d) the Fee will discontinue on the effective date of termination or, if later, the day the Resident no longer resides in the Apartment as set forth in Section III.G. If the Resident has personal possessions in two Apartments on the day of the move to another Apartment within the Community, he/she will be responsible for the Fee and any miscellaneous charges for both Apartments until the initial Apartment is fully vacated and surrendered in the condition required by this Agreement.

5. Upon vacating Apartment, Resident shall surrender Apartment (and storage area, if applicable) in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear. In the event that Apartment (or storage area, if applicable) has been left in a state of repair less than that at the time of move-in, Resident shall promptly remit any costs assessed by Community that are necessary to return Apartment to its pre-move-in condition (excepting any normal wear and tear). A charge for each unreturned key (including mailbox key, if applicable) will be made and a charge for replacing locks will be assessed if not all keys to Apartment are returned to The Community. Any property abandoned by Resident (whether in Apartment or in a separate storage area) shall be disposed of by Community after thirty (30) days of the Apartment being vacated at Resident's expense.

Resident shall be responsible for any costs or charges incurred by Community for the removal or disposal of such abandoned items.

6. If, after this Agreement is terminated, Community intends to make a claim against a Resident for damages and/or expenses related to the Apartment or a storage area, then Community must notify Resident in writing of the claim and shall provide a reasonable time period of not less than fourteen (14) calendar days to respond. Resident's response to Community must include payment of any non-disputed amounts.

7. Within thirty (30) days of the effective date of termination or discharge, Community shall give Resident or Resident's authorized legal representative a final statement of accounts. Any amount due or to be refunded pursuant to the Refund Policy set forth in Section IV.H and Attachment F will be issued at that time.

G. Apartment Hold Policy

If Resident leaves Community for an extended period, including, but not limited to times when Resident is on vacation or is transferred to an outside health care facility, and Resident intends to return to the Apartment, Resident must submit a written request to Community to "hold" the Apartment. During these hold periods, Community shall hold the Apartment for the Resident and the Resident shall remain responsible for the Fee and any miscellaneous charges incurred due and owing pursuant to this Agreement.

H. Refund Policy

It is the refund policy of Community to base refunds upon the actual number of days the Resident resides in Community and a reasonable number of bed-hold days (also referred to as Apartment-hold days), except in applicable cases where the Resident or legal representative does not provide timely notice of voluntary relocation. The Refund Policy is included in this Agreement as Attachment F.

V. RESIDENT'S RIGHTS AND OBLIGATIONS

A. Condition of Premises

1. Resident has the right to inspect Apartment prior to execution of this Agreement. At the inspection, Resident and Community's representative shall write a report of any defects and pre-existing damages in the Apartment and specify any actions that will be taken by Community to correct defects or damages. Material defects affecting the habitability of the Apartment shall be corrected prior to occupancy. Failure of Resident to note in writing any defects or damages indicates Resident's acknowledgment that the Apartment is in good repair and accepted in "as is" condition.

2. Any redecoration of Resident's living space, except for redecoration scheduled and performed by Community, must be approved in writing in advance by Community's Executive Director. Any such redecoration is the responsibility of Resident and is solely at Resident's expense. Redecoration includes, but is not limited to, painting, wallpapering

and applying other cosmetic materials. No other changes to the walls, floors or other structures are permitted unless the Executive Director approves them in writing in advance.

B. Right of Entry

In order to maintain the Apartment in a safe and habitable condition, Community reserves the right to enter the Apartment at any time with reasonable notification to Resident for inspection or servicing, or without notification to respond to an emergency. Community's staff will knock, announce himself/herself, and receive permission to enter before entering the Apartment, if possible. Community's staff will also schedule entry in advance, if possible.

Resident is not permitted to change the entry locks for the Apartment, and Resident is required to cooperate with Community to permit entry as necessary. If Resident has a storage space at Community and Community has a need to enter the space, Resident shall cooperate with Community to facilitate such entry. In the event of a health or safety concern, Resident agrees and understands that Community may break the lock to the storage space if Resident is not immediately available to unlock the storage space.

C. Shared Unit

In the event that a shared Apartment is a two-bedroom apartment subject to two (2) Residency Agreements and one (1) Resident vacates the Apartment, the remaining Resident may either (i) continue to reside in the same Apartment, excluding the second bedroom, provided that the Resident continues to pay the full price applicable to the bedroom occupied and subject to the rights of Community to lease the unused bedroom to a third party; or (ii) upon thirty (30) day written notice from Community, Resident may move to an apartment of Community's choosing that is designed for only one (1) resident. In the event Resident elects option (ii), Resident shall execute a new residency agreement for such apartment and Community shall transport Resident's belongings to the new apartment at no cost to Resident. If Resident does not choose option (i) and there is no other single apartment available in Community, Resident understands and agrees that Resident may be asked to vacate the Apartment. Resident acknowledges that choosing option (i) may result in a second Resident moving into the apartment to occupy the second bedroom.

D. Responsibility for Damages

1. Resident shall be responsible for maintaining at all times his or her own insurance coverage, including health, personal property, renter's, liability, automobile (if applicable), and any other insurance coverage in adequate amounts.

2. Any loss to real or personal property of Community due to the fault, negligence or misconduct of Resident, or Resident's guests, invitees or visitors, shall be paid for by Resident upon presentation of a suitable written invoice. Resident is financially responsible for any injury, illness or damage to any other Resident due to the fault, negligence or intentional misconduct of Resident, or Resident's guests, invitees or visitors. The Community assumes no responsibility for the actions or omissions of Resident, whether intentional or unintentional. Resident also releases and holds Community harmless from any injury or damage to Resident or

his/her personal property caused by the actions or omissions of other residents, whether intentional or unintentional.

E. Damage to Premises or Injury to Persons; Disruption of Service

1. Community shall not have any liability to Resident for any damages to or inconvenience experienced by Resident of whatever nature, unless solely caused by negligent act of The Community.

2. In the event Apartment (or Resident's storage area) is damaged (expressly excluding Resident's personal property), and/or fire, floods, windstorm disrupt services, or in the event of other events categorized as "Acts of God," Community shall effect repairs and restore services within a reasonable period of time and at its own expense. If any damage is so extensive as to render the Apartment uninhabitable, the Fee for Apartment shall cease to be applicable until restoration is accomplished. Community shall not be responsible for providing alternative living arrangements during such period of restoration. Should restoration of Apartment not be economically feasible, this Agreement may be immediately terminated upon written notice from Community to Resident at the sole option of Community.

F. No Smoking Policy

Resident shall not smoke in Community, including in the Resident's apartment or anywhere on the Community premises. This prohibition on smoking includes, but is not limited to, cigarettes, e-cigarettes ("vaping"), cigars, hookahs, and the like. *To protect the health and safety of Community's residents and employees, smoking is prohibited in both the indoor or outdoor areas of Community.* Failure to comply with this policy may result in Community's termination of your residency agreement.

G. Resident Rights and Complaint Procedures

Each Resident and the Resident's legal representative (if any) shall know that Resident has the right to lodge a complaint without intimidation, retaliation or threats of retaliation by Community or its staff. A complaint may be filed with parties other than Community including, but not limited to, the DHEC regional office. DHEC may be contacted at the following address and phone number: South Carolina Department of Health & Environmental Control, Health Licensing, 2600 Bull Street, Columbia, SC 29201; (803) 545-4370.

Prior to admission, the Community's management team shall inform the Resident and the Resident's authorized legal representative of the right to file and the procedure for filing a complaint with the DHEC regional office, local ombudsman or protective services unit in the area agency on aging, or law enforcement agency. Community shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter without retaliation or the threat of retaliation.

If a Resident indicates that he/she wishes to make a written complaint, but needs assistance in reducing the complaint to writing, the Community's Executive Director shall assist the Resident with writing the complaint.

The Community's Executive Director shall ensure investigation and resolution of complaints. The Executive Director is the designated staff person responsible for receiving complaints and determining the outcome of the complaint. Within two (2) business days after the submission of a written complaint, a status report shall be provided by Community to the complainant. If the Resident is not the complainant, the Resident and/or the Resident's legal representative shall receive the status report unless contraindicated by a support plan developed by the Executive Director. The status report must indicate the steps the Executive Director is taking to investigate and address the complaint. Within seven (7) days after the submission of a written complaint, the Executive Director shall give the complainant and, if applicable, his/her authorized legal representative, a written decision explaining the Executive Director's investigation findings and the action the Executive Director plans to take to resolve the complaint. If the Resident is not the complainant, the affected Resident shall receive a copy of the decision unless contraindicated by the support plan. If the Executive Director's investigation validates the complaint allegations, a Resident who could potentially be harmed or his/her authorized legal representative shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan. The telephone number of the DHEC regional office, the local ombudsman or protective services unit in the area agency on aging, and the local law enforcement agency shall be posted in large print in a conspicuous and public place in the Community.

A copy of the Resident's Rights is posted in Community and is attached hereto as Attachment D. The complaint procedure in this Section V.G. is applicable to any complaint regarding the enforcement of the Resident's Rights attached hereto as Attachment D. A copy and explanation of the complaint procedure is attached hereto as Attachment E.

VI. MISCELLANEOUS

A. Agreement Personal and Non-Assignable

This Agreement is between Resident and Community. The rights and privileges contained herein shall not be subleased, transferred, or assigned by Resident. No person other than the Resident shall reside in the Apartment without the prior written approval of Community. Community's rights and obligations under this Agreement are transferable and consent of the Resident is not required for the transfer of such rights and obligations.

B. Forms Made as Part of This Agreement

The information submitted by Resident to Community in applying to live in the Apartment are a part of this Agreement, including but not limited to Resident's application, medical information, confidential financial statement, and, if necessary, personal guaranty. Resident acknowledges that Community relies on Resident's statements made on these forms, and warrants that all statements are true, complete and accurate to the best of his or her knowledge.

C. Non-Discrimination

Community operates under the laws that state no distinction will be made on the grounds of sex, religion, creed, handicap, national origin, or any characteristic protected by law in the admission of residents.

D. Guardianship and Powers of Attorney

The Community' owners, directors or employees will not seek and may not be assigned power of attorney or guardianship for a Resident.

E. Notice

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received only when personally delivered or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service, addressed as set forth below:

Harmony at Columbia:

2300 Clemson Rd.
Columbia, SC 29229

Resident:

2300 Clemson Rd.
REDACTED
Columbia, SC 29229

Legal Representative
(contact information provided below)

F. Interpretation and Venue

This Agreement shall be interpreted pursuant to the laws of the State of South Carolina. In the event of a dispute, Community and Resident agree that venue is proper in the courts of Richland County, South Carolina without regard to any conflict of law provisions.

G. Arbitration

Any controversy, dispute or disagreement arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, not resolved by or ineligible for the complaint resolution procedures set forth in Section V.G and Attachment E (Complaint Procedure) of this Agreement shall be settled exclusively by binding arbitration, which shall be conducted in Columbia, South Carolina in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

H. Liability and Release

Resident acknowledges that Community is not an insurer of Resident's person or property. Resident agrees that Community will not be liable to Resident for any personal injury or property damage (including, without limitation, damage to, or loss or theft of, automobiles or personal property of Resident) suffered by Resident or Resident's agents, guests, or invitees, unless the injury or damage is caused by the negligence of Community or its employees or agents. Resident hereby releases Community from liability for any personal injury or property damage suffered by Resident or Resident's agents, guests, or invitees, unless caused by the negligence of Community or its employees or agents. Notwithstanding anything contained in this Agreement to the contrary, no personal liability shall accrue against any agent, subsidiary, or affiliate of Community or any individual, officer, director, member, partner, or fiduciary of the Community, or any heir, personal representative, successor, or assign of the foregoing, nor shall their respective personally owned property be used for the satisfaction of any claims, it being expressly understood and agreed that Resident shall look solely to the assets of Community for the satisfaction of any and all claims arising out of or relating to this Agreement.

I. Other Releases

1. Consent for Audio & Image. Unless otherwise requested in writing by Resident, Resident hereby consents to use of Resident's photograph by Community for promotional purposes, and to be involved in a quality review of Community that may involve taping of voice and image.

2. Consent for Outings. Resident and/or Resident's authorized legal representative, if applicable, hereby consents that Resident is permitted to accompany other residents and staff for outings and events outside of the building.

J. Pet Addendum

If Resident wishes to have a pet at the Community, Resident shall execute the Pet Addendum, Attachment B to this Agreement and incorporated herein by reference. Resident agrees to comply with all of Community's rules regarding the maintenance of such pets, and shall hold Community harmless from any damage or injuries caused by such pet. Notwithstanding any provision to the contrary in such Pet Addendum, Resident shall be solely responsible for all care and costs associated with his/her pet.

K. Policies and Procedures

1. Community shall have the right to issue general rules for the well-being of Community's Residents. It is Community's intent that any general rules issued will not conflict with the Resident's Rights at Attachment D, or other rights and assurances addressed in state regulation. Nevertheless, if a conflict arises between any general rules and the Resident's Rights at Attachment D or other rights and assurances in state regulation, the Resident's Rights and state regulation shall control. Community may amend the rules and will notify Resident of any amendments or modifications thirty (30) days prior to the effective date of such change. Resident agrees to observe the regulations, policies and procedures that Community may from

time to time adopt. Community and Resident agree that such regulations, policies and procedures shall be treated as if expressly incorporated into this Agreement. Community may make reasonable rule changes in writing, which will be distributed to all residents with reasonable notice prior to implementation of the change. Resident shall be provided the opportunity to provide input into any changes in rules, regulations, policies and procedures adopted pursuant to this Section VLK. Community reserves the right to control the method, manner, and times of operation for the general parking areas and the entry by privately employed personnel, agents, furniture movers, solicitors, and delivery personnel.

2. **Resident shall not give gifts, personal property, or money to employees of the Community.** Also, Resident shall not make private or separate contractual arrangements with Community's employees or give gratuities to Community's employees.

3. All maintenance work requests must come through the Community's Concierge Desk.

L. Recording Devices

Resident and/or Resident's authorized legal representative, if applicable, acknowledges and agrees a recording device such as a "nanny cam" or other recording device shall not be installed in Resident's apartment without prior written consent of Community's Executive Director, General Manager or designee. Resident and/or Resident's authorized legal representative also acknowledges and agrees any use of such a recording device must comply in all respects with applicable state and federal law. Resident and/or Resident's authorized legal representative further acknowledges and agrees Resident and/or Resident's authorized legal representative is solely liable for use of a recording device in Resident's apartment that is not in accordance with applicable state and federal law.

M. Entire Agreement

This Agreement, any exhibits and addenda to this Agreement, including those identified below and which are incorporated herein, and related application forms, shall constitute the entire understanding of the terms and conditions governing Resident's residency in Apartment. No person has the power to make oral modifications, amendments, or additions to this Agreement. If this Agreement is to be amended, such amendment must be reduced to writing, executed by Resident and Community, and attached to all copies of the Agreement. Community will provide at least thirty (30) days' advance notice, in writing, if it proposes to amend the Agreement. The exception to the foregoing shall be if DHEC or another state agency changes the regulations governing Community as an assisted living community, or if there are any other federal or state changes. In either event, Community shall modify this Agreement to comport with those requirements.

 X Attachment A (Schedule of Costs)
 N/A Pet Maintenance Addendum (attached)
 N/A Attachment C (List of Services)

☒ Addendum D (Resident's Rights)
☒ Addendum E (Complaint Procedures)
☒ Addendum F (Refund Policy)
☐ Additional Vehicle Parking Addendum
☐ Service Animal Addendum
☐ Motorized Cart Addendum
☒ _____ Addendum

VII. SIGNATURES

The undersigned, having read the foregoing Agreement, along with all exhibits and attachments thereto, states he/she/they understand and agree to the terms and conditions set forth in this Agreement, and acknowledge the receipt of a copy of this Agreement. An authorized Community staff person reviewed the contents of this Agreement with Resident and Resident's authorized legal representative, if any, prior to its execution.

VIII. RESIDENT'S LEGAL REPRESENTATIVE AND/OR DESIGNATED PERSON

Resident's legal representative, if applicable, is to be notified in the event of an emergency, termination of services by Community, closure of Community as an assisted living facility, or other situations designated by Resident. In addition, Resident and/or Resident's legal representative has also identified a Designated Person to be so notified (this is optional).

Contact Information of Authorized Legal Representative:

Name: *S. Jean Wilson*

REDACTED

Street:

City:

E-Mail:

Primary:

Contact Information of Designated Person (at option of Resident and/or Legal Representative):

Name: _____

Street: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

Primary Telephone: _____ Alternative Telephone: _____

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf. The undersigned, having read the foregoing Agreement, along with all exhibits and attachments to this Agreement, states he/she/they understand and agree to the terms and conditions set forth in this Agreement, and acknowledge the receipt of a copy of this Agreement. The Community's Administrator or designee reviewed the contents of this Agreement with Resident and Resident's authorized legal representative, if any, prior to its execution.

NOTICE IS HEREBY GIVEN THAT THIS AGREEMENT IS SUBJECT TO ALTERNATIVE DISPUTE RESOLUTION PROCEDURES, INCLUDING BINDING ARBITRATION.

