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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable William C. McMaster, III, Circuit Court Judge

Appellate Case No. 2025-002259

Case No. 2025-CP-23-02077

Ashanti Sullivan, as Personal
Representative of the Estate of
Harold Rice,

Respondent,

v.

Simpsonville Community
Healthcare, LLC d/b/a
Simpsonville Post Acute,

Appellant.

RECORD ON APPEAL

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Ashanti Sullivan et al
PLAINTIFF(S)

Simpsonville Community Healthcare Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on September 16, 2025. John Parker Jr. present on behalf of the Plaintiff. Cameron Tabrizian was present on behalf of the Defendant. After careful consideration of the arguments of the parties and the materials filed, Defendant's Motion to Dismiss, Stay Litigation, and Compel Arbitration is DENIED. The parties shall have 30 days to engage in limited jurisdictional discovery as to the validity of the Arbitration agreement. At the conclusion of those 30 days, this matter may be reset if deemed appropriate. Accordingly, Defendant's Motion for Protection from Discovery is DENIED.

It is so Ordered.

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 09/26/2025 .

Harold Rice Estate
Ashanti Sullivan Prs

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), SCRPC.



Greenville Common Pleas

Case Caption: Ashanti Sullivan , plaintiff, et al vs. Simpsonville Community
Healthcare Llc , defendant, et al
Case Number: 2025CP2302077
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-09-26 12:22:57 page 3 of 3

Ashanti Sullivan et al
PLAINTIFF(S)

Simpsonville Community Healthcare Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

See page 2 for the Court's Order.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

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Harold Rice Estate
Ashanti Sullivan Prs

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.

Defendant's Motion to Reconsider was filed with this Court on October 6, 2025. After careful consideration of the filings of counsel, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. Therefore, Defendant's Motion is DENIED. However, the Court will clarify the language contained in its Order dated September 26, 2025.

In the Order, the Court used the term "reset." This term was meant to reflect the Court's intent to allow Defendants to refile their Motion to Compel Arbitration at the conclusion of limited jurisdictional discovery for a hearing on the merits.

It is so Ordered.



Greenville Common Pleas

Case Caption: Ashanti Sullivan , plaintiff, et al vs. Simpsonville Community Healthcare Llc , defendant, et al

Case Number: 2025CP2302077

Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-10-24 14:17:04 page 3 of 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	CIVIL ACTION NO.: 2025-CP-23 -
)	
Ashanti Sullivan, as Personal)	
Representative of the Estate of Harold)	
Rice,)	
)	
)	Summons
)	<i>(Negligence / Gross Negligence)</i>
v.)	<i>(Jury Trial Requested)</i>
)	
Simpsonville Community Healthcare, LLC)	
d/b/a Simpsonville Post Acute)	
)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

PARKER LAW GROUP, LLP

BY: s/Lee D. Cope

Lee D. Cope
SC Bar # 14361
League Creech
SC Bar # 72755
P.O. Box 487
Hampton, SC 29924
(803) 903-1781

ATTORNEYS FOR THE PLAINTIFF

March 31, 2025.
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) CIVIL ACTION NO.: 2025-CP-23 -

Ashanti Sullivan, as Personal)
Representative of the Estate of Harold)
Rice,)

v.)

Simpsonville Community Healthcare, LLC)
d/b/a Simpsonville Post Acute)
)

Complaint
(Negligence / Gross Negligence)
(Jury Trial Requested)

COMES NOW Plaintiff above named, and complaining of Defendant, alleges and says as follows:

1. That Ashanti Sullivan is a citizen and resident of Greenville County, State of South Carolina, and is the Personal Representative of the Estate of Harold Rice, duly appointed by the Greenville County Probate Court, and brings this action as the Personal Representative of the Estate of Harold Rice pursuant to S.C. Code Ann. § 15-5-90, the Survival Action Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute and pursuant to S.C. Code Ann. § 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

2. That upon information and belief, Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute a South Carolina corporation with its principal place of business in the County of Greenville, South Carolina. At the time of the acts complained of, Simpsonville Post Acute was a skilled nursing home facility.

3. That on December 5, 2021, Mr. Rice was found on the floor at home and was admitted to the hospital. On admission to the hospital, Mr. Rice had a deep tissue injury with blisters to his left axilla, a Stage II deep tissue injury with blisters to his left hip, an unstageable wound to his left elbow, a left foot ulcer, an abrasion to his right toe, and a blister to

his scrotum. At the time Mr. Rice was discharged on December 22, 2021, the wound to his left axilla was healed and the other wounds were healing.

4. That on December 22, 2021, Mr. Rice was admitted to the Defendant's facility for long term skilled nursing care. The admission assessment indicated that Mr. Rice was at risk for falls, high risk for skin breakdown and he required assistance with all of his activities of daily living.

5. That on January 28, 2022, Mr. Rice slid out of his wheelchair and was found on the floor.

6. That on March 30, 2022, Mr. Rice rolled out of his bed and was found on the floor in his room.

7. That on April 19, 2022, Mr. Rice was found in his room unresponsive. He was transferred to the hospital and was diagnosed with septic shock. Further workup determined he had a urinary tract infection and acute cholecystitis.

8. That on July 1, 2022, Mr. Rice was found on the floor in front of his wheelchair.

9. Mr. Rice complained of pain; however he was not given pain medication until July 5, 2022.

10. That on July 6, 2022, Mr. Rice was sent to the hospital for a follow-up for his recent surgery and because Mr. Rice had not been eating well over the previous several days. Mr. Rice was diagnosed with an acute fracture of the lumbar spine.

11. That on July 24, 2022, Mr. Rice was laying in bed, when a pegboard fell off of the wall and hit Mr. Rice on the head. He was transported to the hospital and diagnosed with a laceration on his forehead.

12. That on July 28, 2022, Mr. Rice passed away.

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

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

- a. In failing to provide oversight of Mr. Rice's safety and dignity;
- b. In failing to exercise due care, including without limitation, failing to care for Mr. Rice;
- c. In failing to provide appropriate administrative oversight and management to assure Mr. Rice was appropriately cared for;
- d. In failing to realize Mr. Rice needed a higher level of medical care;
- e. In failing to implement appropriate fall prevention measures;
- f. In failing to implement appropriate skin prevention measures;
- g. In failing to exercise reasonable care for the safety and well-being of Mr. Rice under the circumstances;
- h. In failing to adhere to a consistent turning and repositioning schedule;
- i. In failing to provide appropriate nutrition for wound healing;
- j. In failing to have sufficient and properly trained staff to care for its residents;
- k. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mr. Rice;
- l. In failing to manage its revenue and income such that appropriate care may be rendered to Mr. Rice;
- m. In failing to implement an appropriate care plan;

- n. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- o. In such other particulars as the evidence may establish.

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

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

16. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

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

-Signature Page to Follow-

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ATTORNEYS FOR THE PLAINTIFF

March 31, 2025.
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) CIVIL ACTION NO.: 2024-NI-23-

Ashanti Sullivan, as Personal)
Representative of the Estate of Harold)
Rice.,)

v.)

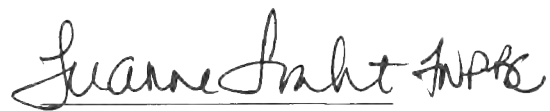
Simpsonville Community Healthcare, LLC)
d/b/a Simpsonville Post Acute)
)

**Affidavit of Merit of
Luanne Trahant, MSN, APRN, FNP-BC,
LNCC**


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

-
- 1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.
 - 2) I am a registered nurse in Louisiana. I received my Bachelor of Science in Nursing from Northwestern State University in 1992 and a Master of Science in Nursing in 2005. I am a Board Certified Family Nurse Practitioner. I have practiced in the field of which I give this opinion for at least three out of the last five years.
 - 3) I have been provided with the medical records from Hillcrest Hospital and Simpsonville Post Acute pertaining to Harold Rice.
 - 4) A basic factual summary is as follows: Mr. Rice was admitted to Simpsonville Post Acute on December 22, 2021 for long term skilled care.
 - 5) The initial admission assessment indicated that he was at risk for fall, skin breakdown and the required assistance with all of his daily activities
 - 6) On January 28, 2022, Mr. Rice slid out of his wheelchair and fell.
 - 7) On March 30, 2022, Mr. Rice rolled out of his bed and fell on the floor. New interventions were put in place, however, the staff failed to consider Mr. Rice's ongoing risk for falls, dementia, and behavioral problems.
 - 8) On April 19, 2022, Mr. Rice was found unresponsive and was transferred to the hospital. He was diagnosed with a urinary tract infection and cholecystitis that required an open surgical procedure to remove his gallbladder. Post operatively, he stabilized and was sent back to Simpsonville Post Acute with 18 abdominal staples and a drain in his stomach. Mr. Rice was noted to suffer from weakness, poor sitting balance and maintaining his sitting balance.

- 9) On July 1, 2022 at 4:31 p.m., Mr. Hill was found on the floor in front of his wheelchair. The nursing staff documented no injuries, and he was assisted into bed. According to the Medication Administration record, Mr. Hill was complaining of pain at a level of 10/10, however, there is no evidence that he was provided with pain medication.
- 10) On July 5, 2022, Mr. Rice was being medicated with Oxycodone for pain.
- 11) On July 6, 2022, he was sent to Hillcrest Hospital for a CT of his abdomen to follow-up on recent surgery
- 12) The CT of the abdomen incidentally indicated that Mr. Hill had an acute fracture of the lumbar spine. He was sent back to SPA and the records indicate that he began receiving Morphine on July 9, 2022, daily, for pain. He continued to deteriorate, hollering out, and suffered from poor appetite and pain. Mr. Hill was admitted to hospice services on July 11, 2022.
- 13) On July 24, 2022, Mr. Rice was laying in bed, when a pegboard fell off of the wall and hit Mr. Rice on the head. He was transported to the hospital and diagnosed with a laceration on his forehead.
- 14) Mr. Rice passed away on July 28, 2022.
- 15) The Defendant's employees failed to implement fall prevention measures to keep Mr. Rice safe from injury.
- 16) It is my opinion based on my experience, education and training that with a reasonable degree of nursing probability, Mr. Rice's pain and suffering could have been prevented.
- 17) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.


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

Sworn to and subscribed before me:


Notary Public
Date: 12/16/2024



STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 13
COUNTY OF GREENVILLE) DOCKET No. 2025-CP-23-02077

ASHANTI SULLIVAN,)
Plaintiff,)
versus)
SIMPSONVILLE COMMUNITY HEALTHCARE,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE WILLIAM C. MCMASTER III

DATE: September 16, 2025.
TIME: ***
LOCATION: South Carolina Circuit Court 13
TRANSCRIBED BY: Mary Ragsdale

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12 Attorney for the Defendant.

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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EXAMINATIONS

(None)

EXHIBITS

(None Marked)

1 PROCEEDINGS - SEPTEMBER 16, 2025.

2 THE COURT: Next hearing is, we have 2025-CP-23-02077,
3 Ashanti Sullivan versus Simpsonville Community Healthcare.
4 All right. The parties will identify themselves and who they
5 represent, please.

6 MR. TABRIZIAN: Yes, your Honor. I represent
7 Simpsonville Post Acute, the Defendant in this case, and the
8 movement under this motion. Cameron Tabrizian.

9 THE COURT: Okay. All right. Go ahead.

10 MR. PARKER: Jay Parker on behalf of the Plaintiff.

11 THE COURT: All right. And this is the Defense's
12 motion to dismiss state litigation and compel arbitration.
13 So we have to hear from you, sir.

14 MR. TABRIZIAN: Yes, your Honor. Before we begin, can
15 I please request that we read or argue both these motions at
16 the same time? Because they're kind of one in the same. We
17 filed another motion that's also being heard after this --
18 directly after this.

19 THE COURT: The discovery, or?

20 MR. TABRIZIAN: Yes, your Honor. And so that's --
21 that's made to -- to not waive any right that we have to
22 arbitration by engaging in discovery.

23 THE COURT: All right. Yeah. Any objection to that,
24 Mr. Parker, taking care of both of them one time?

25 MR. PARKER: No, your Honor.

1 THE COURT: All right. Let's go.

2 MR. TABRIZIAN: So we filed this motion in response to
3 the Plaintiff's medical malpractice claim. The Plaintiff in
4 this case alleges wrongful death and survival against my
5 client, the Defendant. This case revolves around my
6 defendant's facility, and -- and the Plaintiff's estate is
7 Harold -- Harold Rice.

8 Harold Rice was a -- a -- a resident who received
9 treatment and care at the facility. He has unfortunately
10 passed away. Specifically, the Plaintiff is Ashanti Rice
11 Sullivan, on behalf and as personal representative of the
12 Estate of Harold Sullivan.