Gladys A. Graham
Resident's Name (printed)
Gladys A. Graham (Signature)
Resident's Signature
3/25/22
Date

S. Jean Wilson
Authorized Legal Representative's Name (if applicable) (printed)
S. Jean Wilson (Signature)
Authorized Legal Representative's Signature (if applicable)
3/25/22
Date

Designated Person's Name (at option of the resident) (printed)

Designated Person's Signature

Date

Beckie Cunningham
Administrator/Designee's Name
Beckie Cunningham (Signature)
Administrator/ Designee's Signature
3-25-22
Date

I have received a copy of the Harmony at Columbia Resident Handbook.

Resident (Signature): Gladys A. Graham (Signature)
Date: 3/25/22

Community Representative Signature: Beckie Cunningham

Community's Authorized Representative Name (Print): Beckie Cunningham

Date: 3-25-22

the covenant of quiet enjoyment of others in the Facility.

10. You shall be solely liable for injury to others and damage to the Facility, including any common areas, caused by your Pet, including, but not limited to, carpet damage, flooring damage, and flea infestation.
11. In the event of the death of the Pet, Resident may have a new Pet live in the Apartment under the same terms and provisions of this Addendum, with prior approval of the Executive Director or General Manager.
12. **There will be a one-time, non-refundable pet fee of Five Hundred dollars (\$500.00) assessed at move-in. This fee is not applicable to cover the cost of any necessary repairs due to damage caused by the Pet(s).**
13. Failure to comply with the provisions of this Addendum, may, at the discretion of the Facility, lead to the termination of Resident's right to keep his/her Pet in the Unit. If Facility deems, in its sole discretion, that the Resident cannot adequately care for the Pet, that having a Pet poses a risk to Resident or other residents, or that Pet is a nuisance to others, Facility reserves the right to require Resident to make alternative housing/accommodations for the Pet. In such event, it shall be Resident's responsibility to locate such alternate housing/accommodations for the Pet within a time period deemed reasonable by the Facility. Should Resident fail to locate alternative housing/accommodations within the aforementioned time period, this shall be a breach of the Agreement and the Facility may, at its option, immediately terminate the Agreement.
14. Facility reserves the right to arrange for professional pet care if it deems Resident is unable to care for the Pet, and Facility shall bill the Resident for all reasonable and necessary fees for such care until Pet is relocated to alternative housing.
15. If Resident is unable or unwilling to move the Pet to alternative housing/ accommodations upon Facility's request, Facility may relocate the Pet at Resident's expense, including transportation of Pet to an animal shelter, if necessary.

\$ _____ Pet Fee Received.

[Signature page to follow.]

SEEN AND AGREED:

_____ Resident's Name (printed)	
_____ Resident's Signature	_____ Date
_____ Second Resident's Name (printed)	
_____ Second Resident's Signature	_____ Date
_____ Authorized Legal Representative's Name (if applicable) (printed)	
_____ Authorized Legal Representative's Signature (if applicable)	_____ Date
_____ Designated Person's Name (at option of resident and if applicable)	
_____ Designated Person's Signature	_____ Date
COLUMBIA AL OPERATIONS, LLC, d/b/a HARMONY at COLUMBIA	
_____ Administrator/Designee's Name	
_____ Administrator/ Designee's Signature	_____ Date

ATTACHMENT D

Resident's Rights

- (a) A Resident has the right to choose a personal attending physician.
- (b) A Resident has the right to participate in planning care and treatment or changes in care and treatment.
- (c) A Resident has the right to be fully informed in advance about changes in care and treatment that may affect the Resident's well-being.
- (d) A Resident has the right to receive from the Resident's physician a complete and current description of the Resident's diagnosis and prognosis in terms that the Resident is able to understand.
- (e) A Resident has the right to refuse to participate in experimental research.
- (f) A Resident may be transferred or discharged only for medical reasons, for the welfare of the Resident or for the welfare of other residents of the community, or for nonpayment and must be given written notice of not less than thirty days, except that when the health, safety, or welfare of other residents of the community would be endangered by the thirty-day notice requirement, the time for giving notice must be that which is practicable under the circumstances. Each Resident must be given written notice before the Resident's room or roommate in the community is changed.
- (g) Each Resident or the Resident's designated representative may manage the Resident's personal finances unless the community has been delegated in writing to carry out this responsibility, in which case the Resident must be given a quarterly report of the Resident's account.
- (h) Each Resident must be free from mental and physical abuse and free from chemical and physical restraints except those restraints ordered by a physician.
- (i) Each Resident must be assured security in storing personal possessions and confidential treatment of the Resident's personal and medical records and may approve or refuse their release to any individual outside the community, except in the case of a transfer to another health care institution or as required by law or a third party payment contract.
- (j) Each Resident must be treated with respect and dignity and assured privacy during treatment and when receiving personal care.
- (k) Each Resident must be assured that no resident will be required to perform services for the community that are not for therapeutic purposes as identified in the plan of care for the Resident.

- (l) The legal guardian, family members, and other relatives of each Resident must be allowed immediate access to that Resident, subject to the Resident's right to deny access or withdraw consent to access at any time.
- (m) Each Resident without unreasonable delay or restrictions must be allowed to associate and communicate privately with persons of the Resident's choice and must be assured freedom and privacy in sending and receiving mail.
- (n) The legal guardian, family members, and other relatives of each Resident must be allowed to meet in the community with the legal guardian, family members, and other relatives of other residents to discuss matters related to the community, so long as the meeting does not disrupt resident care or safety.
- (o) Each Resident may meet with and participate in activities of social, religious, and community groups at the Resident's discretion unless medically contraindicated by written medical order.
- (p) Each Resident must be able to keep and use personal clothing and possessions as space permits unless it infringes on another resident's rights.
- (q) Each Resident must be assured privacy for visits of a conjugal nature.
- (r) Married residents must be permitted to share a room unless medically contraindicated by the attending physician in the medical record.
- (s) A Resident or a Resident's legal representative may contract with a person not associated with or employed by the community to perform sitter services unless the services are prohibited from being performed by a private contractor by state or federal law or by the written contract between the community and the Resident. The person, being a private contractor, is required to abide by and follow the policies and procedures of the community as they pertain to sitters and volunteers. The person must be selected from an approved list or agency and approved by the community. A Resident or a Resident's legal representative employing a private contractor must agree in writing to hold the community harmless from any liability.
- (t) Each Resident must be offered treatment without discrimination as to sex, race, color, religion, national origin, or source of payment.
- (u) Community shall not by or through its owner, administrator, or operator, nor shall any person subject to the supervision, direction, or control of the owner, administrator, or operator retaliate against a Resident after the Resident or the Resident's legal representative has engaged in exercising the Resident's rights stated herein by increasing charges, decreasing services, rights, or privileges, or by taking any action to coerce or compel the Resident to leave the community or by abusing or embarrassing or threatening any Resident in any manner.

(v) If a Resident or authorized legal representative chooses to voluntarily relocate the Resident from The Community, the Resident or the authorized legal representative must give Community written notice of this intent to relocate not less than fourteen days before the Resident's relocation becomes effective. Voluntary relocation does not occur when a Resident seeks to be discharged because a higher level of care is required or because the Resident's health, safety, or welfare is endangered. If the Resident or authorized legal representative fails to give timely notice, Community may charge the Resident the equivalent of fourteen days' occupancy from the earlier of the date of the relocation or the date Community received proper notice of the Resident's intent to relocate. However, if Community is able to fill the bed vacated by the Resident, Community shall cease charging the Resident regardless of the notice given. Community shall notify the Resident in writing as soon as it fills the bed with a new resident. Residents participating in the Optional State Supplementation Program are excluded from the requirements of advance notice as set forth in this paragraph.

Resident hereby acknowledges receipt of a copy of Resident's Rights.

By: Gladys G. Graham (Jr)

Date: 3/25/22

Legal representative acknowledges receipt of a copy of Resident's Rights.

By: Aileen Nelson

Date: 3/25/22

ATTACHMENT E

Complaint Procedure

Each Resident has the right to lodge a complaint without intimidation, retaliation or threats of retaliation by Community or its staff. A complaint may be filed with parties other than Community including, but not limited to, the DHEC regional office. DHEC may be contacted at the following address and phone number: South Carolina Department of Health & Environmental Control, Health Licensing, 2600 Bull Street, Columbia, SC 29201; (803) 545-4370.

The Resident and the Resident's authorized legal representative have the right to file a complaint with the DHEC regional office, local ombudsman or protective services unit in the area agency on aging, or law enforcement agency. Community shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter without retaliation or the threat of retaliation.

If a Resident indicates that he wishes to make a written complaint, but needs assistance in reducing the complaint to writing, The Community's Executive Director shall assist the Resident in writing the complaint.

The Community's Executive Director shall ensure investigation and resolution of complaints. The Executive Director is the designated staff person responsible for receiving complaints and determining the outcome of the complaint. Within two (2) business days after the submission of a written complaint, a status report shall be provided by Community to the complainant. If the Resident is not the complainant the Resident and the Resident's authorized legal representative shall receive the status report unless contraindicated by a support plan developed by the Executive Director. The status report must indicate the steps the Executive Director is taking to investigate and address the complaint. Within 7 days after the submission of a written complaint, the Executive Director shall give the complainant and, if applicable, the authorized legal representative, a written decision explaining the Executive Director's investigation findings and the action the Executive Director plans to take to resolve the complaint. If the Resident is not the complainant, the affected Resident shall receive a copy of the decision unless contraindicated by the support plan. If the Executive Director's investigation validates the complaint allegations, a Resident who could potentially be harmed or his/her authorized legal representative shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan. The telephone number of the DHEC regional office, the local ombudsman or protective services unit in the area agency on aging, and the local law enforcement agency shall be posted in large print in a conspicuous and public place in The Community.

Resident hereby acknowledges receipt of a copy of the Complaint Procedure, and further acknowledges that the process to file a complaint has been explained in an acceptable and understandable manner.

By: Gladys G. Graham (DG)

Date: 3/25/22

Authorized legal representative hereby acknowledges receipt of a copy of the Complaint Procedure, and further acknowledges that the process to file a complaint has been explained in an acceptable and understandable manner.

By: A. Jean Wilson

Date: 3/25/22

ATTACHMENT F

Refund Policy

It is the refund policy of the Community to base refunds upon the actual number of days the Resident resides in Community and a reasonable number of bed-hold days (also referred to as Apartment-hold days), except in applicable cases where the Resident or legal representative does not provide timely notice of voluntary relocation as set forth herein. The Resident hereby agrees that the Resident resides in Community until each of the following take place: (a) the Resident vacates the community, (b) the Resident removes all personal possessions from the Apartment and storage area, and (c) the Apartment is in good condition. If the Apartment requires repair, cleaning, or other maintenance because the Resident failed to vacate the Apartment in good condition, free of debris and personal possessions, exclusive of reasonable and normal wear and tear, Community will take reasonable and prompt action to restore the Apartment to good condition.

Resident is liable for the Fee and all miscellaneous charges accrued or incurred prior to the effective date of termination of the Agreement or, if later, until the Resident no longer resides in the Apartment as set forth in this Refund Policy and Section III.G of the Agreement. If Resident vacates the Apartment for any reason prior to the effective date of the termination, Community will refund to the Resident or legal representative, if applicable, the difference between any payment received and the Fee and all charges incurred through the last day the Resident resided in Community as set forth in this Refund Policy and Section III.G of the Agreement.

If a Resident or legal representative chooses to voluntarily relocate the Resident from the Community, the Resident or legal representative must give Community written notice of this intent to relocate not less than fourteen days before the Resident's relocation becomes effective. Voluntary relocation does not occur when a Resident seeks to be discharged because a higher level of care is required or because the Resident's health, safety, or welfare is endangered. If the Resident or legal representative fails to give timely notice, Community may charge the Resident the equivalent of fourteen days' occupancy from the earlier of the date of the relocation or the date Community received proper notice of the Resident's intent to relocate. However, if Community is able to fill the bed vacated by the Resident, Community shall cease charging the Resident regardless of the notice given. Community shall notify the Resident in writing as soon as it fills the bed with a new resident. Residents participating in the Optional State Supplementation Program are excluded from the requirements of advance notice as set forth in this paragraph.

Upon discharge, transfer, relocation, or any other vacation of the Apartment by the Resident, any applicable refund will be forwarded to the Resident within 30 days from the last date the Resident resided in Community as set forth in this Refund Policy and Section III.G of the Agreement.

Resident hereby acknowledges receipt of a copy of the Refund Policy.

By: Shadya G. Graham (JW)

Date: 3/23/22

Authorized Legal Representative hereby acknowledges receipt of a copy of the Refund Policy.

By: Dean Wilson

Date: 3/23/22

MISCELLANEOUS CHARGES (cont.)	
Emergency Pendant Charges	\$150 / one time & \$20 / month
Emergency Pendant Replacement Fee	\$50
Escort Service for appointment (staff to accompany resident to appointment)	\$50 per hour. \$25 for each additional hour (billed in one hour increments)
Mileage rate for transportation beyond the provided radius	\$0.55 per mile beyond the provided radius
Beauty/Barber/Manicurist services	See attached schedule of fees
Furniture Rental (bed, nightstand, chest, lamp, chair)	\$200/month (includes linens)
In-Room Tray Service	\$15.00 per meal (regular menu items)
Guest Meals	\$8.00 Children's (under age of 13) Meal (all meals) \$9.00 Breakfast Meal \$11.00 Lunch Meal \$13.00 Dinner Meal
Special Holiday Meals	Menu and Sign in Sheets will be posted in order to plan for guests. Prices will be set in advance
Personal Maintenance Assistance	\$50.00/per 1/2 hour(1 st hour no charge for new move within first month)
Carpet Extraction	\$25.00/per 1/2 hour
Personal/Additional Housekeeping Services Assisted Living Only	\$25.00/per 1/2 hour
Additional Laundry Services (when above standard two loads) Assisted Living Only	\$15/per load
Extraordinary Maintenance and Repairs	Refer to maintenance assistance fees plus cost of materials
RR Internal Move	\$500 plus material cost for turnover of room
Additional Trash Removal	\$35.00 per item
Non-Sufficient Funds (returned check)	\$35.00/per check (\$25.00 in WV only)
Check Processing Fee (non-ACH transaction)	\$15.00/per check
Reserved Parking Space Fee (where available)	\$50/per month
Key Replacement	\$20/per key
Bed Bug Encasement	\$50 / encasement
Long Distance Telephone Charges	Assessed at actual cost
Monthly Statement Late fee*	\$150/month

Pet Deposit Assisted Living Only	\$500.00 one-time non-refundable at move in
Private Caregiver Services	\$25.00/hour – minimum 2 hours
*If a fee or miscellaneous charge incurred and billed on the monthly statement is not paid by the fifth (5th) day of the month it is due, the owed amount will be subject to a flat fee of \$150 per month until satisfied.	

SEEN AND AGREED:

Gladys A. Graham
 Resident's Name (printed)
Gladys G. Graham (Sgt)
 Resident's Signature
3/25/22
 Date

Second Resident's Name (printed)

Second Resident's Signature
S. Sean Wilson
 Authorized Legal Representative's Name (if applicable) (printed)
S. Sean Wilson (Sgt)
 Authorized Legal Representative's Signature (if applicable)
3/25/22
 Date

Designated Person's Name (at option of the resident) (printed)

Designated Person's Signature
Bettie Cunningham
 Administrator/Designee's Name (printed)
Bettie Cunningham
 Administrator/Designee's Signature
3-25-22
 Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
SALLIE WILSON AS GUARDIAN FOR	)	CASE NO. 2023-CP-40-02608
GLADYS GRAHAM,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS COLUMBIA AL
MEDICAL UNIVERSITY HOSPITAL	)	OPERATIONS, LLC D/B/A HARMONY
AUTHORITY D/B/A MUSC HEALTH	)	COLLECTION AT COLUMBIA (AL/MC)
COLUMBIA MEDICAL CENTER	)	AND KAREN BOWMAN’S MOTION TO
DOWNTOWN, COLUMBIA AL	)	STAY AND COMPEL ARBITRATION
OPERATIONS, LLC D/B/A HARMONY	)	
COLLECTION AT COLUMBIA	)	
(AL/MC), AND KAREN BOWMAN,	)	
	)	
DEFENDANTS.	)	
	)	

Defendants Columbia AL Operations, LLC d/b/a Harmony Collections at Columbia (AL/MC) (“Harmony” or “the Facility”) and Karen Bowman (jointly “Defendants” or “moving Defendants”) submit this memorandum in support of their motion, originally filed August 9, 2023 and renewed on November 26, 2024, to stay this action and compel the claims asserted against them in this action to arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has sued Defendant alleging deficiencies relating to care/treatment Ms. Gladys Graham (“Ms. Graham”) received when she was a resident of the Facility. In conjunction with Ms. Graham’s admission to the Facility, her daughter Sallie Jean Wilson (Plaintiff in this case) executed an Admission Agreement on her behalf that contains an enforceable arbitration provision—and/or, more specifically, that Plaintiff should be estopped to deny the enforceability of—that covers the entirety of Plaintiff’s claims against the Facility. As such, Defendant

respectfully requests that this Honorable Court stay the pending action and compel Plaintiff's claims to arbitration.