13 And we move to dismiss this case, stay the proceedings,
14 and compel arbitration pursuant to the Federal Arbitration
15 Act. Right off the get go, I want to talk about one thing.
16 This -- the FAA applies to this. We were served with a -- or
17 provided a copy of the Defendant -- or the Plaintiff's
18 motion, or memorandum and opposition to our motion to compel
19 last night. And -- and I briefly reviewed it as best as I
20 can, but it does raise some precedent and statutory authority
21 under the South Carolina Uniform Arbitration Act.

22 THE COURT: I've got -- I -- I don't know if I -- when
23 did you file that?

24 MR. PARKER: Your Honor, I think my office filed it
25 last night.

1 THE COURT: Yeah. Okay. Well, I haven't read that
2 either. All right. Go ahead.

3 MR. TABRIZIAN: Yes, your Honor. And -- and -- and in
4 particular, there's one last argument that in the
5 alternative, we asked for a limited discovery in this matter.
6 If you were to not deny the motion I'm about to argue. And
7 -- and in that argument they make in their opposition to our
8 motion with that respect, they cite the South Carolina
9 Uniform Arbitration Act.

10 So I -- I want to bring that out forward before we
11 start anything because the Federal Arbitration Act preempts
12 the South Carolina Uniform Arbitration Act, especially in
13 this case, because it goes against federal precedent, as set
14 forth in the statutory text of Federal Arbitration Act 9
15 U.S.C. Section 4. So that -- that's my first caveat before I
16 begin.

17 We are making several arguments in this motion to
18 compel arbitration. The -- the -- the first main argument,
19 and -- and -- and I want to address this one first because it
20 might get muddied when we talk about apparent authority,
21 actual authority as to whether Ms. Rice who signed the
22 arbitration agreement and admissions agreement had the
23 authority to sign on behalf of the resident when he was being
24 admitted to the nursing facility -- the Defendant's facility.

25 And -- and -- and that argument is that these documents

1 and arbitration agreement, which is attached as an Exhibit A
2 to my memorandum in support of my motion and admission
3 agreement, which is attached as Exhibit C to my memorandum in
4 support of my motion, merged and became one agreement with
5 other documents that she signed that aren't really relevant
6 to this matter. They merged and became one agreement, one
7 and the same, and that estoppel precludes the Plaintiff from
8 denying that she had the authority to sign the agreement
9 because he received benefits from the agreement, i.e. his
10 treatment, and his care from the facility, and his residency
11 at the facility as contained in the admission agreement,
12 which is a policy that's required to be executed before the
13 resident becomes a resident of the facility for the Plaintiff
14 or anybody who is seeking care becomes a resident of the
15 facility.

16 And so in order to do that, we're using the arbitration
17 agreement and the admission agreement. And under class, we
18 -- we can merge the documents if five elements are
19 established. One, both of the agreements were signed by the
20 same parties. Two, both of the agreements were executed at
21 the same time. Three, the agreements were executed for the
22 same purpose. Four, the -- the agreements were executed as
23 part of the same transaction, and no contrary intent is shown
24 in the documents to -- to -- to state that these documents
25 weren't supposed to be merged.

1 And all these elements are -- are satisfied. And --
2 and I know Plaintiff last night filed an affidavit that was
3 reportedly testified to by Ashanti Sullivan. And in that
4 affidavit, she testifies under oath that she signed the
5 documents that were presented to her by Simpsonville Post
6 Acute in relation to her father, Harold Rice's admission to
7 their facility.

8 And she also says that she signed them under her maiden
9 name. At the time, she was Ashanti Rice and -- and I presume
10 she was later married and became as Ashanti Sullivan. And so
11 the first element is satisfied because the same parties
12 executed the agreement, the same party that -- on behalf of
13 -- of the Defendant's facility, Simpsonville Post Acute,
14 signed the agreements, the same party, Ashanti Sullivan,
15 signed the agreements.

16 They're signed at the same time. They're time stamped
17 on each of the agreements below and next to the signature. I
18 think they were signed three minutes apart. And during that
19 time, there were other agreements being signed in the interim
20 between those three minutes even. And they were executed for
21 the same purpose. I mean, as her affidavit states, they were
22 in relation to her father, Harold Rice's admission to the
23 facility. And they -- they're executed as part of the same
24 transaction, his initial admission to the facility.
25 And so those first four elements are satisfied.

1 Now, the fifth element, which might come up into play
2 in the future, maybe Plaintiff's Counsel might argue
3 something about that, is that there's no contrary intent that
4 the -- that the agreements should merge. And -- and the
5 arbitration agreement, if you look at it, it states
6 specifically that this agreement shall become part of the
7 admission agreement.

8 There's been a lot of precedent about merger of these
9 two particular documents, an admission agreement and
10 arbitration agreement, in the context of the nursing home
11 facilities, but none of the courts were -- as far as I know,
12 presented with, and none of the courts talked about any
13 provision that in the arbitration agreement that stated that
14 the arbitration agreement shall become part of the admission
15 agreement. This is different. There's no contrary intent.
16 If we were to look at other texts that would go to the
17 outside, and -- and -- and you'd have to rule that it was
18 ambiguous.

19 And when we find ambiguity -- ambiguity, excuse me,
20 that -- that can only be done when --- when you determine
21 that the -- the documents are ambiguous. But -- but in this
22 case, it -- it clearly states that this document shall become
23 part of the admission agreement. So in that respect, I -- I
24 think merger exists. The two documents merge, and in that
25 case, when they merge, we next apply the estoppel test.

1 And the -- the particular test we use for this is
2 called a direct benefits test. And what that is, is that we
3 look at the whole agreement, and if the non-moving party
4 accepts benefits under the agreement, he should be estopped
5 from asserting that some other part of the agreement is not
6 valid.

7 And basically -- what's a good way of putting this?
8 You -- you can't have it both ways. You -- you can't say
9 that -- you know, this agreement -- you know, "I -- I'm going
10 to accept this benefit under the agreement, my residency and
11 the care and treatment provided by the facility," and then
12 also at the same time state, "Yeah, this arbitration
13 agreement's contained in it, but it doesn't apply to me," but
14 can't have it both ways.

15 And -- and -- and so in that case, I -- I think the
16 direct benefits test is, it's established and -- and that the
17 plaintiff in this case, the -- the -- the Estate of Harold
18 Rice is estopped from asserting that -- that this arbitration
19 agreement doesn't apply to this case. And -- and so that's
20 the first argument is -- is the merger of the two documents
21 and -- and the estoppel argument.

22 As far as apparent and inherent authority, which I talk
23 about in the memorandum in support of my motion, apparent
24 authority exists when a principal, in this case, Mr. Rice
25 places an agent, in this case, Ms. Rice Sullivan, in such a

1 position that third parties are reasonably led to believe the
2 agent has a certain authority, and they deal with the agent
3 based on this manifestation.

4 And -- and the Plaintiff argues that there's no
5 evidence of apparent authority. But in this case, if you --
6 if you read the arbitration agreement, it -- it's signed --
7 there's text under it that refers you to certain sections
8 under the signature, and -- and it refers you to certain
9 sections of that agreement, both the arbitration agreement
10 and the admission agreement, but in this case, what matters,
11 the arbitration agreement, and it refers you to a section and
12 -- I beg the Court's indulgence.

13 So in this case, if you look at the arbitration
14 agreement below the signature -- I'm making sure I'm looking
15 at the right document. It says, "Signature of resident or
16 resident's legal representative as described in 2.2." And if
17 we turn to 2.2, which is on Page 1, it says, "Resident shall
18 refer to the person identified as the resident in Section 1.0
19 of this agreement, and includes all persons entitled to bring
20 a claim on behalf of the resident, including the legal
21 representative, responsible party, power of attorney,
22 guardian, surrogate, an agent of the resident, including any
23 person who has signed this agreement on behalf of the
24 resident."

25 And so -- so this document itself provides evidence of

1 apparent authority because she's representing herself. And
2 -- and by Mr. Rice staying at the facility and agreeing to
3 the terms of these agreements that have emerged, she -- he's
4 representing in effect that she's authorized to enter this
5 arbitration agreement on her behalf.

6 Now, other cases have found that -- that this just --
7 the only -- the sole evidence being from a third party, which
8 I -- I mean, I -- I admit that it was signed by Ashanti Rice,
9 is not enough to confer apparent authority. But reading the
10 document with the admission agreement, I think the merger
11 also allows for this to be evidence of apparent authority.
12 And -- and -- and also there -- there's powers of attorneys
13 that have been executed in this case. One we had a copy of
14 before filing this motion. It's a healthcare power of
15 attorney.

16 And in that healthcare power of attorney, which is
17 patched as Exhibit B to my memorandum and support my motion,
18 it states the following: It authorizes the agent -- and in
19 this case, the power of attorney for healthcare is being
20 conferred to Ashanti Rice Sullivan as agent healthcare power
21 of attorney for Mr. -- Mr. Rice. It says, "To authorize my
22 admission to or discharge even against medical advice from
23 any hospital, nursing care facility, or similar facility, or
24 services."

25 And -- and before that, and right below where it says

1 Section 4 agent powers on page 4, it says, "I grant my agent
2 full authority to make decisions for me regarding my
3 healthcare. And exercising this authority, my agent shall
4 follow my desires as stated in this document or otherwise
5 expressed by me or known to my agent."

6 So that includes -- this document includes other powers
7 that he might have verbally conferred to her giving her
8 agency power. And -- and -- and unfortunately, Mr. -- Mr.
9 Rice has since passed away, and I'm sorry about that, but --
10 but the only person that I can find this information from on
11 -- on a different note is -- is from Ms. Rice Sullivan, but
12 -- but I -- I report that this -- this is evidence of -- of
13 apparent authority in this case.

14 One for -- and -- and -- and forgive me because I don't
15 recall the case name, discusses Section (d) of Number 4 on
16 Page 4 of this -- this healthcare power of attorney
17 agreement. I -- I haven't raised any issue to that. I
18 haven't -- I haven't expressed any -- any intent to -- to use
19 this in my argument for compelling arbitration.

20 In fact, that's -- the Supreme Court in South Carolina
21 found that this healthcare power of attorney in respect to
22 conferring actual authority to -- to enter into an agreement,
23 it -- it -- this -- arbitration agreement is not necessary to
24 -- to exercising healthcare power of attorney -- exercise
25 healthcare power of attorney powers, I guess, and -- and --

1 and administering the healthcare of -- of the principal and
2 administering the financial and other powers that are given
3 through this agreement.

4 So Section (4) (d) Supreme Court, I will say, has found
5 that an arbitration agreement is not necessary to the powers,
6 that is not necessary to a -- to an admission agreement, for
7 example, having not merged. And -- and -- and last night
8 there was another health -- or another power of attorney, a
9 financial power of attorney that was -- that was included in
10 exhibit and the Plaintiff's motion and opposition to -- or
11 memorandum and opposition to our motion.

12 I haven't obviously made any argument regarding this,
13 but -- but -- and -- and I'm not going to until I have -- you
14 know, sufficient time to -- to -- to -- to review it, and
15 understand it, and -- and see what it says, and whether it
16 actually confers any authority. So I'm not going to make an
17 argument on that.

18 And then my last argument is that inherent authority
19 exists. Inherent authority is -- is kind of -- there's not a
20 lot of case law in South Carolina about it. There's a lot of
21 case law in other states about it. And -- and -- and the
22 principle of inherent authority is, it's used to enforce
23 agreements where the supposed unauthorized action company, or
24 -- or incidental to transactions which the agent is
25 authorized to conduct.

1 And -- and -- and so I think this case presents a -- a
2 very good set of facts for inherent authority to be -- to be
3 found because Ms. Rice Sullivan was executing documents for
4 the admission of -- of -- of Mr. Rice to the Defendant's, the
5 facility, and what she had the power to do under the
6 healthcare power of attorney. She -- she had the healthcare
7 power of attorney, which allowed her to enter into the
8 admission agreement. And -- and so the arbitration agreement
9 would be incidental to those actions and -- and therefore,
10 inherent authority exists.

11 The -- the Plaintiff's opposition to my memorandum on
12 that note quotes -- quotes the case that I cite -- the South
13 Carolina case that I cite in this, and -- and forgive me.
14 The -- well, they -- they quote in effect, the court in that
15 case says that there's no authorities to support inherent
16 authorities in this case. And it was my reading of that
17 case, that specific quote that they're saying that there's no
18 evidence that inherent authority exists in that case rather
19 than some legal authority, and -- and dismissing that
20 inherent authority exists, or under South Carolina law. That
21 was my take of that.

22 And that's my argument for my motion to compel
23 arbitration in this case. In the alternative, we, of course,
24 again, request limited jurisdictional discovery. I think the
25 evidence in this case that we have, and I've included as an

1 exhibit, sets forth some questions that -- that I'm entitled
2 to -- or my client is entitled to -- to dive further into.

3 Prior medical records that I cited, one as an exhibit,
4 include prior medical records that are not part of my
5 facility records that -- that are from other healthcare
6 providers, state that a power of attorney had been filed with
7 them. I -- I don't know exactly what that power of attorney
8 is. It might be one of the power of attorneys that -- that
9 have been given in this case, whether it be this financial
10 power of attorney that was provided last night, or the
11 healthcare power of attorney that I was provided with earlier
12 on in this case, but I don't know, and -- and it -- it -- it
13 -- it -- I think is reasonable to -- to -- to -- to request
14 this Court that -- that a genuine dispute exists as to an
15 arbitration agreements validity and -- and -- and application
16 to this case.

17 And that I -- I should be entitled to under Section (9)
18 -- or 9 U.S.C. Section (4) to -- to dive further and -- and
19 engage in jurisdictional discovery and either refile this
20 motion once we -- we finish this limited discovery or have a
21 jury trial on the existence of an arbitration agreement,
22 which is provided for in Section (4) of the FAA. And -- and
23 that's my argument, your Honor. I -- I'd like to reserve a
24 rebuttal if -- if I need to. I don't know if I'm going to --
25 going to need to, but...

1 THE COURT: Yes, sir?

2 MR. PARKER: Your Honor, I'm looking at everything I
3 need to go to, and you've been at it for about an hour and a
4 half. I don't want to put you to sleep, but I don't think I
5 could streamline this shorter than maybe 10 or 15 minutes. I
6 didn't know if you needed to take a --

7 THE COURT: No, I'm good.

8 MR. PARKER: Given that. Okay.

9 THE COURT: Go ahead.

10 MR. PARKER: Thank you, your Honor. Just to kind of
11 try to lay out a roadmap first so that we're on the same page
12 with what we are arguing. Basically, the -- the basis of our
13 argument is that the party to this lawsuit is the estate.
14 And Ms. Rice, who is now Ms. Sullivan, she's the personal
15 representative. She is in this lawsuit in the shoes of the
16 estate. The estate is the Plaintiff. The estate is the real
17 party to the lawsuit. And she's in this lawsuit in her
18 personal -- I mean, excuse me, in her representative capacity
19 for the estate.

20 And you have to draw a distinction between that and the
21 fact that she signed these -- this arbitration agreement and
22 this admission agreement in her individual capacity. And the
23 reason that we argue she did that in her individual capacity
24 and not her representative capacity for the estate, is
25 because there was no authority for her to act on

1 Mr. Rice's behalf, specifically to waive his estate's right
2 to a jury trial.

3 And the case law is -- is very clear on -- on
4 distinguishing these two different hats that an individual
5 can wear if they're going into assisted living facility or a
6 nursing facility with a family member who's ill, who can't
7 speak for themselves. So I think it's important to recognize
8 that we are arguing this difference between representative
9 capacity, and back then -- go back in time to 2021 when she
10 was acting in her individual capacity.

11 At that time, she was not personal representative for
12 the estate. There were two power -- powers of attorney that
13 had been executed, naming her as Mr. Rice's attorney-in-fact.
14 But those are very narrow grants of authority specifically
15 only having to do with financial -- purely financial
16 decisions and purely healthcare decisions.

17 The decision to arbitrate to mutually assent to that on
18 behalf of Mr. Rice for his estate, that's not necessary to
19 any financial decisions she had to make on his behalf to get
20 him into the facility. And it's not necessary to any
21 healthcare decision she was making on his behalf to get him
22 into the facility because the arbitration agreement was
23 optional, and defendants conceded to that -- that's not
24 disputed.

25 And so basically what their argument is, is -- they're

1 saying that there is some sort of apparent authority here,
2 but then their alternative argument is even if there's not a
3 authority under estoppel, I should be prevented from now
4 arguing that the arbitration agreement isn't valid because
5 somehow, Ms. Rice, when she signed those things, that she
6 benefited from the admission agreement, from the arbitration
7 agreement, and I'll -- I'll go into all this a little bit
8 more detail, but that's essentially the argument.

9 And then, there's this discovery argument at the end
10 that -- you know, even if you think that there's no evidence
11 of authority today, you don't agree with estoppel argument,
12 that you should still allow some limited discovery because
13 there might be some evidence out there of some sort of
14 authority that they're not aware of.

15 So the -- obviously there's two sources of authority --
16 well, defendants argued for three sources of authority:
17 Actual authority, apparent authority, and then they've
18 brought up something that South Carolina actually doesn't
19 really recognize, which is inherent authority. Whether or
20 not we have actual authority that can come from -- you know,
21 several different sources power of attorney, a
22 conservatorship, a guardianship and there's no evidence in
23 this case that there's a valid source of authority -- actual
24 authority coming from any of those places.

25 They've submitted as an exhibit the healthcare power of

1 attorney. The healthcare power of attorney, I think the case
2 is Arredondo. The Supreme Court has, very black and white,
3 found that healthcare power of attorney, the one that's in
4 the statute that uses the statutory language, that does not
5 grant authority to the attorney-in-fact to sign an
6 arbitration agreement. So that's out. That can't be a
7 source of actual authority.

8 We've submitted as an exhibit, there was a financial
9 power of attorney. It's got very narrow language. It's not
10 a general power of attorney. It doesn't purport to grant to
11 Ms. Rice authority to do anything and everything that
12 Mr. Rice would need her to do. It's strictly to make
13 financial decisions, and only decisions that are necessary to
14 those financial decisions. And again, this arbitration
15 agreement was optional.

16 So first off, the scope of it doesn't even include
17 signing an arbitration agreement or waiving not only the
18 estates, but the -- the future wrongful death beneficiary's
19 rights to the jury trial. It doesn't grant that. So it's
20 not within the scope, but even if it were within the scope,
21 the financial power of attorney isn't valid.

22 Under -- and -- and so it was brought up that the FAA
23 preempts all state law -- well, the FAA can preempt the
24 uniform -- the South Carolina Uniform Arbitration Act, to the
25 extent that it conflicts with the FAA, but it does not

1 preempt the uniform power of attorney act that we have.
2 And in that act, it says that for a power of attorney to be
3 durable, to still be valid after the principal becomes
4 incapacitated, it has to be recorded in the county where the
5 principal lives, or else whatever agreements that agent --
6 purported agent enters into at the time that the principal is
7 incapacitated, it's not effective.

8 This is in our affidavit that we submitted, but I can
9 also represent to you, as an officer of the court, I
10 personally have done a search of the Greenville County
11 Register of Deeds. There is no recorded any sort of power of
12 attorney in there granting any sort of authority to Ms. Rice.
13 So this financial power of attorney wasn't even valid at the
14 time, the arbitration agreement and the admission agreements
15 were signed by Ms. Rice.

16 Another potential source of authority could be the
17 Adult Healthcare Consent Act, that's been argued many times
18 to the Court of Appeals and the Supreme Court. They've
19 roundly rejected that every single time it's come before
20 them. The Adult Healthcare Consent Act doesn't grant any
21 sort of authority that wouldn't be granted in that healthcare
22 power of attorney, that -- that includes the statutory
23 language. There is no conservatorship or guardianship. And
24 so essentially what that leaves us with is there is no
25 possible source of actual authority.

1 And -- and I will represent to you that there is no
2 possible source of actual authority that discovery is going
3 to provide. If there were something, it would be out there
4 recorded with the register of deeds. It's not there. So --
5 and I think this is why the Defendant is primarily relying
6 only argument of apparent authority that somehow supposedly
7 by Ms. Rice signing this agreement, that that has created
8 this authority that supposedly Mr. Rice has given to her and
9 that his defendant was relying on that.

10 And there's several problems with that. One, is that
11 the case law -- black letter case law on agency is very
12 clear. For apparent authority to exist, the representations
13 have to come from the principal, okay? And at the time that
14 Mr. Rice was admitted to this facility, he was incapacitated.
15 And I don't think there's a factual dispute about that
16 either. He was suffering from dementia. We've provided as
17 an exhibit to our memorandum some treatment notes, the
18 document that he had severe cognitive impairment, and that he
19 had a cognitive communication deficit at the time. I don't
20 think he could even speak, which is why he didn't sign these
21 agreements.

22 And so because he was incapacitated and he couldn't
23 communicate, he couldn't have represented to the facility at
24 that time, "My daughter is authorized to sign an arbitration
25 agreement on my behalf -- on my behalf." And if he had done

1 so, they could have come forward with an affidavit. It's
2 their motion, they chose to file it now. That would've been
3 their agent or their employee who received those
4 representations. They haven't come forward with any evidence
5 of that.

6 And so they try to pivot to this, "Well -- you know,
7 Ms. Rice signed this agreement." In the -- in the admission
8 agreement, it says, "I represent that I have authority to act
9 on my father's behalf, and I bind all of his heirs and
10 successors and" -- et cetera -- et cetera, "and everyone else
11 to this arbitration agreement." Well, that's a
12 representation coming from her, that's not coming from him.

13 And I'll refer you to really five cases. We cite them
14 extensively throughout our memorandum. One is Coleman, one
15 is called Hodge, one is Thompson, one is Arredondo, and the
16 other one is the Estate of Solesbee. And all of those cases
17 -- all of these arguments that the Defendant is making have
18 been extensively covered by the Court of Appeals and Supreme
19 Court, and all of them have been rejected.

20 Apparent authority does not come from the agent. And
21 -- and just to make an example of that, to drive that home,
22 it's almost like -- the argument that the Defendant is
23 making, let's say I drove to a car dealership, and I got out
24 and went inside and I said, "I'm here. I'm Judge McMaster's
25 agent. I'm here to buy a car on his credit. Give me a

1 Porsche." And I got in that Porsche and I drove to the beach
2 and drove in the ocean, just to make absurd example, but --
3 and then, the car dealership comes back and goes to you and
4 they say, "We want you to pay for this vehicle that you
5 purchased." And you're like, "I didn't pay for that."
6 "Well, Jay Parker came in and signed us, and he represented
7 to us that he was your agent, and he signed our form that we
8 drew up with our language in which he says, 'I represent that
9 I'm Judge McMaster's agent for the purposes of buying a
10 Porsche. You can use his credit,'" and then they try to hold
11 you responsible and makes you pay for it.

12 And then they go, well -- you say "He wasn't my agent.
13 I never said he was my agent." "Well, he represented to us
14 in this document that he was your agent. So he has apparent
15 authority." That's just not how that works. If it worked
16 that way, then anyone could bind anyone to anything at any
17 time. The representation has to come from the principal.
18 And at -- at the time of admission, Mr. Rice was
19 incapacitated, so he couldn't make any sort of
20 representations towards anyone.

21 So again, our position is, there is no authority there
22 -- there is no power of attorney, there's no conservatorship.
23 There's nothing here that specifically has given Ms. Rice
24 authority to enter arbitration agreement, which is waiving
25 rights to a jury trial. That's just totally different from

1 making a healthcare decision. All these cases I cited go
2 through this very well, and it's -- I would say at this point
3 it is -- is black and white -- you know, they could have put
4 into his powers of attorney that she had authority to
5 institute legal -- legal claims, or waive legal rights on his
6 behalf and his estate's behalf. They don't have that
7 language written into them. So what they want just isn't
8 within the scope of these agreements.

9 So that doesn't end it because the Defendant has now
10 said, "Well, even if that's true, Jay shouldn't be able to
11 argue in front of you today that the arbitration agreement
12 isn't valid because Mr. Rice relied on the admission
13 agreement to receive his treatment." And -- and it is what -
14 - the theory that they're arguing under is called direct
15 benefits estoppel. *Wilson v. Willis*, I think, is the leading
16 case on this in South Carolina.

17 And the primary reason why their argument doesn't work
18 is because they're misusing that argument. In this context,
19 when you have a third party signing the arbitration
20 agreement, who's asserting later on in a representative
21 capacity, asserting rights that aren't contract claims that
22 don't arise from the admission agreement, but are -- but they
23 are tort claims that have their own independent basis in the
24 common law, direct benefits estoppel doesn't apply, because
25 the way that this is usually used is you think about it like

1 a -- like a consumer context where someone's purchased a
2 product and they sign an arbitration agreement, and then they
3 get entered by the product and -- and -- you know, the
4 manufacturer wants to compel them into arbitration.