BACKGROUND

With the help of Ms. Wilson, Ms. Graham was admitted to Harmony on or around April 4, 2022. Harmony is a *community residential care facility* licensed under S.C. Code Ann. section 44-7-260, Regulation 61-84, which means it is an assisted living facility that does not provide daily skilled nursing care. "It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement." Reg. 61-84 §101(J). Ms. Wilson executed an Assisted Living Residency Agreement that contained a binding arbitration provision ("the Agreement"). The Agreement also contains Ms. Graham's purported signature along with the initials "SJW." (See **Exhibit 1**, attached hereto). Upon information and belief, Ms. Wilson signed on her mother's behalf.

Based on the Agreement and pursuant to the terms thereof, Ms. Graham was admitted to the Facility. During her stay at the Facility, Ms. Graham received and accepted the benefits of the Agreement, which included the Facility furnishing him a room, providing routine meals, and rendering care and supervision. To the best of moving Defendants' knowledge, Plaintiff has not asserted that any portion of the Agreement is invalid or unenforceable other than the arbitration provision, or that Ms. Graham entered the Facility unwillingly or without consent.

The first page of the Agreement contains the following statement, bold and underlined at the top of the page:

**NOTICE REQUIRED BY SECTION 15-48-10 OF THE
SOUTH CAROLINA CODE OF LAWS, 1976, IS HEREBY
GIVEN THAT THE FOLLOWING AGREEMENT IS
SUBJECT TO ARBITRATION.**

The arbitration provision itself appears at Paragraph G on Page 14 of the Agreement:

“G. Arbitration

Any controversy, dispute or disagreement arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, not resolved by or ineligible for the complaint resolution procedures set forth in [the applicable sections] of this Agreement shall be settled exclusively by binding arbitration, which shall be conducted in Columbia, South Carolina in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by , in control of or under common control with the party to the extent that such affiliate joins in the arbitration, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.”

(Exhibit 1 at 14). Ms. Wilson and her mother were both “parties to the Agreement” as referenced in the above provision. Ms. Wilson explicitly represented that she was Ms. Graham’s “authorized legal representative” and signed the agreement on her own behalf and on behalf of her mother. She also accepted financial responsibility for her mother’s residency, and instructed the Facility to send monthly invoices to her address and email address. (**Exhibit 2**). Ms. Wilson indicated that she and Ms. Graham shared a joint banking account, and Ms. Wilson listed her own cell phone number as Ms. Graham’s telephone number. (**Exhibit 3**). Ms. Wilson also signed a “*patient consent for treatment*” form and “do not resuscitate” (“DNR”) order on her mother’s behalf, among other forms. (**Exhibit 4**).

By signing the Agreement, Ms. Wilson represented that she had read the Agreement, understood and agreed to its terms and conditions, received a copy of this Agreement, and that an “*authorized Community staff person reviewed the contents of this Agreement with Resident and Resident's authorized legal representative, if any, prior to its execution.*” (Ex. 1 at 17). Above the

final signature line, the Agreement includes the following additional bold, all caps notice regarding arbitration:

**“NOTICE IS HEREBY GIVEN THAT THIS AGREEMENT IS
SUBJECT TO ALTERNATIVE DISPUTE RESOLUTION
PROCEDURES, INCLUDING BINDING ARBITRATION.”**

(*Id.* at 19).

Rebecca “Beckie” Cunningham, the Facility’s Executive Director at the time of Ms. Graham’s admission, signed the Agreement on behalf of the Facility. Ms. Cunningham followed a strict routine when assisting with the admission of new residents, pursuant to Facility policies and procedures. Ms. Cunningham “would personally review and explain each of the admissions documents described above to the admitting resident, the representative, or both to ensure that they reviewed, were comfortable with, and understood each and every document, including the Admission Agreement and the arbitration provision contained therein.” (Affidavit of Rebecca Marie Cunningham, attached hereto as **Exhibit 5**). Ms. Cunningham’s affidavit further confirms that the arbitration provision was optional and was not a condition for admission to the facility. (*Id.* at ¶ 8). Her sworn affidavit states that she “*would not have allowed Ms. Wilson to sign the admission documents on behalf of Ms. Graham without sufficient assurance from the resident and her family that Ms. Wilson had authority to sign on her mother’s behalf.*” (*Id.* at ¶ 12).

Ms. Cunningham’s affidavit also states that a physician had determined Ms. Graham to be appropriate for the assisted living setting, and she did not require a higher level of care. Records in the Facility chart further corroborate that Ms. Graham was alert, independent with most activities of daily living, and did not require daily skilled nursing care. (*See* assessments attached hereto as **Exhibit 6**). Of course, Ms. Graham certainly had some degree of cognitive decline. She was 102 years old with dementia on admission. She was a hospice patient in the memory care wing of the

Facility. But nurse and physician assessments indicate that her cognitive impairment was “*moderate*” with “*occasional disorientation.*” (Ex. 6 at 3). Her ability to communicate and receive information was only mildly impaired. (*Id.*). She was entirely independent with grooming, dressing, and meal consumption. (*Id.* at 5). In an initial examination on admission, a nurse practitioner determined that Ms. Graham was “*alert and oriented x 2*” during the visit. (*Id.* at 11).

Accordingly, Ms. Graham was alert enough on admission to (1) authorize Ms. Wilson to sign the admission paperwork, including the Agreement containing the arbitration provision; and (2) through her words and conduct, to assure Facility staff that Ms. Wilson was authorized to sign on her behalf. Because the acts complained of by Plaintiff fall within the scope of the Agreement’s arbitration provision, the Court should stay these proceedings and compel this matter to arbitration pursuant to the FAA.

ARGUMENT

I. THE FAA GOVERNS THE ARBITRATION AGREEMENT.

The Arbitration Agreement is governed by the FAA. The FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that nursing home admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

II. THE FAA REQUIRES ARBITRATION AGREEMENTS TO BE PLACED ON EQUAL FOOTING WITH ALL OTHER CONTRACTS UNDER SOUTH CAROLINA LAW.

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”¹ 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 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

¹ *Allied-Bruce*, 513 U.S. at 270.

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 PROVISION IS VALID ON ITS FACE.

The arbitration provision is valid on its face. In other words, there is nothing within the four corners of the Agreement itself that calls its validity into question. It bears Ms. Wilson’s signature on behalf of Ms. Graham, along with her express representation that she is authorized to sign for Ms. Graham.² It is countersigned by the Facility’s representative. 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,³ in a proceeding to be conducted pursuant to the American Health Lawyers Association Alternative Dispute Resolution Service Rules of

² By virtue of her signature, Ms. Wilson is “presumed to have read, understood, and assented to [the] terms” of the Arbitration Agreement, *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (“[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.”), including, of course, the express representation therein of her authority to act on Ms. Graham’s behalf. Moreover, there is an implied covenant of good faith and fair dealing in every contract, *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) (“There exists in every contract an implied covenant of good faith and fair dealing.”), and Ms. Johnson is no less bound by this covenant than the Facility. To the extent there is any question raised as to the authenticity of the Agreement, the burden to authenticate is not high, and it is comfortably met here. All that is required is a satisfactory foundation from which it can reasonably be found that the evidence is authentic, i.e., that it is it was it purports to be. *Berry v. Span*, 433 S.C. 1, 10, 855 S.E. 309, 315 (Ct. App. 2021).

³ 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.”)).

Procedure for Arbitration, which will result in a decision that is enforceable in a court of competent jurisdiction. To require more just because an arbitration agreement is in issue would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

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

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

By signing the Arbitration Agreement and Admission Agreement, Ms. Wilson, acting on behalf of Ms. Graham, represented that she understood and assented to their terms. Indeed, she was given the option of agreeing to the arbitration provision, and she freely and voluntarily made the decision to proceed. As set forth in Rebecca Cunningham's affidavit, agreeing to arbitration was not a precondition of admission to the Facility. (**Ex. 5**, ¶ 8) and was not a "take it or leave it" contract in the sense that Ms. Wilson did not have to agree to it on behalf of Ms. Graham for him to be admitted to the Facility. Ms. Wilson had the option not to enter into the Arbitration Agreement on behalf of

her mother, yet she voluntarily did so, voluntarily did not retract her agreement thereto, and her mother stayed at the Facility and received care and supervision after admission.

Defendant offered the option of agreeing to the arbitration provision. Ms. Wilson did not have to accept this offer nor has there been any suggestion or evidence that she was coerced into signing anything. Nonetheless, even if Plaintiff could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiff must still show that the “terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, this Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 25, 644 S.E.2d at 668. Neither party is given an advantage by the terms of the arbitration provision. The Agreement simply binds the parties (both sides) to resolve disputes via arbitration pursuant to the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration.

Lastly, the United States District Court for the District of South Carolina and trial courts around South Carolina have upheld the validity of arbitration agreements similar to the one at issue in this matter. In evaluating these arbitration agreements in the context of nursing home admissions, these courts have agreed that these agreements are not unconscionable. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) (attached hereto as **Exhibit 7**); *THI of S.C. at Columbia, LLC v. Wiggins*, C/A No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011) (Currie, J.); *Benson, infra*. Along similar lines, any holding that the Arbitration Agreement at issue is unconscionable simply because it was executed in the

context of an admission to an assisted living facility would be in violation of the clear precedent under *Kindred* and the FAA, which require arbitration agreements to be placed on equal footing with all other types of contracts under state law. Accordingly, any argument by Plaintiff that the Arbitration Agreement is unconscionable is without merit.

IV. PLAINTIFF’S CLAIMS ARE WITHIN THE SCOPE OF THE ARBITRATION PROVISION.

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

Any controversy, dispute or disagreement arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, not resolved by or ineligible for the complaint resolution procedures set forth in [the applicable sections] of this Agreement shall be settled exclusively by binding arbitration.

This plain language clearly embraces the subject matter of Plaintiff’s claims. And even if there were “any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

V. THE PLAINTIFF WAS AUTHORIZED TO SIGN THE AGREEMENT ON MS. GRAHAM’S BEHALF.

A. The Plain Language of the Agreement Binds Plaintiff.

According to the plain language of the Arbitration Agreement and consistent with her actions during the admissions process, Ms. Wilson represented herself to admissions personnel at the Facility as her mother’s representative with the authority to sign documents and enter agreements on her behalf. It was clearly Ms. Wilson’s intention to bind her mother according to

the terms of the Agreement. Moreover, Ms. Graham evinced no intentions or directions to the contrary. Accordingly, the plain language of the Agreement confirms that Ms. Wilson was authorized to enter this Agreement binding her mother to arbitration, and the Agreement directly applies to the instant dispute. The Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has recently found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances similar to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit 8**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit 9**). In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident's wife in each case executed an admissions agreement and an arbitration agreement similar to the ones in the case at bar, and as here represented to the facility that she had authority to enter these agreements on her husband's behalf. (See **Ex. 8**, p. 2-3; see **Ex. 9**, p. 1). The plaintiffs in *Price* and *Spears* later executed contradictory affidavits in opposition to the Defendants' motion to compel arbitration, disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs' attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. The Court should reach the same conclusion in the present case, and enforce the Agreement's arbitration provision, particularly in the apparent absence of any affidavits or other evidence to contradict the plain language of the Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[,] because was it clearly the intent of the wife to bind her

husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 8**, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident identical to Ms. Wilson's attestation in the Arbitration Agreement noted above. As such, this Court in *Spears* held, in part, that the wife's authority to sign the arbitration agreement at issue was "valid on its face" by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff's authority beyond her own attestation. (See **Ex. 9**, p. 4). As in *Price* and in *Spears*, Ms. Wilson in this matter expressly attested to her own authority to enter into the Agreement on behalf of her mother. Therefore, the Court should find that Plaintiff is bound by the plain language of the Agreement and compel this matter to arbitration.

B. Ms. Wilson Possessed the Apparent and Inherent Authority to Execute and Bind Ms. Graham to the Agreement and/or Plaintiff Should be Estopped to Deny this Authority.

1. Agency Relationship

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

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

Clearly, in this matter, Ms. Wilson held herself out as an agent for her mother without any indication to the contrary when she executed various admission documents on her behalf, including the residency Agreement, medical consent, do not resuscitate order, and instructions to send all invoices to Ms. Wilson’s address. Based on Ms. Wilson and her mother’s conduct and explicit representations, facility representatives were justified in believing she possessed the authority to execute all admissions documents on her mother’s behalf, including the arbitration provision in the Agreement, as stated in the Affidavit of Rebecca Cunningham (Ex. 5, ¶¶ 11-12).

Moreover, by allowing Ms. Wilson to procure her admission to the Facility and, thereafter, by accepting the benefits of the contracts entered into in connection with that admission, Ms. Graham represented that Ms. Wilson was her authorized representative to act on her behalf in connection with admission. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons

who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances”) (emphasis added).

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party’s understanding of a principal’s manifestations and a reasonable belief that the agent has been authorized to act.* The Facility had reason to believe that, by allowing Ms. Wilson to sign the admissions paperwork, including the documents providing for her mother’s stay and the care and supervision provided at the Facility, Ms. Graham cloaked her daughter with the authority to execute those documents. Further, neither of them nor any other family member repudiated or invalidated Ms. Wilson’s actions. Instead, Ms. Graham accepted the benefits of the contract with the Facility by remaining at the Facility and receiving care and services, thereby ratifying her daughter’s actions. Because no one attempted to repudiate the Agreement or even question it, the Facility was further justified in believing Ms. Wilson had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Agreement’s arbitration provision should be deemed enforceable.

Even if Ms. Wilson lacked the actual or apparent authority to enter into the terms of the Agreement, she still possessed sufficient inherent agency powers to render the entire agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” *See*, §§ 8A, 161 *Restatement (Second) of Agency* (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (*abrogated on unrelated grounds*) (examining whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women’s Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005);

Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987) (“[t]he powers of an agent are, prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”) (citing *Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established legal principle follows from one of the cardinal principles of agency law: that third parties, such as the Facility, should not be disadvantaged because they dealt with an agent rather than a principal. As set forth above, there is no dispute as to whether Ms. Wilson was authorized to admit her mother to the Facility. To the extent Plaintiff takes issue with Ms. Wilson’s authority, such actions merely accompanied and were incidental to her authority to admit her mother to the Facility.

2. Agency by Estoppel

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

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

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

(See **Ex. 8**, p. 9). Accordingly, the court concluded that the arbitration agreement was valid and enforceable.

Similarly, in *McCutcheon* the United States District Court of South Carolina concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (See **Ex. 7**). As in the present case, the husband in *McCutcheon* executed a number of documents on his wife's behalf upon her admission to a nursing home facility, including an admissions agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife's legal representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

Like in *Price* and *McCutcheon*, it would be disingenuous and inequitable to allow the Plaintiff in this case to assert she was authorized to sign the Agreement for purposes of admitting her mother to the Facility, but not authorized to agree to the arbitration provision. In the case at bar, no Facility representative had knowledge or reason to believe that Ms. Wilson was not her mother's authorized agent for purposes of executing the Agreement and other admissions paperwork. Additionally, the Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by the Facility, only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, Plaintiff should be estopped from denying the validity of the Agreement's arbitration provision.

VI. PLAINTIFF SHOULD BE EQUITABLY ESTOPPED TO DENY THE ENFORCEABILITY OF THE ARBITRATION AGREEMENT.

"South Carolina has recognized several theories that could bind non signatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel." *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). "Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). "A non-signatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.'" *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)); see also *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290–297, 733 S.E.2d 597, 601–605 (Ct. App. 2012) (applying the direct benefits test as set forth in *International Paper Co.* to

reverse the circuit court’s denial of a motion to compel arbitration); *Wilson*, 426 S.C. 326, 339–345, 827 S.E.2d 167, 174–177 (favorably discussing the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson*, 400 S.C. 281, 733 S.E.2d 597, and under which the Facility contends Plaintiff is estopped to deny the enforceability of the Arbitration Agreement here, where Ms. Graham received direct benefits (in the form of his admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement merged); *see also id.* at 340, 827 S.E.2d at 175 n. 6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added).

This legal principle is properly applied in this case. The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” *S. Ill. Bev., Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(citing *Am. Bureau of*

Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999) (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

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

. . . .

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

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing in part *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).⁴

Of note, this Court applied this precise reasoning in *Spears*. (See **Ex. 9**). In that case, a woman admitted her husband to a skilled nursing facility and in connection with his admission, executed admission and arbitration agreements *identical* to the ones here. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from

⁴ See also *THI of S.C. at Columbia, LLC v. Wiggins*, C/A No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept.13, 2011) (“Hall's care was the essential purpose of the Contract. Thus, Hall was an intended third-party beneficiary of the Contract which was signed by Wiggins in her capacity as an immediate family member. It follows that Hall was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remains binding on his estate.”); accord *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. 7:13-CV-2929-BHH, 2014 WL 6863550, at *4 (D.S.C. Oct. 31, 2014), *report and recommendation adopted*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

refusing to comply with the arbitration agreement where, like here, the resident received “direct benefits from the Admission Agreement in the form of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein.” *Id.*, pg. 10 (footnote omitted).