5 In that case, the -- the Plaintiff is also the person
6 who's signed. Well, that -- that's not even a good -- a
7 great example, not a products case, but something where those
8 rights they're trying to assert come from the contract, the
9 sales contract itself, and the plaintiff's trying to enforce
10 that sales contract.

11 So if I would've -- if I would've filed this case under
12 -- you know, if our theory of the case whether they were
13 contractual duties that have been breached by the Defendant,
14 they would have an argument for estoppel, for direct benefits
15 estoppel. But nowhere in our complaint do we allege anything
16 about a contractual duty. All of our -- our entire theory is
17 based on common law tort duties that are totally independent
18 from the contract.

19 Matter of fact, the reason that this doesn't make
20 sense, what they want, is -- and I do a lot of these
21 arguments over arbitration in the nursing home context.
22 About a quarter of the time that family member, when they
23 come in and they sign that admission agreement, they don't
24 have authority to sign the admission agreement either.

25 And so there is no valid admission agreement. But in

1 those cases, we still can file a lawsuit against the
2 defendant because we have these common law tort claims that
3 are independent of that admission agreement. We don't need
4 the admission agreement.

5 We're not trying to enforce the admission agreement --
6 I mean, the whole logic of the theory is, if I'm going to
7 come in and try to -- to make some argument to you and to a
8 jury that they owe my client something, and that I'm entitled
9 to a remedy because of a contract where I'm trying to enforce
10 that contract, it's not fair for me to turn around and out
11 the other side of my mouth try to argue, "Yeah, but that
12 arbitration agreement that was part of the contract," that
13 part is not valid.

14 What the law says is you're not going to do that. If
15 you're going to try to reap the benefits of the contract,
16 that's -- that the arbitration agreement is contained in,
17 you're not going to turn around and say the arbitration
18 agreement is not valid. But that's not what we're doing
19 here. We -- we have a positive action that are wholly
20 independent of the admission agreement.

21 But also even under the traditional concept of
22 equitable estoppel and the traditional equitable estoppel
23 test, there has to be some sort of manifestation by the party
24 to the lawsuit to the defendant that's meant to mislead them
25 to gain some benefit.

1 And in this case -- and this is why I kind of explained
2 the Ms. Rice acting in her independent -- or in her
3 individual capacity versus her representative capacity. The
4 Plaintiff in this case is the estate and the decedent and the
5 estate never made any sort of representations to the
6 Defendant, to the facility. And so they can't be held now by
7 estoppel to be prevented from asserting some sort of argument
8 about this arbitration agreement.

9 And then the -- the second concept -- and this is where
10 the merger thing kind of comes in, is that they presented
11 these two agreements as separate agreements. One is titled
12 "Admission agreement," one is titled "Our arbitration
13 agreement." They have their own pagination, like the
14 arbitration agreement is Number 1 through 9. It's got its
15 own signature lines on it, it's got its own language, but
16 then it does have a provision in there that says, "Once you
17 sign this, it's considered to be a part of the admission
18 agreement."

19 And that's definitely evidence of merger, for sure.
20 But what the case law says is even if you execute these
21 agreements at the same time, at the same place, and the same
22 person signs both of them, it's only presumed that there's
23 merger if there's no -- nothing that we can glean from the
24 documents that shows an intent contrary to merger.

25 And so this is where the Solesbee case, I think, is

1 really instructive on, kind of getting your head around the
2 idea of this. Because I would think -- I mean, looking at it
3 from a big picture view, if I saw that language in there that
4 said -- you know, "These documents merge when they're
5 signed," I would go, "Well, what is" -- "how are you arguing
6 that there's no merger?" But what the Court of Appeals has
7 said numerous times in unreported decisions, and in this one
8 published decision, Estate of Solesbee, is when the facility
9 structures this arbitration agreement and this admission
10 agreement, they can't have it both ways. They can't sit here
11 and -- and put in language that makes the documents look like
12 they're separate and they're two different documents. And
13 then, at the same time, try to put language in there too that
14 sometimes they can argue they're the same document.

15 For example, today they want to argue it's the same
16 document because they want to try to use this merger
17 argument, this estoppel argument, but in another case,
18 they're going to use these same admission agreements and
19 arbitration agreements for the next five years. But -- you
20 know, a couple of months from now they're going to have a
21 case where the resident has terminated their admission
22 agreement, which they're allowed to do by the language in the
23 admission agreement.

24 Well, in that case, they're -- if -- and if then the
25 resident wants to go and sue them for negligence for their

1 treatment in the facility, now they're going to argue, "These
2 are separate agreements." The arbitration agreement lives on
3 and survives the termination of the admission agreement. And
4 so they try to put this language in there so that it can go
5 both ways. And what this court and the Estate of Solesbee
6 says, "You can't do that." You have to unequivocally merge
7 those documents.

8 And I think the best evidence that this is what they
9 try to do, and I've tried to wrap my head around why they do
10 this for a long time, and I think this is why. The admission
11 agreement says, "This agreement can be terminated by the
12 resident at any point in time with notice for any reason,"
13 but the arbitration agreement provides, "Once you sign this,
14 if you don't -- can't revoke it within 30 days, it lives on
15 in perpetuity." And -- and that is direct evidence that
16 these are not actually the same document. These are separate
17 documents. The arbitration agreement can't live on in
18 perpetuity if you terminate the admission agreement unless
19 it's a separate agreement.

20 So we would argue that there is no merger in this case.
21 And there's a lot of factors that you can glean from that
22 Estate of Solesbee case. And we go through a lot of them in
23 the briefing just about how the agreements are set out, and
24 how different they are, and how they recognize their
25 separateness within the language of the agreements.

1 And so with that, there's no merger theory that works.
2 There's no estoppel theory that works. There's no authority
3 here. It's their motion. They brought it for you today.
4 They could have gone and looked for sources of authority they
5 have -- that apparently they have in other than what they
6 have. I believe that some of the case law they cite on this,
7 the federal case law, is that when you get to this point that
8 we're in here, if there is no factual dispute about anything,
9 you're entitled to go ahead and make a decision today without
10 saying, "Hey, you know what? You get another chance. You
11 get to go out there and have some limited discovery on this
12 issue of authority."

13 And in fact, our court suspected on this, and -- and
14 the Hodge case and the Thompson case are the main ones. And
15 in this exact same situation where the decedent -- where
16 there is a decedent, he's no longer with us, who lacked
17 capacity anyway at the time of the admission agreement and
18 arbitration agreement were made, the courts in those cases
19 have -- have said, at least two times, and the only ones that
20 I can find, the trial court was correct in denying the
21 defendant's motion to compel discovery or to conduct limited
22 discovery on agency because it would not have made any
23 difference.

24 There is no question that they can ask Ms. Rice about
25 any authority that was bestowed upon her because anything

1 that comes from her is going to be her representation. And
2 again, under black letter law and apparent authority and
3 actual authority, that's not enough. And so essentially
4 we're at this point now where there's nothing that can be
5 done to prove those things.

6 And so we would request that -- that you deny that
7 there -- the request for a limited discovery. We think it's
8 just going to protract this case and delay it even further.
9 And they certainly could have engaged -- I mean, I think part
10 of their argument is they're afraid of waiver. They're
11 afraid that if they do get into some kind of discovery, that
12 there's going to be an argument that I'm going to make, that
13 they've waived their right to arbitration, but what the case
14 law also is very clear about that is. So long as they put in
15 their answer that this is subject to arbitration and they
16 continuously represent throughout, I don't want to do this,
17 but I have to on the issue of agency, but we are not
18 conceding arbitration, we're still intact.

19 They will not be seen as having waived anything. They
20 just haven't done that. But what they want is they want to
21 get in here and argue a motion, and if it looks like it's
22 going to lose, have a second bite. And I don't think that
23 the law says they're really entitled to do that. Thank you,
24 your Honor.

25 THE COURT: All right. Thank you. Brief response?

1 MR. TABRIZIAN: Thank you. Briefly, your Honor. As
2 far as the request for limited discovery goes, I -- I think I
3 -- I forgot to mention -- I failed to mention that they --
4 they provided this affidavit of Ashanti Sullivan last night,
5 and -- and I think an additional basis for requesting limited
6 discovery on this issue. She's testified that she
7 represented or signed the agreement to arbitrate in her
8 individual capacity in this affidavit. I -- I think we have
9 the -- the -- the right to cross-examine her as to that
10 affidavit and limited discovery.

11 We -- we -- in a procedural process as far as -- as
12 cross-examination of -- of a witness, basically she's
13 testifying to something and then we're not given the
14 opportunity to -- to cross-examine her on those basis. So --
15 so that's one thing.

16 In respect to the -- the apparent authority argument
17 that -- that no evidence, again, is -- is -- in this case
18 that or the Plaintiff says there's no evidence in this case
19 amounting to a representation of the principal, who is
20 Mr. Rice, I'm going to go back -- I -- I -- maybe -- I didn't
21 mention it clearly. I have a tendency of doing that, but I
22 -- I think these powers of attorney are representations by
23 the principal because they confer a power in -- in the
24 document.

25 And -- and I think the cases that discuss like Hodge

1 and -- and other cases that -- that have been cited by the
2 Plaintiff in opposition of this motion, discuss -- like,
3 these powers of attorneys, and -- and in an actual authority
4 context, and don't necessarily use them as -- as evidence to
5 -- to confer apparent authority. Perhaps they're not enough
6 to confer apparent authority, but -- but -- but that's a
7 factual determination that I have not yet seen or -- or
8 argued.

9 And -- and -- and also -- and -- and Hodge, which the
10 Plaintiff cites to, that's a medical malpractice case. It's
11 -- it's -- it -- that's what the Supreme Court says it is.
12 It's -- they say it's a medical malpractice case. And -- and
13 at the end of the case, the -- the -- or at least the -- the
14 court's holding in that case -- bear with me as I flip to the
15 end.

16 "Apparent authority must be established based on
17 manifestations by the principal, not the agent. The proper
18 focus in determining a claim of apparent authority is not on
19 the relationship between the principal and the agent, but on
20 -- and that between the principal and the third party." In
21 this case, and like in those other cases that -- that have
22 been cited, and -- and the case that we're here today for,
23 the -- the -- the Plaintiff is the Estate of Harold Rice.
24 And he's -- he's unfortunately passed away.

25 I -- I think we're entitled to -- to question the --

1 the -- the personal representative who also signed these
2 documents, whether it be in our individual capacity or
3 representative capacity, as to any representations made by
4 him and -- and her understanding of -- of the power conferred
5 to her, under the South Carolina healthcare power of
6 attorney, specifically the section that I previously cited to
7 -- which is for the -- the paragraph below, Section 4 on Page
8 4. And -- and that's the -- that's all I've got.

9 THE COURT: All right. Thank you very much for your
10 arguments. I'm going to give you -- I think you requested
11 too, that you could have some time to review the -- the memo
12 and respond to that as well?

13 MR. TABRIZIAN: Yes, your Honor. If -- if you -- yeah,
14 I didn't request that, but if -- if you would allow me to.

15 THE COURT: That earlier, I wrote that down.

16 MR. TABRIZIAN: I -- I had -- I had mentioned that and
17 -- and as -- as if I misstated anything, the Plaintiff might
18 have argued that -- that would be the reason why, but -- but
19 if -- if -- if you're granting me leave to -- to file a reply
20 to their memorandum and opposition, I -- I'll definitely take
21 that opportunity. I appreciate it, your Honor.

22 THE COURT: I'll give you seven days to do that. I'm
23 going to take these under advisement. You have seven days to
24 do that. I have not read your memo. I didn't get it.
25 Obviously it was filed last night. It's -- I don't have it

1 in my packet to get prepared, but I want to read that. I've
2 made a lot of notes, obviously from your arguments, but I'll
3 take it under advisement. I'll give you the opportunity to
4 reply as well, and then make decision hopefully in the next
5 10 days or so. Thank you very much.

6 MR. TABRIZIAN: Thank you, your Honor.

7 THE COURT: Thank you.

8 MR. PARKER: Thank you.

9 THE COURT: Thank you.

10 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED.)

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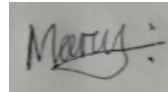
CERTIFICATE OF TRANSCRIBER

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I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 13 of Greenville County, South Carolina, on September 16, 2025.

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

January 16, 2026



MARY RAGSDALE

Transcriber

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 DEFENDANT’S MOTION TO DISMISS, STAY LITIGATION AND DISCOVERY, AND COMPEL ARBITRATION

PLEASE TAKE NOTICE that Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (hereinafter “Defendant”), by and through its undersigned counsel, pursuant to Rules 12(b)(1), (2) and (6), and Rule 26 of the South Carolina Rules of Civil Procedure, and according to the provisions of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 *et. seq.* and applicable federal case law, hereby moves this Honorable Court for an Order Dismissing Plaintiff’s Complaint and Staying Litigation and Compelling Arbitration in the above- captioned case.

This motion is based upon the Binding Arbitration Agreement (“Arbitration Agreement”) executed by and between Ashanti Rice Sullivan, Harold Rice and Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute requiring that any disputes between them, be resolved through binding arbitration exclusively and pursuant to the Federal Arbitration Act. A copy of the executed Arbitration Agreement attached hereto as Exhibit A and incorporated herein by reference.

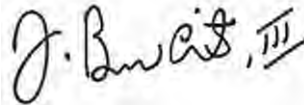
Ashanti Rice Sullivan executed Exhibit A as Harold Rice’s daughter, healthcare surrogate, healthcare power of attorney, Attached hereto as Exhibit B, legal representative, guardian, responsible party, and agent with the actual and/or apparent authority to admit her father to the care, custody and control at Simpsonville Post Acute, thus binding Ashanti Rice Sullivan and Harold Rice to all terms and conditions of Exhibit A, including binding arbitration. Plaintiff’s

claims against Defendant must be compelled to binding arbitration pursuant to the arbitration provision in Exhibit A that was executed by and between the parties for the admission, residency, and care of Harold Rice at Simpsonville Post Acute.

By filing this Motion, the Defendant does not admit any of the allegations in the Complaint or waive any objections, defenses, or other rights, specifically including, but not limited to the right to arbitrate, available to it under state and federal law. Defendant further reserves all rights under Rule 12 of the South Carolina Rules of Civil Procedure to file a responsive pleading to the extent necessary in accordance with a ruling from the Court on the instant motion.

This Motion will be further supported by the pleadings, applicable law, arguments of counsel, a memorandum of law to be filed subsequently, and any other documents, affidavits or materials the Court may receive.

BURR & FORMAN, LLP



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*Attorneys for Defendant Simpsonville Community
Healthcare, LLC d/b/a Simpsonville Post Acute*

May 8, 2025
Charleston, South Carolina

CONFIDENTIAL VOLUNTARY ARBITRATION AGREEMENT

BY SIGNING THIS AGREEMENT, THE RESIDENT IS WAIVING THE RIGHT TO A TRIAL BEFORE A JUDGE OR JURY ON A DISPUTE WITH THE FACILITY. THIS AGREEMENT IS VOLUNTARY. SIGNING THIS AGREEMENT IS NOT A CONDITION OF ADMISSION OR A CONDITION OF CONTINUED RESIDENCY OR CARE/TREATMENT IN THE FACILITY. READ THIS AGREEMENT CAREFULLY BEFORE SIGNING.

1.0 PARTIES TO THE AGREEMENT

This Arbitration Agreement (“Agreement”) is entered into by Simpsonville Post Acute, a nursing facility on behalf of itself and its parents, affiliates and subsidiaries, (collectively referred to as “the Facility”), and the resident, _____ (insert name), and/or Ashanti Rice _____ (insert name), the Legal Representative of the resident (collectively referred to as “Resident”). It is the intent of the Facility and the Resident that this Agreement shall inure to the benefit of, bind and survive them, their heirs, successors, and assigns.

2.0 DEFINITIONS

For purposes of this Agreement:

- 2.1 “Facility” shall refer to the nursing facility identified as the Facility in Section 1.0 of this Agreement, including its employees, administrators, agents, officers, directors, owners, parents, affiliates, and/or subsidiaries and any medical director thereof acting in his/her capacity as medical director.
- 2.2 “Resident” shall refer to the person identified as the Resident in Section 1.0 of this Agreement and includes all persons entitled to bring a claim on behalf of the Resident, including the legal representative, responsible party, power of attorney, guardian, surrogate, executor, administrator, or agent of the Resident, including any person or heir who has signed this Agreement on behalf of the Resident.
- 2.3 “Party” shall refer to either the Facility or Resident and “Parties” shall refer to both the Facility and the Resident.
- 2.4 “Dispute” means any claim or action that a private party seeking monetary damages may file as a lawsuit in civil court, and as further clarified in Section 5.0 of this Agreement.
- 2.5 “Mediation” is a specific process of dispute resolution in which a neutral third party selected by the Parties called a “Mediator” tries to facilitate a settlement of the dispute between the Parties but does not make the decision about the outcome. Here, as explained in Section 10.0 of this Agreement, if the dispute cannot be settled between the Parties through Mediation, the dispute is to be resolved through Arbitration.
- 2.6 “Arbitration” is a specific process of dispute resolution used instead of the traditional court system. Instead of a judge and/or jury determining the outcome of a dispute, a neutral third party selected by the Parties called an “Arbitrator” evaluates the facts, arguments, and evidence (such as witness testimony and records) at a hearing and then makes a decision about the dispute. The Arbitrator’s decision is **binding** on the Parties.

3.0 VOLUNTARY AGREEMENT

- 3.1 **SIGNING THIS AGREEMENT IS VOLUNTARY.** The Resident shall receive the same quality care and treatment at the Facility whether or not the Resident signs the Agreement. The Resident understands that it is solely the Resident's voluntary decision whether to sign this Agreement, without undue pressure or influence.
- 3.2 The Resident understands that by signing this Agreement, the Resident voluntarily agrees to be bound by its terms and conditions.
- 3.3 The Parties agree that the speed, efficiency and cost-effectiveness of Arbitration, together with their mutual undertaking to engage in that process, constitute good and sufficient consideration for the acceptance and enforcement of this Agreement.
- 3.4 The Parties understand that this Agreement bypasses the need for a covered claim to be submitted to a Medical Review Panel under KRS Chapter 216C.

4.0 FEDERAL ARBITRATION ACT

- 4.1 Upon execution, this Agreement shall become part of the Admission Agreement.
- 4.2 The Parties agree that the Facility bills Medicare, purchases supplies from out-of-state vendors, and engages in activities that affect interstate commerce and thus the Admission Agreement is connected to interstate commerce.
- 4.3 The Parties agree and intend that this Agreement, the Admission Agreement, and the Resident's stays at the Facility substantially involve interstate commerce, and stipulate that the Federal Arbitration Act ("FAA"), 9 U.S.C.A. §1-16 *et seq.*, and applicable federal case law apply to this Agreement (even if the FAA would not otherwise apply in a binding way on a state court), preempt any inconsistent state law, and shall not be reverse preempted by the McCarran-Ferguson Act; United States Code Title 15, Chapter 20; or other law. Any amendment to such version of the FAA is hereby expressly waived.

5.0 AGREEMENT TO ARBITRATE DISPUTES

- 5.1 It is agreed that all claims, disputes and controversies between the Resident and Facility arising out of or relating in any way to the Resident's stay at the Facility (including any readmissions), to any service or health care provided by the Facility to the Resident, or to the Admission Agreement, other than as set forth below, will be submitted to, and decided by, binding Arbitration.
- 5.2 This Agreement applies to any and all claims, disputes and controversies that would constitute a legally cognizable cause of action in any court of law including but not limited to: (1) any preliminary disputes involving the making, validity, execution, voidability, unconscionability, severability, interpretation, preemption, waiver, and enforceability of this Agreement or any other defense to enforceability of this

Agreement; (2) those that arise out of state or federal law; (3) those based on statutory or common law duties; (4) those based on representations regarding care or services; (5) those based on breach of contract of the Admission Agreement not relating to payment or collections; (6) those based on any consumer or safety standards; (7) those based on the Resident's Rights statute; (8) those involving compensatory, punitive or statutory damages; and (9) those based on negligence or intentional tort theories, including but not limited to negligence, medical negligence, corporate negligence, and civil assault or civil battery, that seek to recover monetary damages in civil court for personal injury, death, or loss to person or property.

- 5.3 This Agreement shall not apply to disputes involving amounts of money less than \$5,000.
- 5.4 This Agreement shall not apply to actions by the Facility to collect delinquent accounts.
- 5.5 This Agreement shall not apply to involuntary discharge actions initiated by the Facility.
- 5.6 Nothing in this Agreement prevents the Resident from (1) submitting a written concern or grievance to the Facility; (2) making a complaint with and/or requesting an inspection of the Facility from the appropriate governmental agency; (3) reporting alleged violations of law to the appropriate administrative, regulatory or law enforcement agency; or (4) seeking review under any applicable law of any decision to involuntarily discharge or transfer the Resident from the Facility.
- 5.7 Nothing in this Agreement prohibits or discourages the Resident, or anyone on the Resident's behalf, from communicating with federal, state or local officials, including federal or state surveyors, other federal or state health department employees, or representatives of the state long term care ombudsman.
- 5.8 This Agreement is not intended to waive any regulatory right a Resident may have that the state may enforce.
- 5.9 This Agreement does not limit the remedies available to a Party under federal or state law. However, the relief available to the Parties under this Agreement also shall not exceed that which otherwise would be available to the Parties in a court action based on the same facts and legal theories under the law in which that cause of action arises. All limitations regarding damages that exist under South Carolina law at the time of the request for Arbitration are applicable to this Agreement.
- 5.10 All claims based in whole or in part on the same incident, transaction, or residency at the Facility shall be addressed in a single arbitration.
- 5.11 Any claim that is not brought within the statute of limitations period that would apply to the same claim in a court of law in South Carolina shall be waived and forever barred. A claim that arose during Arbitration and was reasonably discoverable by the Parties shall be waived and forever barred if not included in the Arbitration. Disputes

regarding whether a claim was reasonably discoverable shall be resolved in the Arbitration process.

6.0 DEMAND FOR ARBITRATION

- 6.1 Either Party may demand Arbitration.
- 6.2 The demand for Arbitration shall be in writing and submitted to the other Party. If the Resident sends the demand, it should be sent to the attention of the Facility's Administrator and/or the Facility's attorney.

7.0 ARBITRATOR

- 7.1 The Parties shall cooperate and negotiate in good faith to select a neutral Arbitrator. If the Parties fail to agree on the selection of an Arbitrator, a court of competent jurisdiction may appoint an Arbitrator to govern the Parties' dispute.
- 7.2 The Arbitrator shall be independent of and have no conflict of interest with all Parties, witnesses, affiliates, and legal counsel for the Parties and shall have no prior knowledge of the dispute.
- 7.3 The Arbitrator shall be either (1) a retired state or federal court judge in good standing with the South Carolina Bar or (2) a member in good standing with the South Carolina Bar with at least 15 years of civil litigation experience. The Arbitrator shall be someone who is regularly engaged in providing mediation and/or arbitration services in South Carolina and has some familiarity with long term care and post-acute care litigation.
- 7.4 Except as otherwise provided in this Agreement, the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability, scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement or the Admission Agreement, as well as to resolve the Parties' underlying disputes, as it is the Parties' intent to avoid involving the court system. The Arbitrator shall also be responsible for resolving issues pertaining to procedure, discovery, admissibility of evidence, or any other matter of dispute between the Parties relating to the Arbitration.
- 7.5 The Parties agree that the Arbitrator does not have jurisdiction to certify any person as a representative of a class of persons and, by so doing, adjudicate claims of persons not directly taking part in arbitration.

8.0 ARBITRATION PROCESS

- 8.1 Shortly after the Arbitrator is retained by the Parties, the Arbitrator shall confer with the Parties and/or their counsel, in person or by telephone, about the exchange of information needed by the Parties to prepare for the Arbitration hearing and to formulate an Arbitration Discovery Plan.

9.0 PROCEDURAL RULES AND SUBSTANTIVE LAW

- 9.1 Because the Facility is located in South Carolina, the Arbitrator shall apply South Carolina law in deciding the dispute except as otherwise stated specifically in this Agreement. The Arbitrator shall also apply the South Carolina rules of evidence and the South Carolina rules of civil procedure except where this Agreement states otherwise.
- 9.2 This Agreement and the substantive rights of the Parties shall be governed by South Carolina law, including by the procedures of the South Carolina Uniform Arbitration Act, to the extent not already addressed in this Agreement. If, for any reason, there is a finding that South Carolina law cannot support the enforcement of this Agreement, then the substantive rights of the Parties shall be governed by federal law, including but not limited to the Federal Arbitration Act (“FAA”), 9 U.S.C.A Section 1-16 *et. seq.*
- 9.3 The Arbitration decision shall be in writing, shall set forth the Arbitrator’s findings of fact and conclusions of law, and if any damages are awarded, the award shall delineate specific amounts for each type of damages awarded. The Arbitration decision shall be marked “Confidential” and shall be signed by the Arbitrator and provided to the Parties or their counsel.
- 9.4 The Arbitration decision shall be final and binding without the right of appeal by either Party, except as allowed by state law or the FAA.
- 9.5 If there is an Arbitration award, the losing party shall pay the award to the prevailing party within 30 days of the award date. If the award is not timely paid, the prevailing party may bring legal action pursuant to KRS 417.150 to enforce the award as if it were a judgment entered by a court.