This Court in *William Haynes as Personal Representative of the Estate of Elizabeth Varner vs. THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab et al*, Case Nos. 2021- CP-10- 01437 and 02477. S. C. Com. Pls. Feb. 24, 2022 (attached hereto as **Exhibit 10**), also applied the same reasoning in holding that the Plaintiff was estopped from denying the validity of an arbitration agreement, where the resident received “direct benefits from the Admission Agreement throughout her residency at the facility, including, without limitation, the room, board, care/treatment she received therein.” (*Id.* at 18). The Court went on to explain that the resident “effectively embraced and directly benefited from the Admission Agreement” and therefore the Plaintiff could not deny the enforceability of the arbitration agreement, which had merged with the admission agreement. (*Id.*).

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

compelled to arbitrate where the non-signatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement . . .”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a non-signatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the non-signatory exploits the contractual relationship of the parties but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with the Court of Appeals’ decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the non-signatory has exploited other parts of the contract by reaping its benefits. Indeed, to require more than this—or, in other words, to limit the applicability of direct benefits estoppel to only instances where the non-signatory’s claim relies solely on the contract terms to impose liability—is to invite the very sort of have-your-cake-and-

eat-it-too inequity that the doctrine aims to prevent in the first place. Neither *Wilson* nor *Pearson* nor general notions of equity countenance,⁵ much less call for, such a result.

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

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

VII. THE DEFENDANTS HAVE NOT WAIVED ARBITRATION RIGHTS.

The moving Defendants promptly asserted their arbitration rights and have not waived any right to compel arbitration in this matter. “[T]o establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” *Gen. Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001) (no waiver where party seeking arbitration had been involved in litigation for less than eight

⁵ See *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

months). Mere inconvenience to an opposing party is not sufficient to establish prejudice. There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case. Furthermore, it is the policy of this state to favor arbitration of disputes. *Id.* See also *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E.2d 581 (2003) (no waiver where litigation process had lasted approximately thirteen months before third party defendant sought arbitration).

In the case at bar, the moving Defendants originally filed the Motion to Compel Arbitration on August 9, 2023, less than three months after Plaintiff filed suit. Before the undersigned defense counsel appeared on behalf of moving Defendants in the present case, previous defense counsel had filed an answer on or around June 30, 2023 that did not raise arbitration, and served initial written discovery requests on Plaintiff. However, *immediately* upon transfer of the defense to undersigned counsel, the undersigned notified Plaintiff's counsel of the arbitration provision and withdrew the discovery requests. (See email correspondence attached hereto as **Exhibit 11**). The parties then agreed to pursue mediation. Plaintiff explicitly agreed to moving Defendants' withdrawal of the present motion with leave to refile, and agreed that such withdrawal would not operate as a waiver of arbitration rights. (See correspondence to the court attached hereto as **Exhibit 12**). Following an impasse at mediation, the moving Defendants promptly renewed the present Motion. As a result, no discovery has been conducted and no depositions have been taken in this case. Accordingly, there are no grounds for which Plaintiff may contend she has been prejudiced by any delay in pursuing arbitration. The moving Defendants timely asserted arbitration rights, no discovery has been conducted, and the parties have not otherwise availed themselves of the court system. Accordingly, the moving Defendants have not waived their right to compel arbitration.

VIII. THE CASE MUST BE STAYED WHILE ARBITRATION IS PENDING

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

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

(Emphasis added.)⁶ Citing this statutory provision, the South Carolina Court of Appeals held the "FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties." *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002). Accordingly, pursuant to this Court's inherent power to manage its own docket and the statutory mandates of the FAA, moving Defendants respectfully request that this matter must be stayed in its entirety until such time as the Court has made a final decision regarding the present motion, the arbitration process is complete, and the appellate process, if any, has been exhausted.

⁶ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. See S.C. Code ANN. § 15-48-20(d) ("Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section.")

IX. ALTERNATIVELY, THE PARTIES SHOULD BE PERMITTED TO CONDUCT ADDITIONAL DISCOVERY.

If the Court is not inclined to grant the instant motion on the grounds contained in this memorandum, this Defendant requests that the parties be permitted to conduct additional discovery on the issues raised herein, and in particular, the nature of Ms. Wilson's agency relationship with her mother and the circumstances surrounding the admissions process.

In a case involving similar issues, the Honorable Perry Gravely allowed the parties to conduct additional discovery on the issue of a mother's authority to execute an Arbitration Agreement on her son's behalf in connection with his admission to a skilled nursing facility. *See James Boyd v. THI of South Carolina, LLC d/b/a at Magnolia Place-Greenville, et. Al*, 2018-CP-23-01934 (S.C. Com. Pls. July 9, 2018) (attached hereto as **Exhibit 13**). Critical to the court's decision in that case was whether the son's conduct and admissions director's understanding of that conduct created apparent agency so as to bind the father to an arbitration agreement. The court permitted the parties to take the depositions of the mother, the son, the admissions coordinator for the skilled nursing facility, and the case manager for the hospital the father was transferred from. After considering the testimony of those individuals, the court found there was evidence to support the finding of apparent agency.

Likewise, the Honorable Alison Lee allowed the parties to conduct additional discovery on a wife's authority to execute an arbitration agreement on behalf of her husband. *See Priscilla Brown, as Personal Representative of the Estate of James Brown v. THI of South Carolina at Columbia at Magnolia Manor d/b/a Midlands Health and Rehabilitation Center*, 2017-CP-40-00516 (S.C. Com. Pls. Nov. 7, 2019) (attached hereto as **Exhibit 14**). Judge Matie Murphy also ordered arbitration related discovery in a more recent case. *See Beverly Vaughn as Personal Representative of the Estate of Loris Paris vs. Saint Matthews Healthcare, LLC; Melissa Kizer;*

Melissa Davis; and Angela Smith Teliha, 2022-CP-38-00525 (S.C. Com. Pls. Nov. 17, 2023) (attached hereto as **Exhibit 15**).

The case at the bar involves Ms. Wilson's own authority to execute the Agreement and the circumstances surrounding its execution. As in *Boyd, Brown, and Vaughn*, if the Court determines the record is insufficient to properly rule on the issues before it, additional discovery should be permitted as necessary.

Most respectfully, if the Court should make such a determination, it is only fair to allow this Defendant to engage in some appropriately limited discovery to attempt to protect its arbitration rights. It must be remembered that this Defendant moved to compel arbitration under a facially valid arbitration agreement. This Defendant firmly believes Ms. Wilson had the authority to execute the Agreement on behalf of her mother. Nevertheless no one ever called her authority to enter into the Agreement into question until now. This Defendant had no reason to conduct discovery until this dispute arose, and even then, it still maintains its primary position that the Agreement was enforceable based on the record as is. If further development of the record is needed on any point material to arbitrability, the Court should expressly allow this Defendant to protect its legitimate interests through discovery into the relevant subject matter without exposing itself to a claim of waiver by Plaintiff, i.e., without having to expose themselves to a potential Catch-22 where they could be said to have waived their arbitration rights simply by endeavoring to prove them.

CONCLUSION

For the reasons set forth herein, Defendants respectfully request that this Court enter an order staying the pending action and compelling arbitration. Alternatively, and if the Court is not inclined to grant the instant motions on the grounds asserted above, Defendant requests that the

parties be permitted to conduct limited discovery into the issue of Ms. Wilson's authority without Defendant waiving its arbitration rights. Defendant also requests permission to be heard after such discovery is conducted and requests that it be permitted to submit supplemental memoranda along with any additional evidence obtained.

CLEMENT RIVERS, LLP

By: /s/ Matthew O. Riddle

D. Jay Davis, Jr

SC Bar No. 12084

Matthew O. Riddle

SC Bar No. 76650

P.O. Box 993, Charleston, SC 29402

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

mriddle@ycrlaw.com; gdotterer@ycrlaw.com

*Attorneys for the Defendants Columbia AL
Operations, LLC D/B/A Harmony Collection at
Columbia (AL/MC) and Karen Bowman*

Charleston, South Carolina

Dated: March 4, 2025



Resident Move-In: Checklist
Assisted Living/Memory Care

- ☐ Commitment Agreement
- ☐ Lease Agreement (to be signed prior to admission)
Lease sign Appt date/time: 3/25/2022
- ☐ Schedule of Costs
- ☐ Proration Worksheet & Concessions
- ☒ Bill of Rights
- ☒ Emergency Plan
- ☐ ACH (attach voided check)

EXHIBIT

2

☒ Who receives Monthly Statement? S. Jean Wilson

☒ Monthly Statement: (circle one) USPS Mailed or Emailed

Billing Address:

Billing Email:

@verizon.net

☒ Resident Handbook (for resident) & acknowledgement

HARMONY

SENIOR
SERVICES

ELECTRONICALLY FILED - 2025 Mar 04 5:32 PM - RICH LAM
NPLEAS - CASE#2023CP4002608

Resident Information			
Name of Resident: <i>Gladys A. Graham</i>	Social Security #: [REDACTED]	DOB: [REDACTED]	
Birthplace: <i>Saluda, SC</i>	Age: <i>102</i>	Gender: <i>F</i>	Marital Status: <i>Widowed</i>
Veteran Status: <i>N/A</i>	Previous Occupation: <i>Licensed Practical Nurse</i>	Face/Ethnicity: <i>Black</i>	Primary Language: <i>English</i>
Primary Contact Email: [REDACTED]	Move In Date: <i>Mar 31, 2022</i>		
Previous Address: [REDACTED]	How Long: <i>44 yrs.</i>		
Personal Contacts			
Name/Relationship	Address/City/State/Zip	Home Phone	Cell Phone
Primary Emergency: <i>Sallie Jean Wilson</i>	[REDACTED]	[REDACTED]	[REDACTED]
Secondary Emergency: <i>Diann Cook</i>	[REDACTED]	[REDACTED]	[REDACTED]
Responsible Party: <i>Sallie Jean Wilson</i>	[REDACTED]	[REDACTED]	[REDACTED]
POA/Health Care:			
POA/Financial:	<i>Joint banking, but no legal document</i>	[REDACTED]	[REDACTED]
Next of Kin: <i>Sallie Jean Wilson</i>	[REDACTED]	[REDACTED]	[REDACTED]
Other: <i>Diann Cook</i>	[REDACTED]	[REDACTED]	[REDACTED]
Professional Contacts			
Name	Address/City/State/Zip	Phone	
Physician: <i>Dr. Michelle Floyd</i>	<i>116 Venture Ct., Greenwood, SC 29649</i>	<i>(864) 735-5594</i>	
Mental Health Provider: <i>N/A</i>			
Dentist: <i>Dr. Sam Wheeler</i>	<i>201 N. Banks St., Saluda, SC 29138</i>	<i>(864) 445-8124</i>	
Pharmacy: <i>Prosperity Drugs</i>	<i>101 N. Main St., Prosperity, SC 26127</i>	<i>6939 (803) 364-2310</i>	
Referring Agency Case Manager: <i>Shannon Moody, LMSW</i>	<i>Agape Care SC</i>	<i>(800) 932-2738</i>	
Other Medical Provider: <i>N/A</i>			
Medical Information:			
Allergies: <i>Hay fever</i>	Diagnoses: <i>Senile Degeneration of Brain</i>	Level of Care (LOC): ☒ Ambulatory ☐ Non-Ambulatory	
Has On File (Check all that Apply):			
☐ Living Will ☐ Medical Durable Power of Attorney ☒ Not Resuscitate (DNR)			
Name of Hospital to be taken to: <i>Prisma Health Baptist Parkridge Hospital</i>		Medical Insurance Plan: <i>Hetna Medicare Plan (PPO)</i>	
Medical Insurance Group Name: <i>Hetna Medicare Plan (PPO)</i>	Medical Insurance Group ID #: <i>MEBFDMFR</i>	Medical Insurance Member ID #: <i>MEBFDMFR</i>	
Dental Insurance Plan:		Dental Insurance Identification #:	
Medicare Identification #: [REDACTED]	Medical Identification #: <i>N/A</i>		
Religious Preference: <i>Baptist</i>	Name and Address of Clergy: <i>Rev. Herbert Martin</i>	Telephone: <i>(864) 337-5829</i>	
Name and Address of Funeral Home: <i>Butler & Sons Funeral Home</i>		Telephone: <i>(864) 445-2623</i>	
Signature of person completing this form: <i>A. Jean Wilson, daughter</i>			Date: <i>3/23/22</i>



Patient Information and Consent

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Notes for today's visit:

Patient Information

Name (First, Middle, Last)	Birth	Age	Social Security #
Gladys A. Graham	REDACTED	102	REDACTED
Birth Sex ☐ M ☒ F	Primary Care Provider ☐ None ☐ SCHC is my primary care provider		
Mailing Address	Apt. #	City	State Zip
REDACTED		REDACTED	SC
Primary Phone	Home	Cell	Okay to leave message?
REDACTED	☐	☒	☒ Yes ☐ No
EMERGENCY CONTACT	Name	Relationship	Primary Phone
	S. Jean Wilson	Daughter	REDACTED

Preferred Pharmacy

 I elect to use SC Home Rx Pharmacy and consent to my information being shared: ☒ Yes ☐ No

Pharmacy Name	Pharmacy Location

Insurance

 Please provide a copy of all insurance cards.

PRIMARY INSURANCE CARRIER				SECONDARY INSURANCE CARRIER			
Insurance Company Name				Insurance Company Name			
Medicare				Hefna Medicare Plan (ppo)			
Address				Address			
City		State	Zip	City		State	Zip
Phone		Policy Number		Phone		Policy Number	
		REDACTED					
Group Number / Name				Group Number / Name			
Insured Name & DOB				Insured Name & DOB			
Patient's relationship to Insured: ☒ Self ☐ Spouse ☐ Dependent				Patient's relationship to Insured: ☐ Self ☐ Spouse ☐ Dependent			

Authorization for Release of Information

May we leave testing results or referral info in email or voicemail?

☒ Yes ☐ No

Who may receive information on your behalf regarding testing or referrals?

Name: S. Jean Wilson, Diann Cook

Workers' Compensation

I hereby authorize SCHC to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care of rehabilitation, regarding my medical records and the treatment I have received or will receive.

X

Patient or Authorized Person's Signature

Date

Patient Consent for Treatment

- I voluntarily consent to any and all health care treatment and diagnostic procedures provided by SCHC and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at SCHC.
- I agree to be contacted via email or SMS with information related to my visit, like: a patient portal invitation, post-visit satisfaction survey, appointment or checkup reminders, health tips, or new services that relate to me or my family.
- I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Notice of Privacy Practices.
- I authorize payment of medical benefits to SC House Calls or their designee for services rendered and I am responsible for any amount not covered.
- I acknowledge that SCHC will obtain all my medication/prescription history when using an electronic system to process prescriptions for my medical treatment.
- I consent to telehealth visits.
- I understand that SCHC will share my healthcare protected notes with my primary care provider.

I have received a copy of the Notice of Privacy Practice and Financial Policy Notice. ☐ Yes ☐ No Initial _____

X S. Jean Wilson

Patient or Authorized Person's Signature

Date

3/25/22

Harmony Graham 176



**Emergency Medical Services
Do Not Resuscitate Order**

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**SOUTH CAROLINA
EMERGENCY MEDICAL SERVICES**

RESUSCITATE

DO NOT RESUSCITATE ORDER

NOTICE TO EMS PERSONNEL

This notice is to inform all emergency medical personnel who may be called to render assistance to

Gladys A. Graham
(Name of Patient)

that he/she has a terminal condition which has been diagnosed by me and is at least eighteen (18) years of age, and has specifically requested that no resuscitative efforts including artificial stimulation of the cardiopulmonary system by electrical, mechanical, or manual means be made in the event of cardiopulmonary arrest.

REVOCATION PROCEDURE

THIS FORM MAY BE REVOKED BY AN ORAL STATEMENT BY THE PATIENT TO EMS PERSONNEL, OR BY MUTILATING, OBLITERATING, OR DESTROYING THE DOCUMENT IN ANY MANNER.

3/22/22
Date

[Signature]
Patient's Signature (or Surrogate or Agent)

Physician's/ APRN's/ PA's Name (Please Print)

Physician's/ APRN's/ PA's Signature

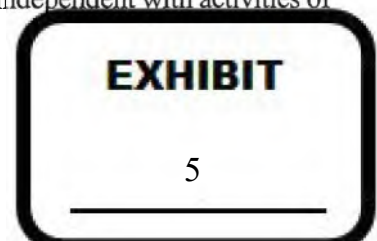
Physician's/ APRN's/ PA's Address

Physician's/ APRN's/ PA's Telephone Number

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
SALLIE WILSON AS GUARDIAN FOR	)	CASE NO. 2023-CP-40-02608
GLADYS GRAHAM,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
MEDICAL UNIVERSITY HOSPITAL	)	AFFIDAVIT OF REBECCA MARIE
AUTHORITY D/B/A MUSC HEALTH	)	CUNNINGHAM
COLUMBIA MEDICAL CENTER	)	
DOWNTOWN, COLUMBIA AL	)	
OPERATIONS, LLC D/B/A HARMONY	)	
COLLECTION AT COLUMBIA	)	
(AL/MC), AND KAREN BOWMAN,	)	
	)	
DEFENDANTS.	)	

I, Rebecca Marie Cunningham, respectfully submit this Affidavit in support of the Motion to Compel Arbitration of Defendant Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (the "Facility") in the above-captioned case:

1. I am over the age of eighteen, am otherwise competent, and a resident of the State of South Carolina.
2. I served as the Executive Director for the Facility during the time period at issue in the Plaintiff's Complaint.
3. The Facility is a *community residential care facility* licensed under S.C. Code Ann. section 44-7-260, Regulation 61-84, which means it is an assisted living facility that does not provide daily skilled nursing care. "It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement." Reg. 61-84 §101(J).
4. Ms. Graham was deemed by a physician to be appropriate for admission to the Facility, according to Regulation 61-84, § 801. As such, she was largely independent with activities of daily living, and did not require daily skilled nursing care.