10.0 MEDIATION

- 10.1 Prior to the Arbitration hearing, the Parties shall cooperate and schedule a Mediation to try to settle the dispute. The Parties shall attempt to resolve the dispute in good faith.
- 10.2 The Parties shall equally share the cost of the Mediation. The Parties, at their own expense, may be represented by an attorney at the Mediation.
- 10.3 The Mediation shall be conducted by a Mediator to be jointly agreed upon by the Parties and their counsel. Should the Parties and their counsel be unable to reach agreement on the selection of the Mediator, the Arbitrator shall select the Mediator. The Arbitrator shall not serve as the Mediator. The Mediator shall meet the same credentialing requirements as set forth in 7.2 and 7.3.
- 10.4 All Mediation written statements and discussions shall remain confidential and shall not be shared with the Arbitrator.
- 10.5 Following the Mediation, the Mediator shall advise the Arbitrator simply as to whether

- 15.1 This Agreement represents the Parties' entire agreement regarding disputes and supersedes all prior agreement, understandings and representations, whether written or oral, between the Parties with respect to its subject matter (and specifically including any representations made at the time of admission) and constitutes a complete and exclusive statement of the terms of the Agreement between the Parties with respect to its subject matter.
- 15.2 This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement signed by both Parties.
- 15.3 The Parties agree that the original of this Agreement, including the signature pages, may be scanned or duplicated and that any readable copy, the reproduction of which is shown accurately to reproduce the original document, may be used for any purpose just as if it were the original, including proof of the content of the original writing.

16.0 ACKNOWLEDGMENT OF UNDERSTANDING

16.1 BY SIGNING BELOW, THE RESIDENT CONFIRMS THAT:

- (1) The Resident has read this Agreement or had it read to him/her;**
- (2) The Agreement has been explained to the Resident in a form and manner the Resident understands, including in a language the Resident understands, and the Resident has had an opportunity to ask questions of a Facility representative and receive answers to any questions about the terms and conditions of this Agreement;**
- (3) The Resident was not rushed or pressured to read or sign the Agreement;**
- (4) The Resident understands that he/she has the right to review this Agreement with an attorney or family member before signing it;**
- (5) The Resident understands what the Agreement says and means;**
- (6) The Resident understands that the signing of this Agreement is NOT a precondition to the furnishing of services or care to the Resident by the Facility;**
- (7) THE RESIDENT UNDERSTANDS AND AGREES THAT BY SIGNING THIS ARBITRATION AGREEMENT, THE RESIDENT IS GIVING UP AND WAIVING THE RESIDENT'S CONSTITUTIONAL RIGHT TO HAVE THE CLAIM DECIDED BY A COURT OF LAW BEFORE A JUDGE AND JURY AND TO APPEAL ANY DECISION OR AWARD OF DAMAGES RESULTING FROM THE ARBITRATION PROCESS EXCEPT AS PROVIDED IN THIS AGREEMENT; and**

(8) The Resident consents to all the terms of this Agreement and THE CONSENT IS BEING DONE KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITHOUT LIMITATION.

If signed by a Legal Representative (or an individual purporting to be a Legal Representative) for the Resident, then such individual hereby represents, warrants and certifies to the Facility that the Facility may reasonably rely upon the validity of such individual's signature, and that such individual has actual, implied or apparent legal authority to execute this Agreement as granted by the Resident. Such individual also agrees that any claims or disputes arising between such individual, in their individual or any representative or derivative capacity, and the Facility, including without limitation any agents, employees, and affiliates thereof, shall be resolved solely pursuant to the dispute resolution and other terms and conditions of this Agreement, as though such individual were entering into this agreement in his or her individual capacity.

FOR THE RESIDENT:

E-SIGNED by Ashanti Rice
on 2021-12-23 11:14:59 EST

Signature of Resident or Resident's
Legal Representative as described in 2.2

Ashanti Rice

Printed Name

Relationship to Resident if Legal
Representative

December 23, 2021 GMT

Date

FOR THE FACILITY:

E-SIGNED by Lynda Denise Knight
on 2021-12-23 09:59:19 EST

Signature of Facility Representative

Lynda Denise Knight

Printed Name

Job Title at Facility

December 23, 2021 GMT

Date

SOUTH CAROLINA HEALTH CARE POWER OF ATTORNEY

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.
2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.
3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.
4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.
5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.
6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.
- B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.
- C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

- D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.
- E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.
- F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.
- G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

SOUTH CAROLINA HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, HAROLD LEE RICE, hereby appoint
(Principal)

(Agent's Name) ASHANTI T. RICE

(Agent's Address) [REDACTED] GREENVILLE SC

Telephone: home: work: mobile: [REDACTED]

as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

a. First Alternate Agent:

Address: N/A

Telephone: home: work: mobile:

b. Second Alternate Agent:

Address: N/A

Telephone: home: work: mobile:

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Information Portability and

Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

- A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;
- C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;
- D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.
- E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

N/A

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may A, R may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does

not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) ALP GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

- a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or
- b. if I am in a state of permanent unconsciousness.

OR

(3) _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Item 7, (INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

(a) ALP GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(b) _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(c) _____ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN ITEM 8, YOUR AGENT WILL NOT

HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on

this 29 day of JULY, 2013. My current home address is:

[Redacted] Greenville SC

Principal's Signature: [Signature]

Print Name of Principal: FAROLD LEE RICE

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: [Signature]

Date: _____

Print Name: Billy Lattimore

Telephone: _____

Address: _____

Witness No. 2

Signature: [Signature]

Date: _____

Print Name: Sharon Johnson

Telephone: _____

Address: _____

(This portion of the document is optional and is not required to create a valid health care power of attorney.)

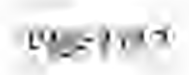
STATE OF SOUTH CAROLINA

COUNTY OF Greenville

The foregoing instrument was acknowledged before me by Principal on July 29
20 13

Notary Public for South Carolina Mary M Lacey

My Commission Expires: September 13, 2019

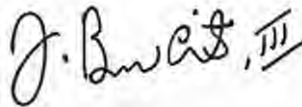


STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, by and through its undersigned counsel, pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, hereby moves this Court for a Protective Order to Stay Discovery pending the resolution of the pending Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration filed by Defendant on May 8, 2025. Defendant further requests that this Court hear this Motion along with its pending Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration. This Motion is based upon and supported by the pleadings, Defendant's Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, applicable statute and case law, and any supporting memoranda to be filed with the Court prior to a hearing on this Motion.

Respectfully submitted,

BURR & FORMAN, LLP



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*Attorneys for Defendant Simpsonville Community
Healthcare, LLC d/b/a Simpsonville Post Acute*

May 8, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, STAY LITIGATION AND DISCOVERY, AND COMPEL ARBITRATION

PLEASE TAKE NOTICE that Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (hereinafter “Defendant”), by and through its undersigned counsel, submits this memorandum of law in support of its Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, pursuant to Rule 12(b)(6) SCRPC; the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.*; and a binding Arbitration Agreement executed by the Plaintiff and Defendant, which covers all the allegations raised in this wrongful death and survival action filed by Plaintiff and is attached hereto as Exhibit A.

FACTS

On July 29, 2013, Harold Rice (“Rice”) executed a Health Care Power of Attorney document that authorized Ashanti Sullivan (“Sullivan”) to act on his behalf, as his agent. *See* Exhibit B, Health Care Power of Attorney. Harold Rice was Ashanti Rice’s father. The Health Care Power of Attorney authorized Sullivan to, *inter alia*:

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility or service

Exhibit B, p. 4. Furthermore, the Health Care Power of Attorney executed by Mr. Rice is a “durable power of attorney.” Exhibit B, p. 3. Furthermore, Rice expresses that “In exercising this

authority, my agent [Ashanti Sullivan] shall follow my desires as stated in this document or otherwise expressed by me or known to my agent.” Exhibit B, p. 4.

On December 23, 2021, Rice was admitted to Defendant’s Facility. During the admission process, Sullivan executed several documents on behalf of Rice including the Arbitration Agreement. Exhibit A. Specifically, the Arbitration Agreement is “part of the Admission Agreement.” Exhibit A, p. 2.

The Admission Agreement for Harold Rice was signed by Ashanti Rice, which stated that Ashanti Rice was the “Daughter” of the Resident. Exhibit C. The Admission Agreement includes certain attached documents, including the Arbitration Agreement and the South Carolina Community Long Term Care Consent Form for Harold Rice was signed by Ashanti Rice as “Daughter/POA.” Exhibit D.

Ashanti Sullivan executed the Arbitration Agreement as Harold Rice’s daughter, healthcare surrogate, healthcare power of attorney, legal representative, guardian, responsible party, and agent with the actual and/or apparent authority to admit her father to the care, custody and control at Simpsonville Post Acute. It binds Ashanti Sullivan and Harold Rice to all terms and conditions of Exhibit A, including binding arbitration.

The Arbitration Agreement requires that any disputes be resolved through binding arbitration exclusively and pursuant to the Federal Arbitration Act. Exhibit A, p. 2. The Agreement was signed by Defendant. It was signed by Ashanti Rice as “legal representative as described in Section 2.2.” Section 2.2 of the Arbitration Agreement provides:

2.2 “Resident” shall refer to the person identified as the Resident in Section 1.0 of this Agreement and includes all persons entitled to bring a claim on behalf of the Resident, including the legal representative, responsible party, power of attorney, guardian, surrogate, executor, administrator, or agent of the Resident, including any person or heir who has signed this Agreement on behalf of the Resident.

Exhibit A, p. 1. The Arbitration Agreement contains a delegation clause where the parties agreed to have certain “gateway” matters to be decided by an arbitrator:

- 7.4 Except as otherwise provided in this Agreement, the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability, scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement or the Admission Agreement, as well as to resolve the Parties’ underlying disputes, as it is the Parties’ intent to avoid involving the court system. The Arbitrator shall also be responsible for resolving issues pertaining to procedure, discovery, admissibility of evidence, or any other matter of dispute between the Parties relating to the Arbitration.

Exhibit A, p. 4. Ashanti Rice, as Personal Representative of the Estate of Harold Rice, filed this wrongful death and survival action against Defendant, which relates to Mr. Rice’s residency at and care treatment from Defendant’s facility.

LEGAL STANDARD

Under the Federal Arbitration Act “[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. This policy...requires courts to enforce the bargain of the parties to arbitrate.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (internal citations omitted) (finding it was error for the lower court to refuse to compel arbitration). “This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Therefore, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *Id.*, 338 S.C. at 41, 524 S.E. 2d at 846 (internal quotations and citations omitted)

LAW AND ANALYSIS

The Federal Arbitration Act (“FAA”) provides that “[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be 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.

The FAA applies in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Additionally, “[a] party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement and (2) the claims fall within the scope of the agreement.” *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019).

I. The Arbitration Agreement Involves Interstate Commerce

Here, the Arbitration Agreement, as part of the Admission Agreement, involves interstate commerce. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

The Arbitration Agreement was executed for the admission of Mr. Rice at Defendant’s Facility, as an attachment incorporated into the Admission Agreement. The Facility is a skilled nursing facility, which involves interstate commerce. Additionally, the Plaintiff and Defendant agreed in the Arbitration Agreement that the “Resident’s stays at the Facility substantially involve interstate commerce and [the Parties] stipulate that the Federal Arbitration Act (“FAA”), 9 U.S.C.A. § 1-16 *et seq.*, and applicable federal case law apply to this Agreement[.]” Therefore, the FAA applies to the Arbitration Agreement, which mandates compelling the above-captioned action to arbitration.

II. The Arbitration Agreement is Valid and Enforceable

“The FAA presumes parties intend that the court, rather than an arbitrator, will decide ‘gateway’ issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute.” *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). “The parties may, of course, delegate these gateway issues to an arbitrator as long as there is ‘clear and unmistakable’ evidence of such delegation.” *Id.* If such a delegation occurs, the court retains the right and duty to determine if the delegation is valid and enforceable “as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause[.]” *Id.*

A. A Valid Agreement to Delegate Exists

“An arbitration agreement, of course, is a contract.” *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025). A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing three elements. *Id.* In South Carolina, [t]he necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

A valid offer and valid consideration exist. An “offer” is the manifestation by one party of their willingness to enter a bargain, made so as to justify another person in understanding that his assent to that bargain is invited. Restatement (Second) of Contracts § 24. The offer identifies its subject, i.e. the bargained-for-exchange, and also creates a power of acceptance in the offeree. Restatement (Second) of Contracts § 29. Finally, “valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. A forbearance to exercise a legal right is valuable consideration.” *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (internal citations omitted).

Here, a valid offer exists. The Defendant's signature on the Admission Agreement, as well as the Arbitration Agreement, manifest its willingness to bind itself to the terms it sets forth. The Defendant's signature was time stamped before that of Ms. Sullivan's, who signed on behalf of Mr. Rice, as his agent with actual and apparent authority. Next, consideration exists. In return for payment from Rice, Defendant agreed to provide covered skilled nursing services for Rice at its facility. Additionally, the mutual agreement to arbitrate is valid consideration. *Lampo*, 445 S.C. at 313, 914 S.E.2d at 144. Therefore, a valid offer and valid consideration exist.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.*

Here, there is a valid acceptance for two reasons. (1) Because the Admission Agreement merged with the Arbitration Agreement, Plaintiff is estopped from refusing to submit her claims to arbitration or delegating these issues to arbitration. (2) Sullivan possessed the requisite actual, apparent, and inherent agency authority to execute the Arbitration Agreement on behalf of Plaintiff. Specifically, the Health Care Power of Attorney granted Sullivan the power "authorize [Rice's] admission to or discharge from any . . . nursing care facility," allowing her to execute the Admission Agreement, as well as the Arbitration Agreement.

i. The Arbitration Agreement and Admission Agreement Must be Construed Together, and Plaintiff Should be Estopped from Denying the Parties' Mutual Right to Arbitration

1. Merger

The Admission Agreement and the Arbitration Agreement should be construed together and Plaintiff should be required to arbitrate her claims against the Facility. The Arbitration Agreement and Admission Agreement were executed by Ms. Sullivan as agent and on behalf of Plaintiff. The validity of these agreements, including the Arbitration Agreement, must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. *See Lampo*, 445 S.C. at 311, 914 S.E.2d at 142-3.

The Arbitration Agreement provides that “[u]pon execution, this Agreement shall become part of the Admission Agreement.” Exhibit A, p. 2. The Arbitration Agreement and the Admission Agreement were both signed by Sullivan, as representative on behalf of her father on the same day, at the same time, and related to the same subject matter, which was Plaintiff’s admission to Defendant’s facility and Defendant’s provision of care and treatment to him.

Courts in South Carolina construe contemporaneous instruments together; if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977). “In the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together.” *Id.* *See also Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (holding that promissory notes and a mortgage agreement executed contemporaneously on the same date, must be construed together).

Here, the Arbitration Agreement, as well as all other agreements contemporaneously signed by the Plaintiff, merged with the Admission Agreement. The Admission Agreement and Arbitration Agreement were signed at the same time. The Admission Agreement was signed by Plaintiff at 11:11 a.m. on December 23, 2021. The Arbitration Agreement was signed by Plaintiff at 11:14 a.m. on December 23, 2021. They were signed three (3) minutes apart. Multiple other documents were signed that also merged with the Admission Agreement, such as the South Carolina Community Long Term Consent Form (“LTCF”).

The instruments were signed by the same parties. Defendant undisputedly signed the Admission Agreement and the Arbitration Agreement. Plaintiff signed the Admission Agreement and Arbitration Agreement on behalf of and as agent for Harold Rice. Next, the instruments were executed for the same purpose. The Admission Agreement and Arbitration Agreement were for the provision of care and treatment to Mr. Rice at Defendant’s facility.

Lastly, the instruments were executed in the same transaction. Specifically, the Admission Agreement and Arbitration Agreement were executed during and for the initial admission of Harold Rice at Defendant’s facility where he would become a resident of and be provided care and treatment by Defendant. While the Plaintiff may allege that evidence exists showing the contrary, the Arbitration Agreement clearly and specifically states that it “shall become part of the Admission Agreement” upon execution. Therefore, the Admission Agreement and the Arbitration Agreement merged once the Arbitration Agreement was executed.

2. Plaintiff is Equitably Estopped from Refusing to Arbitrate

“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 & Anlaen 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. at 339–345, 827 S.E.2d at 174–177 (discussing direct benefits test).

Because of the doctrine of merger referenced above, equitable estoppel 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. Illinois Beverage, Inc. v. Hansen Beverage Co.*, No. 07-CV-391-DRH, 2007 WL 3046273, at *11 (S.D. Ill. Oct. 15, 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*, 170 F.3d at 353 (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)).

In the present case, Plaintiff embraced all aspects of the Admission Agreement with the Facility. It would be inequitable to permit a party to claim the other is liable in tort based upon a contractual relationship, while at the same time allowing that same party to avoid the arbitration provisions of the contract upon which the party bases its claims. Moreover, the claims fall within

the arbitration provision itself. In other words, Plaintiff cannot have it both ways by relying upon certain terms of the Admission Agreement when it works to her advantage and repudiating the Arbitration Agreement when it works to her disadvantage.

As outlined above, the Plaintiff's allegations fall within the scope of the Arbitration Agreement. Accordingly, Plaintiff cannot assert claims against this Defendant based upon certain terms of the Admission Agreement while repudiating the Arbitration Agreement. She should be equitably estopped from doing so. Numerous courts hold that where a plaintiff receives the benefits of the contract, which Plaintiff certainly did, the non-signatory is estopped from denying an arbitration agreement merely because he did not sign the contract under and pursuant to which he received all the benefits.

3. Coleman, Thompson and Hodges are Distinguishable

Plaintiff may argue that the Admission Agreement and the Arbitration Agreement are not merged pursuant to *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) (holding that merger did not exist when (a) arbitration agreement was governed by federal law and admission agreement was governed by state law and (b) when the documents referenced the two agreements collectively with an "or" such as "admission agreement or arbitration agreement"); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014)(holding no merger when there was a thirty (30) day disclaimer in arbitration agreement and no specific reference connecting arbitration agreement and admission agreement); and *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016) (holding no merger when there was a thirty (30) day disclaimer in arbitration agreement and no specific reference connecting arbitration agreement and admission agreement). Moreover, the Plaintiff may argue that non-dispositive similarities in those cases preclude merger of the Admission Agreement and Arbitration Agreement. This case is distinguishable.

Hodge, Coleman, and Thompson, disclaim merger when there is evidence of a contrary intent. Unlike the arbitration agreements in those cases, the Arbitration Agreement and Admission Agreement in the case at bar should not be considered “separate” for purposes of denying merger because the intent of the documents is clear; the Arbitration Agreement and Admission Agreement **shall** merge. *See Klutts Resort Realty, Inc.*, 268 S.C. at 88, 232 S.E.2d at 24 (“In the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together.”) (emphasis added).

Here, the Arbitration Agreement states that it “shall become part of the Admission Agreement” upon execution. Exhibit A, p. 2. Plaintiff cannot create ambiguity to support an intent to the contrary of this clear and unmistakable statement. *See Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (“In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: ‘one may not, by pointing out a single sentence or clause, create an ambiguity.’”)

Additionally, unlike the agreements in *Hodge*, the Arbitration Agreement and Admission Agreement here do not apply different laws. Instead, the Arbitration Agreement applies the FAA and any applicable law that is not preempted or inconsistent with it. The Admission Agreement is governed by and construed in accordance with any laws in which the Defendant Facility is located. Exhibit C, p. 11. While the Arbitration Agreement was voluntary, it matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission. Here, there can be no question that the Arbitration Agreement, once agreed upon, was intended by the parties to be construed together with the Admission Agreement. Therefore, the Court should find that the delegation clause is a valid and enforceable provision

because the Arbitration Agreement merged upon execution with the Admission Agreement and Plaintiff is equitably estopped from refusing arbitration.

ii. Ms. Sullivan Had the Requisite Actual/Apparent/Inherent Agency Authority to Execute the Arbitration Agreement on Behalf of Plaintiff

1. Ms. Sullivan had the Apparent Agency Authority to Execute the Arbitration Agreement

A true agency relationship may be established by evidence of 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)). “An 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).

In *Carraway v. Beverly Enters. Ala., Inc.*, 978 So. 2d 27 (Ala. 2007), the facts are substantially similar to the case at bar. There, the plaintiff was the brother of a resident of a nursing home facility who executed a number of documents on his sister's behalf upon her admission to the facility, including an arbitration agreement. *Id.* at 30-31. The brother signed the documents as his sister's authorized representative but did not have a power of attorney. *Id.* When signing the

arbitration agreement, the brother in *Carraway* left the resident signature line blank and signed it as the “authorized representative” of his sister. *Id.*

Suit was later filed and the facility moved to compel arbitration, which the trial court granted. *Id.* On appeal, the Alabama Supreme Court affirmed the trial court's decision holding that the resident's brother possessed the apparent authority to enter into the arbitration agreement on his sister's behalf, as evidenced by the fact that she never objected to him signing on her behalf and the arbitration agreement specifically provided that any person authorized by the resident may execute it on her behalf. *Id.*

Like in *Carraway*, Ashanti Sullivan signed the Arbitration Agreement as a “legal representative” for Plaintiff during Mr. Rice’s admission. Moreover, Ms. Sullivan held herself out as a legal representative and agent who had the authority to enter into the Arbitration Agreement when she signed it. Other documents she executed also represented that she was a “POA” for Plaintiff. See Exhibit D. No evidence suggests that Mr. Rice objected to Plaintiff entering into these agreements or that any party attempted to repudiate the Arbitration Agreement. By allowing Ms. Sullivan to procure her father’s admission to the Facility as legal representative and POA, and thereafter by accepting the benefits of the contracts entered into in connection with that admission, Plaintiff represented that Ms. Sullivan was Mr. Rice’s authorized representative to act on his behalf in connection with his admission.

2. Ms. Sullivan had the Actual and/or Inherent Agency Authority to Execute the Arbitration Agreement on Plaintiff’s Behalf

Even if the Court does not find apparent agency, Ms. Sullivan undoubtedly possessed sufficient actual or inherent agency powers to render the agreement enforceable. Such inherent agency 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*, *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004), (examining whether party had properly demonstrated the existence of inherent agency powers); *see also 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.”).

The basis for the doctrine of inherent agency is that, as between an equally innocent principal and third party, the third party should prevail. Third parties, such as Defendant, should not be disadvantaged because it dealt with an agent rather than a principal. As set forth above, Mr. Rice executed a Health Care Power of Attorney that authorized Ms. Sullivan, as his agent, to admit him to Defendant’s facility. To the extent that Plaintiff takes issue with Ms. Sullivan’s authority to bind her father to the Arbitration Agreement and specific terms therein, such actions were merely incidental to Ms. Sullivan’s authority to admit him to Defendant’s facility.

The Health Care Power of Attorney Mr. Rice executed empowered Ms. Sullivan to “authorize [h]is admission to or discharge, even against medical advice, from any hospital, nursing care facility or service.” Furthermore, the Health Care Power of Attorney expressed that “[i]n exercising this authority, my agent [Ashanti Sullivan] shall follow my desires as stated in this document or otherwise expressed by me or known to my agent.” Exhibit B, p. 4. Defendant should not be disadvantaged for acting in accordance with the express representations of Ms. Sullivan’s Authority. Therefore, even if Ms. Sullivan lacked actual authority to enter into an Arbitration Agreement, the Arbitration Agreement was incidental and part of the Admission Agreement which she undisputedly had the authority to enter into on Mr. Rice’s behalf.

III. At Minimum, Defendant is Entitled to Conduct Jurisdictional Discovery Related to the Enforcement of this Arbitration Agreement.

Finally, if the Court is not satisfied with any factual issue necessary to the disposition of Defendant's Motion to Compel Arbitration, including the enforceability of the contract, Defendant requests that this case be stayed for the purpose of conducting limited jurisdictional discovery, affording this Court the opportunity to make a "full inquiry" into the issue. *See Dean*, 408 S.C. at 388, 759 S.E.2d at 736, n. 13 (requiring that the court make a full inquiry into the process of contractual formation prior to determining arbitrability). Returning to the FAA, the Fourth Circuit Court of Appeals notes that, when a motion to compel arbitration "presents unresolved questions of material fact, the FAA 'call[s] for an expeditious and summary hearing' to resolve those questions." *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015) (alteration in original). Section 4 of the FAA provides that when "the making of the arbitration agreement . . . [is] in issue, the court shall proceed summarily to the trial thereof." 9 U.S.C. § 4.