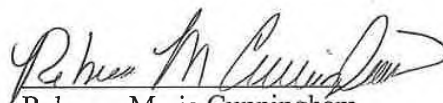


5. I participated in the admissions process for Gladys Graham's admission to the Facility. The admissions documents reflect that Ms. Graham's daughter, Sallie Wilson, signed the Admissions Agreement containing the subject arbitration provisions, on behalf of her mother.
6. As part of the admissions process, each admitting resident, or her representative on the resident's behalf, reviews an Admissions Agreement and various other documents that must be completed by the resident or her representative for admission to the Facility.
7. The admitting resident and her representative also receives a written copy of the resident's rights under applicable state laws (which are also posted in the Facility), a written explanation of the charges for services provided by the Facility, a separate listing of local and government resources furnished by the state Ombudsman and other state/local advocacy groups (which are also posted in the facility), in addition to other administrative documents. The admitting resident, or the resident's representative on behalf of the resident, initials an Acknowledgement Form as part of this admissions process, acknowledging that he or she has received and reviewed these respective items.
8. The admitting resident, or the resident's representative on behalf of the resident, also has the option to enter into an Arbitration Agreement with the Facility during the admissions process, whereby any future claims by and between the resident and the Facility based on the admitting resident's residency at the Facility must be submitted to mandatory arbitration. Execution of/agreement with the arbitration provision is not a condition for admission to the Facility.
9. As part of the admissions process, I would personally review and explain each of the admissions documents described above to the admitting resident, the representative, or both to ensure that they reviewed, were comfortable with, and understood each and every document, including the Admission Agreement and the arbitration provision contained therein. In particular, I would verbally explain to the resident, the representative, or both and ensure they understood the benefits, care, and treatment the resident had elected to receive.
10. With respect to the Arbitration Agreement, I would explain to the admitting resident, the representative, or both that completion of the Arbitration Agreement meant that in the event of a legal dispute with the Facility, the resident would submit his or her claims to arbitration in lieu of going to court.

11. The relevant documents reflect that Ms. Wilson signed the Admissions Agreement containing the arbitration provision in Ms. Graham's presence and on her behalf, without objection from Ms. Graham, and after a full explanation of the Admissions Agreement Arbitration and its arbitration provisions.
12. Based upon the Facility's admission policies and procedures, and my own strict routine and practice as Executive Director, I would not have allowed Ms. Wilson to sign the admission documents on behalf of Ms. Graham without sufficient assurance from the resident and her family that Ms. Wilson had authority to sign on her mother's behalf.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on 2/28, 2025.

Charleston, South Carolina


Rebecca Marie Cunningham

SWORN TO AND SUBSCRIBED TO BEFORE ME

this 28 day of February, 2025.

Duane Peterson

NOTARY PUBLIC

My Commission Expires: 9-9-25
(SEAL)



Physician/Healthcare Provider History & Physical

Therapy Services

Therapy services can be made available to residents of assisted living. These services must be ordered by a physician/HCP in order to be initiated.

Resident evaluation and treatment as indicated. Check all that apply: N/A

☐ Home Health

Mrs Graham is a hospice patient

☐ Physical Therapy

☐ Occupational Therapy

☐ Speech Therapy

Related to the following:

This section may be completed by the nurse.

☐ Recent Hospitalization

☐ Recent Fall/Injury/Illness

☐ Recent Skilled Care or Rehabilitation Center stay

☐ Use of Hospice/ Home Health/Companion Services

Assistive Devices: canes

Other instructions:

she needs supervision for safety 24 hours/day

Appropriate for Assisted Living Setting

I have examined this person and find no evidence to support the need for continuous skilled nursing care at this time. The person's needs can be met in the Community Residential Care Facilities setting. Additionally, this person does not pose a threat to themselves or others.

M. J. Heyd, MD

Physician/HCP signature

3/24/2022

Date

The Harmony Collection at Columbia
2300 Clemson Road
Columbia SC
29229

Phone: 803-223-9560

Fax: 803-764-2108

SC Health and Service Evaluation Results

Community: The Harmony Collection at Columbia [AL/MC] (COO) Gender: Female
 Resident: Graham, Gladys REDACTED Assessment Date: 4/15/2022 - 4/17/22
 Unit: REDACTED Reason for Assessment: SC Initial - 72 Hour
 Resident Status: Current Completed By: Gwen Jefferson
 Date of Birth: REDACTED

Assessment Item	Response Selected	Score	
		In House	Outside

Assessment Section: Demographics			
Assessed By: gwen.jefferson (g.jefferson)			
Admitted From	Private Home/Apt. with supportive services	0	0
What was the previous address from where they were admitted from?		0	0
Supportive Services	Hospice	0	0
What care level is the resident currently in at the time of this assessment?	Secured Unit	0	0
Move In Date	3/31/2022	0	0
Gender	Female	0	0
Date of Birth	REDACTED	0	0
Place of Birth	Saluda, SC	0	0
Marital Status	Widowed	0	0
Religion	Baptist	0	0
Education (Highest Level Completed)	Technical/Trade school	0	0
Lifetime Occupation	LPN	0	0
Primary Spoken Language	English	0	0
Primary Written Language	English	0	0
Responsibility/Legal Guardian	Family member responsible	0	0
Resident Code Status	DNR	0	0
Demographics Total:		0	0

Assessment Section: Diagnoses			
Assessed By: Bridgett.Gurffey (bgurffey)			
Diagnoses	Arthritis, Dementia, Hypertension (HTN)	0	0
Diagnoses - Reviewed	The resident's active diagnoses were reviewed. See Service Plan for details.	0	0
Communicable Diseases	Resident is free from communicable disease(s)	0	0
Allergies	NKA	0	0
Smoking	Resident does not currently smoke	0	0
Allergies - Reviewed	The resident's active allergies were reviewed. See Service Plan for details.	0	0
Oxygen Use	Not Applicable: Resident does not require supplemental oxygen	0	0
Oxygen Enabling Devices and Methods	None Apply	0	0
Diagnoses Total:		0	0

Assessment Section: Skin Evaluation			
Assessed By: gwen.jefferson (g.jefferson)			
Overall skin condition:	Normal	0	0
Skin color	Normal	0	0
Skin temperature	Normal	0	0
Describe location and type of skin marking(s) (i.e., scars, birthmarks, healed surgery sites, tattoos, etc.)	na	0	0

Harmony Graham 020

4/7/2022

Describe location and type of active skin issue(s) (i.e., open areas, broken skin, rashes, bruising, etc.)
Resident has an active wound
Describe location, type, and date of onset of active wound(s)

na 0 0
No 0 0
Skin Evaluation Total: 0 0

Assessment Section: Neurocognitive Orientation Evaluation
Assessed By: Bridgett-Gunfley (bgunfley)

Resident is oriented to person
Moderate Impairment: Resident has current history of occasional disorientation to person, place, time or situation even in familiar surroundings and requires supervision and oversight for safety
Moderate Impairment: Current history of frequent or difficulty remembering and using information; requires directions and reminding from others; cannot follow written instructions

Short Term Memory 2 0

Long Term Memory 1 0

Vision 1 0

Hearing 0 0

Other Sensory Impairment(s) 0 0
Communication 1 0

Communication Involving Devices and Methods 0 0
Neurocognitive Total: 14 0

Assessment Section: Psychosocial
Assessed By: Bridgett-Gunfley (bgunfley)

Wandering Judgment 0 0
Resident does not have current or history of wandering. Resident has current history of frequent poor judgment. Resident may resist care often. Needs protection and supervision because participant makes unsafe or inappropriate decisions.

Behaviors 16 0
Resident has current or history of frequent disruptive, aggressive, or socially inappropriate behavior, either verbally or physically improper. May require professional consultation or staff training.

Anxiety 2 0
Mood and Depression 2 0
Resident has current history of occasional anxiety
Resident has current history of occasional depression or mood disorder

Healing/Wounds/Dehiscence 4 0
Resident has current history of occasional healing/wounds/dehiscence

Substance Use: 0 0
Resident does not currently have a history of substance use.

Previous mental health or intellectual disability 0 0
Psychosocial Total: 34 0

Assessment Section: Pain and Discomfort
Assessed By: Gwen-Jefferson (g-jeffe)

Is the resident able to express pain? 0 0
How does the resident express pain? 0 0
Frequency 0 0

Type of Pain 0 0
Pain scale 0 0
Location 0 0
None Apply
0 - No pain

Harmony Graham 021

ROA 177

Housekeeping Preferences
Laundry Level of Assistance

Daily bed making 0
Total: Staff completes all laundry tasks 0
Housekeeping and Laundry Total: 0

Assessment Section: Shopping and Finance
Assessed By: Bridgett Guffey (bguffey)
Shopping Level of Assistance
Finance Level of Assistance

Family provides 0
Family provides 0
Shopping and Finance Total: 0

Assessment Section: Transportation
Assessed By: Bridgett Guffey (bguffey)
Transportation Level of Assistance

Minimum: Resident requires use of available transportation and needs instruction or physical assistance 1
Transportation Total: 1

Assessment Section: Meal Preparation
Assessed By: Bridgett Guffey (bguffey)
Do we prepare meal for resident?

Yes 0
Meal Preparation Total: 0

Assessment Section: Activities
Assessed By: Bridgett Guffey (bguffey)
Activities Level of Assistance
General Activity Preferences
General Activity Preferences
General Activity Preferences
General Activity Preferences
General Activity Preferences

Minimal: Resident may require occasional verbal reminders for scheduled activities. 1
Cards/other games 0
Crafts/arts 0
Music 0
Gardening or plants 0
Other, coloring 0
Activities Total: 1

Assessment Section: Routines and Preferences
Assessed By: Bridgett Guffey (bguffey)
Caregiver Preference
Resident Preferences

Does not have caregiver preference 0
Resident does not have other preferences or routines 0
Routines and Preferences Total: 0

Assessment Section: Emergency and Evacuation
Assessed By: gwen jefferson (g.jefferson)
Evacuation Level of Assistance

Emergency Response Level of Assistance
Resident trained on and demonstrates how to activate emergency call system

Moderate: Resident requires some physical assistance to evacuate residence or to request emergency assistance 2
Minimal: Resident requires occasional reminding with how to use the emergency response system 1
No/Unable, not at community yet 0

Emergency Response Enabling Devices and/or Methods
Emergency Response Enabling Devices and/or Methods
Evacuation Enabling Devices and Methods

Emergency Pull Cord 0
Pendant Call System 0
Grab bar 0
Walker (no wheels, wheeled, seat attached, ment walker) 0
Emergency and Evacuation Total: 3

Assessment Section: Memory Care - Two Person Assistance
Assessed By: Bridgett Guffey (bguffey)

Memory Care Resident requires two person assist?

No 0

Memory Care - Two Person Assistance Total: 0

Assessment Section: Memory Care - Meal Assistance
Assessed By: Bridgett Guffey (bguffey)

Memory Care Resident Requires All-Inclusive Meal Assistance?

No 0 0
Memory Care - Meal Assistance Total: 0 0

Assessment Section: Memory Care - Excessive Incontinence
Assessed By: Bridgett Gurfey (bgurfey)

Memory Care Resident has Excessive Incontinence

No 0 0
Memory Care - Excessive Incontinence Total: 0 0

Assessment Section: (SC) HEALTH STATUS

Assessed By: Bridgett Gurfey (bgurfey)
Physician has certified that resident is appropriately placed in CRCP
Resident has condition(s) that are normally prohibited, and resident manages them independently
If resident has condition(s) that are normally prohibited, and resident manages them independently, select all that apply
Resident had a state required 2-Step TB test/examination
Resident has orders for special procedures
Resident has orders for preventative care measures
Resident has podiatry issues
If resident has podiatry issues, check all that apply
Resident has dental or oral care issues
If resident has dental or oral care issues, check all that apply

Yes 0 0
No 0 0
None Apply 0 0
No (list reasons), Pre-admit 0 0
No 0 0
Yes 0 0
Thick toenails 0 0
None Apply 0 0
(SC) HEALTH STATUS Total: 0 0

Assessment Section: (SC) SPECIAL CONDITIONS

Assessed By: Bridgett Gurfey (bgurfey)
Resident has a special condition that may need specific care
If resident has a special condition that may need specific care, check all that apply
Resident has been diagnosed with diabetes
If resident has been diagnosed with diabetes, check all that apply
Is the resident a first time user of O2?

Yes 0 0
Alzheimer's or dementia related diagnosis 0 0
No 0 0
None Apply 0 0
No 0 0
(SC) SPECIAL CONDITIONS Total: 0 0

Assessment Section: (SC) MEDICATION

Assessed By: Bridgett Gurfey (bgurfey)
Resident has medication orders
Resident needs assistance obtaining medication and/or medication supplies
If resident needs assistance obtaining medication and/or medical supplies, check all that apply
Resident needs assistance starting medication
If resident needs assistance starting medication, check all that apply
Resident does, and has been approved, to self-administer medication
If resident does, and has been approved to self-administer medication, check all that apply
Resident needs or requests medication administration
If resident needs or requests medication administration, check all that apply

Yes 0 0
Staff assists resident in obtaining medication and/or medical supplies 0 0
Yes 0 0
Staff assists resident in starting medication 0 0
No 0 0
None Apply 0 0
Yes 0 0
Other needs regarding medication administration (describe), Med Tech administers (SC) MEDICATION Total: 0 0

Assessment Section: (SC) NURSING CARE

Assessed By: Bridgett Gurfey (bgurfey)
Resident has short-term nursing needs
If resident has str ~ym nursing needs, check all that apply

Yes 0 0
Accesses hospice services 0 0
Harmony Graham (SS) NURSING CARE Total: 0 0

Assessment section: (SC) ADLS

REDACTE

Assessed By: Bridgett Guffey (bguifey)
Telephone usage level of assistance

Resident has dietary needs regarding religious practices and/or cultural differences
Resident dining preferences
Resident needs assistance accessing ice and/or drinking water
Resident chooses to use and store cleaning products or other hazardous agent(s) in residence
If resident chooses to use and store cleaning products or other hazardous agent(s) in residence, check all that apply
Resident has a pet that resides in the community

Assessment Section: (SC) RESTRAINTS

Assessed By: Bridgett Guffey (bguifey)
Resident has order for emergency mechanical or physical restraints
If resident has order for emergency mechanical or physical restraints, check all that apply

Minimal: Resident is able to answer the telephone and carry on a normal conversation but has difficulty with placing calls	0	0	0
No	0	0	0
Prefers to eat in community dining area	0	0	0
Yes (describe), Staff assists	0	0	0
No	0	0	0
None Apply	0	0	0
No	0	0	0
(SC) ADLS Total:	0	0	0
No	0	0	0
(SC) RESTRAINTS Total:	0	0	0
Grand Total	172	0	172

Recommendations
Recommendations shown are based on setup as of the assessment completion date.

Care Level

Memory Care

Services

Memory Care

Level of Care: Level of Care - MC - 3 -Monthly

Applicable Score

172.00

Clinical Information

Type	Description	Reactions	Start Date	End Date
Allergies	NKA		03/17/2022	
Diagnoses	Dementia		03/17/2022	
	Hypertension (HTN)		03/17/2022	
	Arthritis		03/17/2022	

Orders

Resident

Resident Care Director

Family / Responsible Party

Executive Director

Harmony Graham 026

4/7/2022

MAIN STREET PHYSICIANS



MainStreetPhysicians.com | SCHouseCalls.com

Agape
2300 Clemson Road
COLUMBIA, SC 29229-6872
Phone: (803) 223-9560, Fax: (803) 764-2106

Date: 04/11/2022

RE: Gladys* Graham, DOB: [REDACTED]

ENCOUNTER REASON/DATE

New Patient to provider but not the practice EP, Hospice Follow Up, Non Face to Face
Followup: Anemia of chronic disease
Followup: Arthritis
Followup: Hypertensive disorder
Followup: Senile degeneration of brain
Followup: Chronic kidney disease
04/07/2022 - 09:30AM - The Crossings at Columbia

PROBLEMS:

Reviewed Problems

- Hyperlipidemia - Onset: 04/09/2022
- Anemia of chronic disease - Onset: 05/30/2021
- Senile degeneration of brain - Onset: 05/30/2021
- Cataract - Onset: 04/09/2022
- Essential hypertension - Onset: 04/10/2022
- Hypertensive disorder - Onset: 05/30/2021
- Gastroesophageal reflux disease - Onset: 04/09/2022
- Chronic kidney disease - Onset: 05/30/2021
- Rheumatoid arthritis - Onset: 04/09/2022
- Arthritis - Onset: 05/30/2021
- Benign meningioma - Onset: 05/14/2021

ALLERGIES:

Reviewed Allergies
NKDA

MEDICATIONS:

See facility MAR

FAMILY HISTORY:

Discussed Family History

SOCIAL HISTORY:

Discussed Social History

SC House Calls

Graham, Gladys* A [REDACTED] [REDACTED]

Harmony Graham 061

ROA 181

ELECTRONICALLY FILED - 2025 Mar 04 5:32 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002608

Diet and Exercise

What type of diet are you following?: Regular

What is your exercise level?: None

Activities of Daily Living

Are you able to care for yourself?: No

Are you blind or do you have difficulty seeing?: Yes

Are you deaf or do you have serious difficulty hearing?: No

Do you have difficulty concentrating, remembering or making decisions?: Yes

Do you have difficulty walking or climbing stairs?: Yes

Do you have difficulty dressing or bathing?: No

Do you have difficulty doing errands alone?: Yes

Are you able to walk?: Yes: walks without restrictions

Do you have transportation difficulties?: Yes

Substance Use

Do you or have you ever smoked tobacco?: Never smoker

Do you or have you ever used any other forms of tobacco or nicotine?: No

What was the date of your most recent tobacco screening?: 04/07/2022

Has tobacco cessation counseling been provided?: No

What is your level of alcohol consumption?: None

Do you use any illicit or recreational drugs?: No

What is your level of caffeine consumption?: Occasional

Home and Environment

Are you a caregiver?: No

Meaningful Use - Optional

Hospice: Yes

Insulin dependent?: No

Dialysis?: No

Is patient Oxygen dependent?: No

Would you evacuate if there were to be an evacuation?: Yes

Adult Palliative Care

Does patient have ability to make own decisions/needs known?: Yes

Gender Identity and LGBTQ Identity

Gender identity: Identifies as Female

Assigned sex at birth: Female

Pronouns: she/her

First name used: Gladys

Sexual orientation: Straight or heterosexual

SURGICAL HISTORY

Reviewed Surgical History

ADDITIONAL HISTORY

None recorded

HISTORY OF PRESENT ILLNESS

Ms Graham is a 102yo AA female patient that is being seen today as a new patient to me and is not new to the practice in the MC where she resides for a Hospice follow up on (unstable) Dementia, (stable) arthritis, (not at goal) CKD, anemia, and (stable) HTN. Patient states she is doing good. Denies pain, no problems chewing or swallowing food, no complaints of diarrhea or constipation, LBM was about 2 days ago she states and it was normal, no trouble sleeping at night, No problem with urination. Denies burning with urination, Denies CP or SOB

The following records were reviewed and/or the following plan of care management changes were considered as a prolonged non face to face service: spoke with staff about patient's behavior, appetite, urine/bowel, and cognitive status since moving into the harmony.

REVIEW OF SYSTEMS:

Patient reports **exercise intolerance** but reports no fever and no chills. She reports no dry mouth; **missing teeth. Dentures present.** She reports **muscle weakness and swelling in the extremities** but reports no muscle aches, no arthralgias/joint pain, and no back pain. She reports **memory loss** but reports no depression, no sleep disturbances, and no anxiety. She reports no dry eyes, no vision change, no irritation, and no diplopia. She reports no difficulty hearing. She reports no nose problems and no sinus problems. She reports no chest

medication as prescribed. Will continue to monitor.
I10: Essential (primary) hypertension

2. Arthritis -

stable. No complaint of pain voiced at this time. Patient stated that her knees hurts at times.
Will continue to monitor.
M19.90: Unspecified osteoarthritis, unspecified site

3. Gastroesophageal reflux disease -

stable. No verbal complaints voiced. Encourage patient to sit up at least 30 minutes - 1 hour after eating. Will continue to monitor.
K21.9: Gastro-esophageal reflux disease without esophagitis

4. Chronic kidney disease -

unstable. Encourage patient to refrain from taking NSAIDs. No verbal complaints voiced. Generalized edema noted to bilateral feet. will continue to monitor.
N18.9: Chronic kidney disease, unspecified

5. Senile degeneration of brain -

stable. A&Ox2 during visit. Staff stated that patient is more confused in the afternoon. Primary hospice diagnose. Staff denies any behavior issues. Will continue to monitor.
G31.1: Senile degeneration of brain, not elsewhere classified

6. Full care by hospice -

I attest that I had a face to face encounter today to gather clinical findings to determine continued eligibility for hospice care. As the nurse practitioner, my clinical findings from the encounter were provided to the certifying physician to use in determining whether the patient continues to have a life expectancy of six months or less if the terminal illness runs its normal course.
Z51.5: Encounter for palliative care

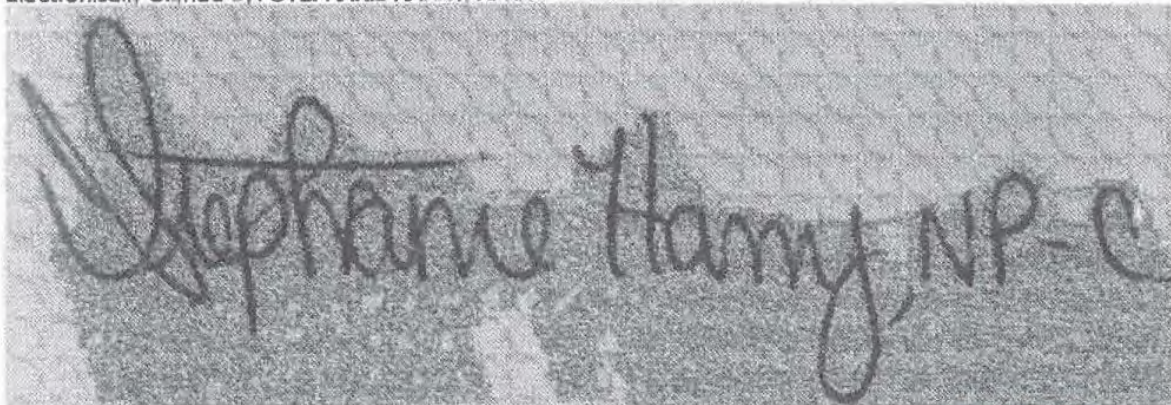
Discussion

Discussion Notes

moderate complexity

34 minutes spent on reviewing patient's records and/or managing/developing the plan of care. Start time 12:00pm Stop time 12:34pm. Patient seen/scheduled for face to face visit on 4/7/2022.

Electronically Signed by: STEPHANIE HARRY, APRN

A large, stylized handwritten signature in black ink that reads "Stephanie Harry, NP-C". The signature is written over a light gray, textured background.

5C House Calls

Graham, Gladys* A

REDACTED

Harmony Graham 063

ROA 183

ELECTRONICALLY FILED - 2025 Mar 04 5:32 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002608

From: Riddle, Matthew <MRiddle@ycrlaw.com>
Sent: Wednesday, August 9, 2023 12:59 PM
To: brad@hugheyfirm.com
Cc: Davis, Jay <jdavis@ycrlaw.com>; clong@ycrlaw.com; Wakeham, Rebecca (Becky) <bwakeham@ycrlaw.com>; jennifer@hugheyfirm.com
Subject: Gladys Graham v. Harmony

Brad,

I believe you're aware that we have been assigned the defense of this case. We are in the process of getting the file from Alissa Fleming and answering your discovery.

The client has provided to us the attached admission agreement, which contains an arbitration provision. I'm not sure if you and Alissa had already discussed this agreement. Please let us know if you will agree to transfer the claims against Harmony to arbitration per this agreement.

We will need to go ahead and file a motion to compel arbitration and will get that out shortly. In the meantime, you and your client may disregard the discovery requests that Alissa served. Just let us know if any questions. We look forward to working with you on this case. Thanks,

Matt Riddle
Partner
Clement Rivers, LLP
P.O Box 993
Charleston, SC 29402-0993
T: (843) 720-5422
F: (843) 579-2974





CLEMENT RIVERS, LLP
ATTORNEYS AT LAW

Matthew O. Riddle
Partner

Direct Dial: (843) 720-5422
Direct Fax: (843) 579-2974
E-mail: MRiddle@ycrlaw.com

February 14, 2024

Judge Newman

Re: Sallie Wilson as Guardian for Gladys Graham v. Medical University Hospital
Authority d/b/a MUSC Health Columbia Medical Center Downtown, Columbia
AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen
Bowman
Case No.: 2023-CP-40-02608

Dear Judge Newman:

My client's Motion to Compel Arbitration in the above case is currently set for a hearing before you next Tuesday, February 20, 2024. The Parties are now discussing the potential for early mediation. In that regard, please accept this letter as notice of my client's withdrawal of its Motion with leave to re-file. Plaintiff's counsel is copied here and has agreed that withdrawal with leave to re-file shall not be construed as waiver of any arbitration rights.

Thank you for your attention to this matter and please let us know if the court will require anything further.

With kindest regards, I am

Sincerely,

Clement Rivers, LLP

/s/ Matthew O. Riddle
Matthew O. Riddle
Partner

MOR/smp
cc: Counsel for all parties

EXHIBIT

12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2023-CP-40-02608
Sallie Wilson as Guardian for Gladys Graham,	)	
	)	
	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS
Versus	)	COLUMBIA AL OPERATIONS, LLC D/B/A
	)	HARMONY COLLECTION AT COLUMBIA
	)	(AL/MC), AND KAREN BOWMAN'S
Medical University Hospital Authority d/b/a	)	MOTION TO COMPEL ARBITRATION
MUSC Health Columbia Medical Center	)	
Northeast, Columbia AL Operations, LLC d/b/a	)	
Harmony Collection at Columbia (AL/MC), and	)	
Karen Bowman,	)	
	)	
Defendants.	)	

The Plaintiff, Sallie Wilson as Guardian for Gladys Graham (soon to be substituted for Rabbani Abu Rashid Muhammad, as the Personal Representative of the Estate of Gladys Andrews Graham), hereby serves his Memorandum in Opposition to Defendants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman's Motion to Compel Arbitration.

FACTS AND PROCEDURAL HISTORY

Gladys Graham was a resident at Defendants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman [hereinafter referred to as "Harmony"] facility. The Defendants operate a community residential care facility (commonly known as assisted living), licensed by the South Carolina Department of Health and Environmental Control, R.61-84, *Standards for Community Residential Care Facilities*. While a resident in the Defendants' facility, Ms. Graham was allowed to at least one fall on April 18, 2022, which resulted in a fractured right hip, and was suspected to suffer multiple other falls. Ms. Graham was transferred to the Medical University of South Carolina in Columbia, South Carolina, where she underwent a hip repair surgery and subsequently developed pressure wounds to her right buttock and heel, which subsequently healed. Sallie Wilson was appointed Guardian and Conservator for Gladys Graham on January 10, 2023 by the Saluda County Probate Court.

Sallie Wilson, as Guardian for Gladys Graham filed a Notice of Intent against Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast [hereinafter referred to as “MUHA”] on March 30, 2023. A pre-suit mediation was held on May 17, 2023, at which the parties reached an impasse. A Summons and Complaint and Amended Summons and Complaint naming the current Defendants was filed on May 18, 2023. Defendant MUHA filed its Answer on June 23, and the Harmony Defendants filed their Answer on June 30, 2023. Harmony also subsequently served discovery on the same date concurrent with their Answer. On August 9, a Consent Order for Substitution of Counsel was filed for the Harmony Defendants, along with the Defendant’s first Motion to Compel Arbitration.

On July 16, 2024, all parties participated in a mediation wherein the Plaintiff settled with MUHA, but reached an impasse with Harmony. Gladys Graham passed away on July 30, 2024, and Rabbani Abu Rashid Muhammad was appointed the Personal Representative of the Estate of Gladys Andrews Graham on September 24, 2024 by the Saluda County Probate Court. Harmony re-filed the present Motion to Compel Arbitration on November 26, 2024.

STANDARD OF REVIEW

In determining whether a particular dispute can be compelled into arbitration, this Court must first determine whether a valid agreement to arbitrate exists between the parties. All waivers of trial by jury must be known, voluntary, and intentional. The signatory must have legal authority or legal capacity to sign on behalf of the Plaintiff resident. **The burden of proof is on the party attempting to compel the arbitration to prove a valid contract.** “A parties’ right to a jury trial in South Carolina is governed by state law. See Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978).

In determining whether an agreement to arbitrate exists, “the court should apply ‘ordinary state-law principles that govern the formation of contracts.’” Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. **South Carolina common law requires that, in order to have a valid and enforceable contract,**

there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. THERE IS NOT AN ENFORCEABLE ARBITRATION AGREEMENT

A. Gladys Graham did not sign the Arbitration Agreement.

Sallie Wilson executed an Admission Agreement on behalf of Gladys Graham on March 25, 2022, prior to her entry to the Defendant's facility on March 31, 2022. At the time of signing, Sallie Wilson did not have any legal authority to sign on her behalf, by way of a Power of Attorney or Court Ordered Guardianship or Conservatorship. At the time of her admission, Ms. Wilson was not Ms. Graham's Legal Power of Attorney nor did she have legal guardianship over her.

Following her discharge from Harmony, Ms. Graham was found to be incompetent and Ms. Wilson was appointed as her legal Guardian and Conservator by the Saluda County Probate Court on January 10, 2023.

B. **A Residency Agreement and an Arbitration Agreement are two separate agreements and one cannot be bound by the other.**

Our South Carolina Supreme Court has ruled the difference between a residency contract and an arbitration agreement, and that just because the two agreements are contained in one document does not make them one in the same. The Supreme Court has ruled that:

Assent to this contract [the admission agreement] was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). A decision to admit a resident to a community residential care facility such as the Defendants is a healthcare decision. As such,

signing an admission agreement to a skilled nursing facility is a healthcare related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also Thompson v. Pruitt Corp.*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting *Coleman*, 407 S.C. at 351-52, 755 S.E.2d at 453)).

C. Sallie Wilson did not Possess Statutory Authority to Bind Gladys Graham under the Arbitration Agreement.

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care." *Id.* A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

- (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:
- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
 - (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
 - (3) a person given priority to make health care decision by another statutory provision;
 - (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;

- b. formal signing of a written property or marital settlement agreement; or
- c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (6) a parent of the patient;
- (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
- (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
- (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendant has put forth no evidence that Gladys Graham was unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent, as required by the statute. Additionally, the AHCCA only deals “health care” related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word “legal” or “arbitration” mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The Court in Coleman held that the sister of a nursing home resident could not bind the resident to an arbitration agreement at the time of admission, and that the arbitration agreement was not valid because it exceeded the scope of the sister’s authority under the AHCCA. According to the Court, AHCCA specifically limited surrogates’ authority to making health care decisions and associated financial arrangements. Arbitration is not a health care or related financial decision, and thus exceeds the authority granted by the AHCCA. Id. At 351-52, 755, S.E. 2d at 453.

ii. S.C. Bill of Rights for Residents of Long-Term Care Facilities

South Carolina Bill of Rights for Residents of Long-Term Care Facilities is codified in S.C. Code Ann. §44-81-10, et seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin, or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(3). This is substantially the same as the AHCCA.

Under the Bill of Rights, decision making is limited to health care decisions, not legal decisions.

II. **DEFENDANTS FAILED TO RAISE ARBITRATION AS AN AFFIRMATIVE DEFENSE**

Defendants are attempting to compel arbitration yet have failed to plead arbitration as an affirmative defense. Because the Defendants failed to raise this affirmative defense, it is waived and arbitration cannot be compelled. SCRCP R. 8(c).

III. **BY PARTICIPATING IN DISCOVERY, DEFENDANTS HAVE WAIVED THE RIGHT TO COMPEL ARBITRATION**

The Plaintiff filed this action on May 18, 2023. Defendants filed their Answer and concurrently served initial discovery requests on June 30, 2023. Plaintiff served Interrogatories, Requests for Production, and Requests to Admit on July. 10, 2023. Counsel for the Harmony requested a thirty (30) day extension to respond to Plaintiff's discovery requests, which was granted. Harmony later responded to Plaintiff's first discovery requests on August 9, 2023 with a list of objections, referring to the first Motion to Compel Arbitration that was filed the same day. This delay has prejudiced and continues to prejudice Plaintiff.

IV. **FEDERAL ARBITRATION AGREEMENT ACT DOES NOT MANDATE ENFORCEMENT OF THIS AGREEMENT**

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed above in Section I, there is no valid arbitration agreement because Ms. Wilson did not have the legal authority to execute a valid arbitration. Second, Plaintiff's claims include negligence, negligence per se, fraud and misrepresentation, and violations of the South Carolina Unfair Trade Practices Act. Nowhere in the Defendants' arbitration agreement are those causes of action listed. Accordingly, the FAA does not apply.

V. **THE PROCEEDINGS MUST NOT BE STAYED**

The Defendants argue that the FAA requires a stay. However, because the FAA does not apply and this case is not subject to arbitration, the proceedings must not be stayed.

VI. **PROTECTIVE ORDER**

On July 10, 2023, the Plaintiff served the Defendants with Plaintiff's First Discovery Requests. To date, Defendants have only responded with objections. Because arbitration is improper, the Defendants must respond to the Plaintiff's First Discovery Requests within thirty (30) days of the date of the Order Denying the Defendants' Motion to Compel Arbitration.

VII. **ATTORNEY'S FEES AND COSTS**

The Plaintiff respectfully requests the Court award attorney's fees and costs associated with the preparation and arguing of this motion. The undersigned has communicated with opposing counsel on multiple occasions regarding the invalidity of the arbitration agreement, and the Defendant's failure to meet their burden of proof. Despite this, Defendants continue to insist to go forward with their motion to compel which has resulted in a substantial amount of time and expense to the undersigned, which contributes to the prejudice and delay to the Plaintiff.

CONCLUSION

Based on the reasons set forth above, the Plaintiff respectfully requests the Defendant's Motion to Compel Arbitration be denied.

s/ Bradley H. Banyas
 D. Nathan Hughey (SC Bar #68409)
 A. Stuart Hudson (SC Bar #71691)
 Bradley H. Banyas (SC Bar #101668)
HUGHEY LAW FIRM, LLC
 1311 Chuck Dawley Blvd., Suite 201
 Post Office Box 348
 Mt. Pleasant, South Carolina 29465
 (843) 881-8644 (P)
 (888) 884-8311 (F)
 nate@hugheylawfirm.com
 stuart@hugheylawfirm.com
 brad@hugheylawfirm.com

March 5, 2025
 Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ electronic filing, ☐ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 5th day of March, 2025.

s/Bradley H. Banyas

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
SALLIE WILSON AS GUARDIAN FOR	)	CASE NO. 2023-CP-40-02608
GLADYS GRAHAM,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANTS' MOTION TO ALTER,
MEDICAL UNIVERSITY HOSPITAL	)	AMEND, AND/OR RECONSIDER ORDER
AUTHORITY D/B/A MUSC HEALTH	)	DENYING MOTION TO COMPEL
COLUMBIA MEDICAL CENTER	)	ARBITRATION
DOWNTOWN, COLUMBIA AL	)	
OPERATIONS, LLC D/B/A HARMONY	)	
COLLECTION AT COLUMBIA	)	
(AL/MC), AND KAREN BOWMAN,	)	
	)	
DEFENDANT.	)	
	)	

TO: THE HONORABLE ROBERT E. HOOD, PRESIDING JUDGE, AND COUNSEL OF RECORD

NOW COME Defendants Columbia AL Operations, LLC d/b/a Harmony Collections at Columbia (AL/MC) (“the Facility”) and Karen Bowman (collectively “these Defendants”), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCP, and, on the grounds set forth below, hereby move this Honorable Court to alter, amend, and/or reconsider its order filed March 26, 2025 (the “Subject Order”), which denied these Defendants’ motion to compel arbitration (the “Motion to Compel Arbitration”).

- I. Contending, most respectfully, that the Motion to Compel Arbitration 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 Motion to Compel Arbitration, whether in writing or via oral argument, i.e., each and every distinct issue/argument set forth in the Motion to Compel Arbitration itself, in supporting memoranda, via oral argument at the hearing on the Motion to Compel Arbitration, and in Defendants' proposed order granting the Motion to Compel Arbitration, 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).

- 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 FAA Governs the arbitration provision found within the Admission Agreement.**

The Subject Order erroneously finds that “the FAA does not apply” here. (Subject Order p. 13; *see also id.* (“[B]ecause the FAA does not apply . . .”).) The arbitration provision is governed by the FAA. The FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically

contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that nursing home admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

B. Had the Court found that FAA governs the arbitration provision, as it respectfully should have, the Court should have found (and should now find) that the FAA requires arbitration provisions 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”¹ 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.*

¹ *Allied-Bruce*, 513 U.S. at 270.

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 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).

C. The Court should have found (and should now find) that the arbitration provision is valid on its face.

The arbitration provision is valid on its face. In other words, there is nothing within the four corners of the Admission Agreement itself that calls its validity into question. It bears Ms. Wilson’s signature on behalf of Ms. Graham, along with her express representation that she is authorized to sign for Ms. Graham.² It is countersigned by the Facility’s representative. It is duly supported by consideration and sets forth all necessary terms, containing, as it does, the parties’ mutual promises

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

to submit a certain defined scope of disputes to binding arbitration,³ in a proceeding to be conducted pursuant to the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, which will result in a decision that is enforceable in a court of competent jurisdiction. To require more just because an arbitration provision is in issue would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

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

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

³ 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.")).

By signing the Admission Agreement, Ms. Wilson, acting on behalf of Ms. Graham, represented that she understood and assented to their terms. Indeed, she was given the option of agreeing to the arbitration provision, and she freely and voluntarily made the decision to proceed. As set forth in Rebecca Cunningham's uncontroverted affidavit, agreeing to arbitration was not a precondition of admission to the Facility. (**Exhibit 1**, ¶ 8) and was not a "take it or leave it" contract in the sense that Ms. Wilson did not have to agree to it on behalf of Ms. Graham for her to be admitted to the Facility. Ms. Wilson had the option not to enter into the arbitration provision on behalf of her mother, yet she voluntarily did so, voluntarily did not retract her agreement thereto, and her mother stayed at the Facility and received care and supervision after admission.

The Facility offered the option of agreeing to the arbitration provision. Ms. Wilson did not have to accept this offer nor has there been any suggestion or evidence that she was coerced into signing anything. Nonetheless, even if Plaintiff could demonstrate that there was an absence of meaningful choice, a finding of unconscionability would still not be warranted in the present case, as Plaintiff must still show that the "terms [of the agreement] are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

When determining this aspect of unconscionability, this Court must focus on "whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker." *Id.* at 25, 644 S.E.2d at 668. Neither party is given an advantage by the terms of the arbitration provision. The Agreement simply binds the parties (both sides) to resolve disputes via arbitration pursuant to the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration.

Lastly, the United States District Court for the District of South Carolina and trial courts around South Carolina have upheld the validity of arbitration agreements similar to the one at issue in this matter. In evaluating these arbitration agreements in the context of nursing home admissions, these courts have agreed that these agreements are not unconscionable. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) (attached hereto as **Exhibit 2**); *THI of S.C. at Columbia, LLC v. Wiggins, C/A* No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011) (Currie, J.); *Benson, infra*. Along similar lines, any holding that the Arbitration Agreement at issue is unconscionable simply because it was executed in the context of an admission to an assisted living facility would be in violation of the clear precedent under *Kindred* and the FAA, which require arbitration agreements to be placed on equal footing with all other types of contracts under state law. Accordingly, any argument by Plaintiff that the Arbitration Agreement is unconscionable is without merit.

D. The Court should have found (and should now find) that the Plaintiff's Claims are within the scope of the arbitration provision.

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

Any controversy, dispute or disagreement arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, not resolved by or ineligible for the complaint resolution procedures set forth in [the applicable sections] of this Agreement shall be settled exclusively by binding arbitration.

This plain language clearly embraces the subject matter of Plaintiff's claims. And even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration" *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001)

(“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

E. The Court should have found (and should now find) that the Plaintiff was authorized to sign the Agreement on Ms. Graham’s behalf.

1. The Plain Language of the Agreement Binds Plaintiff.

According to the plain language of the Admisison Agreement and consistent with her actions during the admissions process, Ms. Wilson represented herself to admissions personnel at the Facility as her mother’s representative with the authority to sign documents and enter agreements on her behalf. It was clearly Ms. Wilson’s intention to bind her mother according to the terms of the Agreement. Moreover, Ms. Graham evinced no intentions or directions to the contrary. Accordingly, the plain language of the Agreement confirms that Ms. Wilson was authorized to enter this Agreement binding her mother to arbitration, and the Agreement directly applies to the instant dispute. The Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has previously found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances similar to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit 3**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit 4**). In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident’s wife in each case executed an admissions agreement and an arbitration agreement, and as here represented to the facility that she had authority to enter these agreements on her husband’s behalf. (See **Ex. 3**, p. 2-3; see **Ex. 4**, p. 1). The plaintiffs in *Price* and *Spears* later executed contradictory affidavits in opposition to the Defendants’ motion to compel arbitration,

disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs' attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. Respectfully, the Court should have reached the same conclusion in the present case, and enforce the Agreement's arbitration provision, particularly in the apparent absence of any affidavits or other evidence to contradict the plain language of the Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[.]" because was it clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 3**, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident identical to Ms. Wilson's attestation to the arbitration provision in the Admission Agreement noted above. As such, this Court in *Spears* held, in part, that the wife's authority to sign the arbitration agreement at issue was "valid on its face" by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff's authority beyond her own attestation. (See **Ex. 4**, p. 4). As in *Price* and in *Spears*, Ms. Wilson in this matter expressly attested to her own authority to enter into the Agreement on behalf of her mother. Therefore, the Court should find that Plaintiff is bound by the plain language of the Agreement and compel this matter to arbitration.

2. Ms. Wilson Possessed the Actual, Apparent, and/or Inherent Authority to Execute and Bind Ms. Graham to the Agreement and/or Plaintiff Should be Estopped to Deny this Authority.

a. Agency Relationship

The Subject Order erroneously finds that Ms. Wilson did not have authority, erroneously stating that Defendants produced no evidence of actual or apparent authority. (Subject Order pp. 4–9.) The Subject Order also erroneously relies on the South Carolina Adult Health Care Consent Act in rejecting Defendants’ agency argument,⁴ which has no bearing whatsoever on Defendants’ agency argument.

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

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

⁴ (Subject Order pp. 5–6.)

they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

Clearly, in this matter, Ms. Wilson held herself out as an agent for her mother without any indication to the contrary when she executed various admission documents on her behalf, including the residency Agreement, medical consent, do not resuscitate order, and instructions to send all invoices to Ms. Wilson’s address. Based on Ms. Wilson *and her mother’s conduct and explicit representations*, facility representatives were justified in believing she possessed the authority to execute all admissions documents on her mother’s behalf, including the arbitration provision in the Agreement, as stated in the **uncontroverted** Affidavit of Rebecca Cunningham, which, indeed, provides proof—which the Subject Order erroneously overlooks or misapprehends—of Ms. Graham’s representations as to Ms. Wilson’s authority. (**Ex. 1**, ¶ 11 (“Ms. Wilson signed the Admission Agreement containing the arbitration provision *in Ms. Graham’s presence* and on her behalf, without objection from Ms. Graham, and after a full explanation of the Admissions Agreement . . . and its arbitration provisions.”) (emphasis added); *id.* at ¶ 12 (“Based on the Facility’s admission policies and procedures, and my own strict routine and practice as Executive Directive, I would not have allowed Ms. Wilson to sign the admission documents on behalf of Ms. Graham without sufficient *assurance from the resident* and her family that Ms. Wilson had authority to sign on her mother’s behalf.”) (emphasis added)).

Contrary to the assertion in the Subject Order that “a review of the admission and arbitration documents by the Defendants would have informed them that [Ms. Wilson] did not have actual authority by way of a durable Power of Attorney, nor Court Appointed Guardianship to bind her mother, nor did she ever indicate that she had apparent authority to enter contracts on

behalf of her mother,”⁵ Ms. Wilson expressly signed the Admission Agreement as her mother’s authorized representative.

The Subject Order is erroneous in all respects in which it would impose a burden on Defendants to have investigated the issue of Ms. Wilson’s authority further. (*See, e.g.*, Subject Order p. 7 (“Defendants are a sophisticated business entity frequently interacting with residents and their families during the assisted living admission. Defendants are familiar with the legal concepts of guardianship and powers of attorney and had the ability to ask Sallie Wilson for documentation”); *id.* at p. 10 (similar language).) As an initial matter, Defendants’ argument does not rely on the existence of a guardianship or power of attorney, and unlike a guardianship or power of attorney, written documentation is not necessary to create an actual or apparent agency. And as explained, Defendants did inquire as to Ms. Wilson’s authority to sign for Ms. Graham and were expressly advised, with, according to Ms. Cunningham’s uncontroverted affidavit, Ms. Graham’s knowledge and assurance, that Ms. Wilson was duly authorized. The Subject Order erroneously cites Ms. Graham’s capacity as a fact adverse to Defendants’ position and repeatedly points out that the Facility simply could have asked Ms. Graham to sign herself, but none of this in any way undermines Defendants’ position. In fact, Ms. Graham had to have capacity to authorize Ms. Wilson to sign for her, and the fact that Ms. Graham could have signed herself in no way undermines Ms. Wilson’s authority to sign for her under principles of agency. And, here again, to require more from Defendants just because an arbitration provision is in issue would violate the FAA’s requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

⁵ (Subject Order p. 7.)

Moreover, by allowing Ms. Wilson to procure her admission to the Facility and, thereafter, by accepting the benefits of the contracts entered into in connection with that admission, Ms. Graham represented that Ms. Wilson was her authorized representative to act on her behalf in connection with admission. *See R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances”) (emphasis added).

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable belief that the agent has been authorized to act.* The Facility had reason to believe that, by allowing Ms. Wilson to sign the admissions paperwork, including the documents providing for her mother's stay and the care and supervision provided at the Facility, Ms. Graham cloaked her daughter with the authority to execute those documents. Further, neither of them nor any other family member repudiated or invalidated Ms. Wilson's actions. Instead, Ms. Graham accepted the benefits of the contract with the Facility by remaining at the Facility and receiving care and services, thereby ratifying her daughter's actions. Because no one attempted to repudiate the Agreement or even question it, the Facility was further justified in believing Ms. Wilson had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Agreement's arbitration provision should be deemed enforceable.

Even if Ms. Wilson lacked the actual or apparent authority to enter into the terms of the Agreement, she still possessed sufficient inherent agency powers to render the entire agreement

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

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established legal principle follows from one of the cardinal principles of agency law: that third parties, such as the Facility, should not be disadvantaged because they dealt with an agent rather than a principal. As set forth above, there is no dispute as to whether Ms. Wilson was authorized to admit her mother to the Facility. To the extent Plaintiff takes issue with Ms. Wilson’s authority, such actions merely accompanied and were incidental to her authority to admit her mother to the Facility.

b. Agency by Estoppel

“When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable

prudence dealt with the agent on the faith of such appearances.” *R & G Constr.*, 343 S.C. at 433, 540 S.E.2d at 118. To properly show estoppel in South Carolina, a party must show: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” *Boyd v. Bellsouth Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

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

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

(*See Ex. 3*, p. 9). Accordingly, the court concluded that the arbitration agreement was valid and enforceable.

Similarly, in *McCutcheon* the United States District Court of South Carolina concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (*See Ex. 2*). The husband in *McCutcheon* executed a number of documents on his wife’s behalf upon her admission to a nursing home facility, including an admission agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife’s legal representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

Like in *Price* and *McCutcheon*, it would be disingenuous and inequitable to allow the Plaintiff in this case to assert she was authorized to sign the Agreement for purposes of admitting her mother to the Facility, but not authorized to agree to the arbitration provision. In the case at bar, no Facility representative had knowledge or reason to believe that Ms. Wilson was not her mother's authorized agent for purposes of executing the Agreement and other admissions paperwork. Additionally, the Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by the Facility, only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, Plaintiff should be estopped from denying the validity of the Agreement's arbitration provision.

Plaintiff's contention that Ms. Wilson lacked statutory authority to sign the Agreement on behalf of Ms. Graham is without merit. Plaintiff is correct that the South Carolina Adult Health Care Consent Act ("AHCCA") (S.C. Code Ann. §§ 44-66-10 *et seq.*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §§ 44-81-10 *et seq.*) do not provide Ms. Wilson authority to enter the arbitration provision on Ms. Graham's behalf. However, these statutes do not bar an assisted living resident from authorizing her family member to execute

an agreement to arbitrate where, as here, it is shown that the resident is alert, oriented, and has capacity to grant such authority.

Here, it is uncontroverted that Ms. Graham was competent at the time of her admission to the Facility. Plaintiff has presented no evidence that Ms. Graham lacked capacity to authorize Ms. Wilson as her agent for the purpose of executing the Agreement and other documents on admission to the Facility. Indeed, Ms. Cunningham's uncontroverted affidavit attests that Ms. Graham was determined by a physician to be appropriate for the assisted living setting, and that Ms. Graham did not require a higher level of care. (**Ex. 1**). The assessments of Ms. Graham during her time at the Facility show that she was alert, independent with most activities of daily living, and did not require daily skilled nursing care. (**Exhibit 5**). Plaintiff has offered no evidence to contravene Ms. Cunningham's sworn affidavit testimony that the Facility relied on the assurance from Ms. Graham, through her words and conduct, that Ms. Wilson had the authority to sign on Ms. Graham's behalf. Accordingly, neither the AHCCA nor the Bill of Rights for Residents of Long-Term Care Facilities applies to the court's determination here that Ms. Wilson was authorized to sign the Agreement on behalf of her mother.

F. The Court should have found (and should now find) that the Plaintiff is equitably estopped to deny the enforceability of the Arbitration Provision.

The Subject Order erroneously overlooks or misapprehends South Carolina law allowing for the enforcement of an arbitration provision via equitable estoppel and erroneously relies on the traditional six-part test for equitable estoppel, rather than the applicable "direct benefits" test. "South Carolina has recognized several theories that could bind non signatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel." *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). "Equitable estoppel precludes a party

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

This legal principle is properly applied in this case. The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration

provision.” *S. Ill. Bev., Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

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

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

. . . .

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

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing in part *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).⁶

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

Of note, this Court applied this precise reasoning in *Spears*. (See **Ex. 4**). In that case, a woman admitted her husband to a skilled nursing facility and in connection with his admission, executed admission and arbitration agreements. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from refusing to comply with the arbitration agreement where, like here, the resident received “direct benefits from the Admission Agreement in the form of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein.” *Id.*, pg. 10 (footnote omitted).

This Court in *William Haynes as Personal Representative of the Estate of Elizabeth Varner vs. THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab et al*, Case Nos. 2021- CP-10- 01437 and 02477. S. C. Com. Pls. Feb. 24, 2022 (attached hereto as **Exhibit 6**), also applied the same reasoning in holding that the Plaintiff was estopped from denying the validity of an arbitration agreement, where the resident received “direct benefits from the Admission Agreement throughout her residency at the facility, including, without limitation, the room, board, care/treatment she received therein.” *Id.* at 18. The Court went on to explain that the resident “effectively embraced and directly benefited from the Admission Agreement” and therefore the Plaintiff could not deny the enforceability of the arbitration agreement, which had merged with the admission agreement. *Id.*

The key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the non-signatory

accord THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, No. 7:13-CV-2929-BHH, 2014 WL 6863550, at *4 (D.S.C. Oct. 31, 2014), *report and recommendation adopted*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (“Under direct benefits estoppel, [a] non-signatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits theory of estoppel, a non-signatory may be compelled to arbitrate where the non-signatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement”) (internal citations and quotation marks omitted); *id.* at 343, 827 S.E.2d at 176 (“It is important to distinguish direct benefits from indirect benefits because when the benefits to a non-signatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the non-signatory exploits the contractual relationship of the parties but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause while at the same time denying that the arbitration clause is enforceable. *See Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with the Court of Appeals’ decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the

test for direct benefits estoppel is simply whether the non-signatory has exploited other parts of the contract by reaping its benefits. Indeed, to require more than this—or, in other words, to limit the applicability of direct benefits estoppel to only instances where the non-signatory’s claim relies solely on the contract terms to impose liability—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. Neither *Wilson* nor *Pearson* nor general notions of equity countenance,⁷ much less call for, such a result.

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

Ms. Graham received the benefit of her admission to the Facility, including, without limitation, the room, board, care, and treatment she received therein. This Court should find that the Plaintiff is estopped to deny the enforceability of the Agreement’s arbitration provision, Ms. Graham having effectively embraced the contract with the Facility for the purpose of her admission and receipt of the benefits thereof.

And there is no evidence to support the Subject Order’s assertion that Defendants failed to adequately protect their rights or otherwise acted so as to render them ineligible for equitable relief.

⁷ *See Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

Again, Ms. Wilson expressly represented her authority to sign on her mother's behalf in signing the Admission Agreement; as attested to by Ms. Cunningham, the Admission Agreement with the arbitration provision was signed in Ms. Graham's presence after a full explanation, without objection by Ms. Graham, and with Ms. Graham's assurance as to Ms. Wilson's authority; and, once more, to require more from Defendants just because an arbitration provision is in issue would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

Respectfully, contrary to the Court's reasoning set forth in the Order in this case, *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) and *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016) are entirely inapposite here. While those cases also involved arbitration agreements in the long-term care setting, the circumstances were otherwise entirely different from the case at bar. Unlike in the present case, the residents' family members in *Coleman* and *Thompson* signed two distinct documents: an (1) admission agreement and (2) a separate arbitration agreement. The defendants in those cases argued that, pursuant to the contractual principle of *merger*, the two separate documents should be treated as a single contract, such that the Plaintiff should be equitably estopped from denying the enforceability of the arbitration agreement, while accepting the benefits of the separate admission agreement. The court in both cases rejected the defendants' argument that the two separate documents *merged*, and did not even reach the equitable estoppel arguments. Contrary to the Court's Order here, those cases simply do not stand for the proposition that "a residency agreement and an arbitration agreement are two separate agreements and one cannot be bound by the other." Respectfully, this ruling is an error of law and a misinterpretation of the holdings in the above cases.

Unlike *Coleman* and *Thompson*, in the present case, Ms. Wilson signed a single contract, the Admission Agreement, which contained the arbitration provision. She did not sign a separate arbitration agreement. As a result, this Court is not asked to “merge” two separate documents for purposes of applying equitable estoppel principles. Therefore, *Coleman* and *Thompson* are entirely inapposite and provide no guidance whatsoever as it relates to the present Motion. Here, Ms. Graham accepted the benefits of the Admission Agreement, and therefore, respectfully, the Court should have found she is estopped from denying the enforceability of the arbitration provision contained within the very same document.

G. Out of an abundance of caution, Defendants would make clear that they did not fail to properly raise arbitration as an affirmative defense or waive their arbitration rights.

The moving Defendants promptly asserted their arbitration rights and have not waived any right to compel arbitration in this matter. The Court explicitly declined to address these arguments in its Order, but out of an abundance of caution, Defendants would make clear that they did not fail to properly raise arbitration as an affirmative defense or waive their arbitration rights.

“[T]o establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” *Gen. Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001) (no waiver where party seeking arbitration had been involved in litigation for less than eight months). Mere inconvenience to an opposing party is not sufficient to establish prejudice. There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case. Furthermore, it is the policy of this state to favor arbitration of disputes. *Id.*; see also *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 586 S.E.2d 581 (2003) (no waiver where

litigation process had lasted approximately thirteen months before third party defendant sought arbitration).

In the case at bar, the moving Defendants originally filed the Motion to Compel Arbitration on August 9, 2023, less than three months after Plaintiff filed suit. Before the undersigned defense counsel appeared on behalf of moving Defendants in the present case, previous defense counsel had filed an answer on or around June 30, 2023, that did not raise arbitration and served initial written discovery requests on Plaintiff. However, *immediately* upon transfer of the defense to undersigned counsel, the undersigned notified Plaintiff's counsel of the arbitration provision and withdrew the discovery requests. (See email correspondence attached hereto as **Exhibit 7**). The parties then agreed to pursue mediation. Plaintiff explicitly agreed to the moving Defendants' withdrawal of the present motion with leave to refile, and agreed that such withdrawal would not operate as a waiver of arbitration rights. (See correspondence to the court attached hereto as **Exhibit 8**). **No party has answered any discovery request served in this case.**

Following an impasse at mediation, the moving Defendants promptly renewed the present Motion. As a result, no discovery has been conducted, and no depositions have been taken in this case. Accordingly, there are no grounds for which Plaintiff may contend she has been prejudiced by any delay in pursuing arbitration. The moving Defendants timely asserted arbitration rights, no discovery has been conducted, and the parties have not otherwise availed themselves of the court system. Accordingly, the moving Defendants have not waived their right to compel arbitration.

Finally, Plaintiff's assertion that the Defendants waived their arbitration rights by failing to plead arbitration as an affirmative defense in their Answer is unavailing. The term "*arbitration and award*" as used in Rule 8, SCRCP refers to a claim that has already been resolved by an award in arbitration. See *Hill v. Ricoh Ams. Corp.*, 603 F.3d 766, 771 (10th Cir. 2010) ("[Plaintiff's] argument

is based on a misunderstanding of the term arbitration and award. The defense set forth in Rule 8(c)(1) is not that the claim should be arbitrated rather than adjudicated in court; it is that the claim has already been resolved by an award in arbitration.”); *see also Forms, Inc. v. Am. Standard, Inc.*, 550 F. Supp. 556, 557 (E.D. Pa. 1982) (explaining that “arbitration and award” as used in federal rule 8(c) means that there has already been arbitration and an award).⁸

H. The Court should have found (and should now find) that this case must be stayed while arbitration is pending.

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

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

(Emphasis added.)⁹ Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of

⁸ Rule 8(c) is substantially the same as the Federal Rule, and as a result federal cases interpreting the Rule may be properly cited as persuasive authority, particularly where, as here the appears to be no applicable South Carolina authority. *See Unisom Ins. v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 562 (2018) (finding Rule 12(b)(5) of the South Carolina Rules of Civil Procedure is “substantially similar” to the federal rule, and, as such, federal cases interpreting the federal rule are persuasive).

⁹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See* S.C. Code Ann. §15-48-20 (d) ("Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section.")

one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002). Accordingly, pursuant to this Court’s inherent power to manage its own docket and the statutory mandates of the FAA, the Court should have found that this matter must be stayed in its entirety until such time as the Court has made a final decision regarding the present motion, the arbitration process is complete, and the appellate process, if any, has been exhausted.

I. Alternatively, the Court should have found (and should now find) that the parties be permitted to conduct additional discovery.

Because the Court denied Defendant’s Motion to Compel Arbitration and Motion to Stay this case on the grounds contained in its memorandum, the Court should have found that the parties be permitted to conduct additional discovery on the issues raise herein, and in particular, the nature of Ms. Willson’s agency relationship with her mother and the circumstances surrounding the admissions process.

In a case involving similar issues, the Honorable Perry Gravely allowed the parties to conduct additional discovery on the issue of a mother’s authority to execute an Arbitration Agreement on her son’s behalf in connection with his admission to a skilled nursing facility. *See James Boyd v. THI of South Carolina, LLC d/b/a at Magnolia Place-Greenville, et. Al*, 2018-CP-23-01934 (S.C. Com. Pls. July 9, 2018) (attached hereto as **Exhibit 9**). Critical to the court’s decision in that case was whether the son’s conduct and admissions director’s understanding of that conduct created apparent agency so as to bind the father to an arbitration agreement. The court permitted the parties to take the depositions of the mother, the son, the admissions coordinator for the skilled nursing facility, and the case manager for the hospital the father was transferred from. After considering the testimony of those individuals, the court found there was evidence to support the finding of apparent agency.

Likewise, the Honorable Alison Lee allowed the parties to conduct additional discovery on a wife's authority to execute an arbitration agreement on behalf of her husband. *See Priscilla Brown, as Personal Representative of the Estate of James Brown v. THI of South Carolina at Columbia at Magnolia Manor d/b/a Midlands Health and Rehabilitation Center*, 2017-CP-40-00516 (S.C. Com. Pls. Nov. 7, 2019) (attached hereto as **Exhibit 10**). Judge Matie Murphy also ordered arbitration related discovery in a more recent case. *See Beverly Vaughn as Personal Representative of the Estate of Loris Paris vs. Saint Matthews Healthcare, LLC; Melissa Kizer; Melissa Davis; and Angela Smith Teliha*, 2022-CP-38-00525 (S.C. Com. Pls. Nov. 17, 2023) (attached hereto as **Exhibit 11**).

The case at the bar involves Ms. Wilson's own authority to execute the Agreement and the circumstances surrounding its execution. As in *Boyd*, *Brown*, and *Vaughn*, the Court should have found that additional discovery be permitted as necessary.

Most respectfully, if the Court should make such a determination, it is only fair to allow this Defendant to engage in some appropriately limited discovery to attempt to protect its arbitration rights. It must be remembered that this Defendant moved to compel arbitration under a facially valid arbitration provision. This Defendant firmly believes Ms. Wilson had the authority to execute the Admission Agreement on behalf of her mother. Nevertheless no one ever called her authority to enter into the Agreement into question until now. This Defendant had no reason to conduct discovery until this dispute arose, and even then, it still maintains its primary position that the Agreement was enforceable based on the record as is. If further development of the record is needed on any point material to arbitrability, the Court should expressly allow this Defendant to protect its legitimate interests through discovery into the relevant subject matter without exposing itself to a claim of waiver by Plaintiff, i.e., without having to expose themselves to a potential

Catch-22 where they could be said to have waived their arbitration rights simply by endeavoring to prove them.

WHEREFORE, for the forgoing 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 ask 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.

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.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/ Matthew O. Riddle
D. Jay Davis, Jr. (SC Bar No. 12084)
jdavis@yctrlaw.com
Matthew O. Riddle (SC Bar No. 76650)
mriddle@yctrlaw.com
Russell G. Hines (SC State Bar No. 72100)
rhines@yctrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5406
Attorneys for Defendants

Dated: April 4, 2025
Charleston, South Carolina

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

Appeal from Richland County
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2023-CP-40-02608

Sallie Wilson
as Guardian for Gladys Graham,

Respondent,

v.

Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast,
Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC),
and Karen Bowman,

Defendants.

Of whom Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC)
and Karen Bowman are

Appellants.

NOTICE OF APPEAL

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

Other Counsel of Record:

D. Nathan Hughey (SC Bar No. 68409)
A. Stuart Hudson (SC Bar No. 71691)
Bradley H. Banyas (SC Bar No. 101668)
HUGHEY LAW FIRM, LLC
P.O. Box 348
Mount Pleasant, South Carolina 29465
(843) 881-8644

Attorneys for Respondent

G. Murrell Smith, Jr. (SC Bar No. 66263)
SMITH ROBINSON HOLLER DUBOSE AND MORGAN, LLC
P.O. Box 580
Sumter, South Carolina 29151
(803) 778-2471

-and-

Austin T. Reed (SC Bar No. 102808)
SMITH ROBINSON HOLLER DUBOSE AND MORGAN, LLC
3200 Devine Street
Columbia, South Carolina 29205
(803) 254-5445

Attorneys for Defendant
Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast

Defendants/Appellants Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC) and Karen Bowman (collectively, “Appellants”) hereby appeal the following orders of the Honorable Robert E. Hood, Circuit Court Judge:

- **Order filed March 26, 2025, denying Appellants’ Motion to Compel Arbitration; and**
- **Order filed April 23, 2025, denying Appellants’ Motion to Alter, Amend, and/or Reconsider.**

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 April 23, 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)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

May 23, 2025

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

Appeal from Richland County
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2023-CP-40-02608

Sallie Wilson
as Guardian for Gladys Graham,

Respondent,

v.

Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast,
Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC),
and Karen Bowman,

Defendants.

Of whom Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC)
and Karen Bowman are

Appellants.

PROOF OF SERVICE

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(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 on Defendant Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast, on May 23, 2025, by emailing (see attached email) a copy of the same to their counsel of record:

D. Nathan Hughey, Esquire
nate@hugheyfirm.com
A. Stuart Hudson, Esquire
stuart@hugheyfirm.com
Bradley H. Banyas, Esquire
brad@hugheyfirm.com
HUGHEY LAW FIRM, LLC
Attorneys for Respondent

G. Murrell Smith, Jr., Esquire
murrell@smithrobinsonlaw.com
Austin T. Reed, Esquire
austin.reed@smithrobinsonlaw.com
SMITH ROBINSON HOLLER DUBOSE
AND MORGAN, LLC
*Attorneys for Defendant
Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center
Northeast*

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, May 23, 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 all 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

May 23, 2025

Hines, Russell

From: Hines, Russell
Sent: Friday, May 23, 2025 1:04 PM
To: Nate Hughey; Stuart Hudson; Brad Banyas; Murrell Smith; Austin Reed
Cc: Brown, Stephen L.; Davis, Jay; Riddle, Matthew; Justman, Aimee; Bell, Pollyana (Polly); Peterson, Susan; Eadie, Christine
Subject: Wilson v. MUHA (2023-CP-40-02608) -- Notice of Appeal
Attachments: Wilson v. MUHA (2023-CP-40-02608) -- Notice of Appeal.pdf; Appealed Order 1 -- 2025 03-26 -- Order Denying MTCA.pdf; Appealed Order 2 -- 2025 04-23 -- Order Denying MTR.pdf

Attached for service in the above-referenced matter please find Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC) and Karen Bowman's **Notice of Appeal** and copies of the **Appealed Orders** attached thereto.

Russell G. Hines
CLEMENT RIVERS, LLP
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



CLEMENT RIVERS, LLP
25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com



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

A filing has been submitted to the court RE: 2023CP4002608

Official File Stamp: 05-23-2025 12:59:07 PM
Court: CIRCUIT COURT
Common Pleas
Richland
Case Caption: Sallie Wilson , plaintiff, et al vs Medical University Hospital Authority , defendant, et al
Event(s): Notice/Notice of Appearance

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:

Bradley Hunter Banyas for Sallie Wilson et al
Donald Jay Davis, Jr. for Columbia AI Operations Llc, Harmony Collection At Columbia (Al/Mc), Karen Bowman
Matthew Oliver Riddle for Columbia AI Operations Llc, Harmony Collection At Columbia (Al/Mc), Karen Bowman
Daniel Nathan Hughey for Sallie Wilson, Gladys Graham
Austin Tyler Reed for Musc Health Columbia Medical Center Northeast, Medical University Hospital Authority, Musc Health Columbia Medical Center Downtown
George Murrell Smith, Jr. for Musc Health Columbia Medical Center Northeast, Medical University Hospital Authority, Musc Health Columbia Medical Center Downtown

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

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.

RECEIVED
Feb 05 2026
SC Court of Appeals

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)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

February 5, 2026