Further, the Fourth Circuit has explained that, when the party resisting arbitration challenges "the existence of an agreement to arbitrate," the court should initially apply a standard "akin to . . . summary judgment." *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015). The party opposing arbitration thus "may not rest upon the mere allegations or denials of her pleading but must instead, by affidavit or other evidentiary showing, set out specific facts." *Roach v. Navient Sols., Inc.*, 165 F. Supp. 3d 343, 348 (D. Md. 2015); see *Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735 (7th Cir. 2002) (similar). "If there is an issue of fact as to the making of the agreement for arbitration, then a trial is necessary." *Bensadoun v. Jobe-Riat*, 316 F.3d 171, 175 (2d Cir. 2003). Finally, according to the Fourth Circuit's interpretation of the Federal Arbitration Act, the "[o]ne thing the district court may never do is find a material dispute of fact does exist" and then deny the motion without holding "any trial to resolve that dispute of fact." *Dillon*, 787 F.3d at 713 (internal citations omitted).

Here, the Defendant is entitled to discovery as to certain references made by Plaintiff as “POA.” Specifically, Exhibit D is signed by Sullivan as “Daughter/POA.” Furthermore, a prior medical care provider indicated a “POA” was filed on February 6, 2018. Exhibit E. To the extent the Court cannot compel arbitration at present due to an outstanding question of fact, Defendant respectfully requests that this Court grant limited jurisdictional discovery in order to resolve those issues and then to proceed to an expeditious and summary hearing regarding them.

CONCLUSION

For the reasons set forth herein, Defendant respectfully requests that this Court enter an Order dismissing the pending action and compelling arbitration. Alternatively, if the Court is not inclined to grant the motion on any of the grounds asserted above or at the hearing, Defendant requests that the parties be permitted to conduct limited discovery and an opportunity to renew its Motion to Compel Arbitration.

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*Attorneys for Defendant Simpsonville Community
 Healthcare, LLC d/b/a Simpsonville Post Acute*

September 9, 2025
 Charleston, South Carolina

EXHIBIT C

**Simpsonville Post Acute
NURSING HOME
ADMISSION AGREEMENT**

Simpsonville Post Acute, is a community based, comprehensive adult health care facility. Simpsonville Post Acute, provides health care services to those individuals requiring twenty-four (24) hours a day, seven (7) days a week nursing home, health care services. This Admission Agreement ("Agreement") is for those individuals requiring "Nursing Home" services.

This Agreement is made this 22 day of December, 2021,
by and between Simpsonville Post Acute, ("Facility") and _____
("Resident") or Ashanti Rice ("Resident's Responsible Person"). When used in this Agreement, the term "Responsible Person" means an attorney-in-fact under a valid power of attorney executed by Resident, or a conservator or guardian of the person or the estate of Resident, or a representative payee appointed for Resident, or other person who has lawful access to Resident's income and financial resources. Reference to "Resident" in this Agreement means Resident or Responsible Person or both. The parties agree to the following provisions concerning Resident's admission to the Facility:

TERMS OF ADMISSION AGREEMENT

(1) COVERED NURSING FACILITY SERVICES

(a) Facility will provide furnished room and board, routine nursing care and supplies for Resident and such other personal services as may be necessary for Resident's health, well being and good grooming. Facility will also provide meals, linens, housekeeping, social services and activities, and other services as required by law. Attached as an addendum and made a part of this Agreement is a Rate Schedule, which includes a list of items included and a list of items not included in the per diem rate.

(b) Facility will obtain and administer medications, dressings and other medical supplies, and will provide for laboratory studies and other treatments whenever ordered by Resident's attending physician.

(c) Facility will make arrangements for special services, which are not included in the daily rate for which Resident will be charged. Facility will arrange for the transfer of Resident to a hospital or other health care facility whenever ordered to do so by the Resident's attending physician, and Facility will notify the Resident or Resident's Responsible Person of such transfer.

(2) CHARGES AND OTHER FINANCIAL TERMS

(a) Resident agrees to pay for all charges, costs, expenses, and fees for items and services provided to Resident which are not paid to the Facility by Medicare, Medicaid, or other payor source. Resident will be responsible to pay for services directly to any providers of ancillary services which are utilized by the Resident, including expenses incurred for discharge or transfer.

(b) Resident agrees to pay Facility monthly in advance at the per diem rate established by the Facility for covered services as provided in paragraph 1(a) of this Agreement, unless Resident is eligible to have covered services paid for by Medicare or Medicaid.

Resident understands and agrees that all amounts due under this Agreement must be paid within seven (7) days of billing, and that any accounts delinquent in excess of thirty (30) days shall be subject to a service charge of one and one-half (1½ %) percent per month.

(i) Medicare. Residents who are admitted under the Medicare program pay the coinsurance commencing on the twenty-first (21st) day of Resident's long term care stay. (A skilled nursing facility stay at another facility immediately prior to admission to Facility will be counted towards the twenty (20) days or Medicare's One Hundred Percent (100%) payment.) Statements for any charges or coinsurance coverage will be sent to Resident or Responsible Person. If Resident's Medicare eligibility for nursing home care is denied, discontinued or terminated, Resident agrees to pay the current per diem and other charges for self-paying Residents. Such charges will begin on the effective date Medicare is denied, discontinued or terminated. Resident will make payment promptly upon receipt of the statement.

If Resident's request for Medicare coverage is denied, discontinued or terminated, this Agreement allows Facility to relocate Resident to a non-Medicare certified nursing care bed located in Facility.

(ii) Medicaid. Residents who are admitted under the Medicaid program shall pay all resource monies to the Facility by the seventh (7th) day of each month in accordance with the amount set by the local Medicaid Agency.

- If approved to receive Medicaid, Resident is required to pay Facility the Resident's resource amount.
- If pending or approved for Medicaid, Resident will reside in a semiprivate room.
- The Facility will provide private room accommodations for a Medicaid eligible resident if the Resident requires a private room due to medical necessity. If semiprivate accommodations are available and are offered to a Resident but the Resident makes a written request for a private room, the private room shall be considered a non-covered service for which the Facility may seek supplemental payment from the Resident or the Resident's Representative.

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Resident Initials

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SIMPSONVILLE 001988

Such supplemental payment shall conform to all of the following:

- The supplemental payment amount shall represent no more than the difference between the charge to private pay residents for a semiprivate room and the charge to private pay residents for a private room;
- The charge for the private room shall not include charges for services covered by Medicaid, whether or not Medicaid payment meets the Facility's cost for the per diem service;
- The Facility shall detail both monthly and annual supplemental charges, if applicable, on a Resident's statement of charges so that the additional cost of a private room is evident to the Resident;
- The written request for a private room shall be kept in the Resident's file; and,
- The amount of any supplemental payment shall not be considered an offset in determining patient liability for cost of care. All income that would otherwise be considered available to apply to the cost of care at the Medicaid rate shall continue to be considered available.

ANY INVOICES NOT PAID WITHIN THIRTY (30) DAYS OF THE DATE OF THE INVOICE ARE SUBJECT TO A LATE CHARGE OF ONE AND ONE HALF (1 ½%) PER MONTH AND RESIDENT IS OBLIGATED TO PAY ANY LATE CHARGES. IN THE EVENT FACILITY INITIATES ANY LEGAL ACTIONS OR PROCEEDINGS TO COLLECT PAYMENTS DUE FROM RESIDENT UNDER THIS AGREEMENT, RESIDENT WILL BE RESPONSIBLE TO PAY ALL ATTORNEY'S FEES AND COSTS, TO THE EXTENT PERMITTED BY LAW, WHICH ARE INCURRED BY THE FACILITY IN PURSUING THE ENFORCEMENT OF RESIDENT'S FINANCIAL OBLIGATIONS UNDER THIS AGREEMENT.

(c) Resident agrees to pay for charges not included in the per diem rate, such as medications, dressings, other medical supplies, laboratory studies and other treatments as provided in paragraph 1(b) in which charges are not paid to the Facility by Medicare, Medicaid or other third party payor. Those charges will be set forth in the Resident's monthly billing.

(d) Resident agrees to pay for charges of all personal care services and items requested by the Resident that are not included in the per diem rate. All charges for personal care items not included in the per diem rate will be included in Resident's monthly billing.

(e) Resident will be responsible to pay for all charges for physician's services directly to Resident's attending physician. Resident is responsible to pay for services and/or equipment ordered by the attending physician if the service and/or equipment is not covered by Medicare, Medicaid or third party payor.

(f) Facility will notify Resident in writing thirty (60) days in advance of any changes in its rates.

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(g) Resident agrees to notify Facility and apply promptly for all estimated benefits under the Medicaid program as soon as the Resident meets applicable eligibility criteria. Notification will occur at time of admission including adjustments to estimated benefits.

(h) If Resident believes he/she is eligible for Medicaid reimbursement, Resident will apply for Medicaid within three (3) days of admission to Facility. Failure to apply for Medicaid coverage within three (3) days of admission may constitute grounds for immediate discharge by Facility.

(i) Resident agrees to cooperate with the Facility in the application and eligibility process by submitting necessary forms and required information. Where Resident is eligible to receive benefits for care under the Medicare or Medicaid program, the Facility agrees to accept the payment from these programs as payment in full for items and services covered, but Resident will remain liable for all expenses related to applicable income, co-insurance and deductible amounts owed by Resident, if any, and any personal items noted in paragraph 2(d) above.

(j) The Resident may authorize Facility to apply for all applicable State and Federal benefits on behalf of Resident. Resident agrees to cooperate with the Facility in the application and eligibility process by submitting necessary forms and required information.

(k) Resident irrevocably authorizes the Facility to make claims and to take other actions to secure for the Facility receipt of third-party payments to reimburse the Facility for its charges for the stay and care of resident. To the fullest extent permitted by law, as security for payment of the Facility's charges, Resident hereby assigns to the Facility all of Resident's rights to any third-party payments now or subsequently payable to the extent of all charges due under this agreement. Resident or Resident's Responsible Person shall promptly endorse and turn over to the Facility any payments received from third parties to the extent necessary to satisfy the charges under this Agreement.

(l) Upon discharge or transfer of the Resident, Facility will submit a final bill to Resident and will pay a refund, if any is due, within thirty (30) days of final billing. If Resident's care has been covered by Medicaid or other third party payor, Resident will receive any refund due within thirty (30) days of when Facility receives final payment from Medicaid or other third party payor.

(m) When Resident's Responsible Person signs this Agreement on behalf of Resident, Resident's Responsible Person is responsible for payment to the Facility to the extent Resident's Responsible Person has access or control of Resident's accounts, assets, benefits, deposits, funds, income or resources. By signing this Agreement, Resident's Responsible Person does not incur personal financial liability.

Resident's Responsible Person agrees to assist in the preparation, completion and submission, if applicable, of Resident's application for Medical Assistance benefits. The failure to assist timely in the Medical Assistance application process may result in the discharge of Resident for non-payment. In the event Resident applies for Medical Assistance benefits, Resident's Responsible Person will arrange for the designation of the Facility as representative payee for any Social Security related benefits or other income sources of Resident, in any amount not to exceed the Patient Pay Amount as determined by the Medicaid Agency.

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Resident's Responsible Person will be obligated to pay to the Facility from Resident's Responsible Person's own resources an amount equivalent to any accounts, assets, benefits, deposits, funds, income or resources of the Resident which are available to pay for Resident's care, when Resident's Responsible Person withholds, misappropriates for personal use or otherwise does not make available to Facility for payment of Resident's financial obligations under this Agreement, or an amount equivalent to revenue lost by the Facility due to Resident's Responsible Person's failure to cooperate in the Medical Assistance eligibility or redetermination process.

(n) In the event of Resident's death, the Facility will notify the person(s) designated by Resident. The Facility is authorized to arrange for the transfer of Resident's body to the designated funeral home. Resident's estate is responsible for the payment for all costs associated with the transfer and funeral expenses.

(o) This Agreement shall operate as an assignment, transfer and conveyance to Facility of so much of Resident's property as is equal in value to the amount of any unpaid obligations under this Agreement, and this assignment will be an obligation of resident's estate and may be enforced against Resident's estate. Resident's estate will be liable and will pay to Facility an amount equivalent to any unpaid obligations of Resident under this Agreement. This assignment will apply whether or not Resident is occupying the Facility at the time of Resident's death.

(p) Resident Trust Fund Accounts: The facility has purchased a surety bond or otherwise provided assurance satisfactory to the Secretary of the Department of Health and Human Services, to assure the security of all residents' personal funds deposited with the facility. Upon the death or discharge of the resident, the facility will refund within 30 days the remaining personal fund balance to the resident or estate. The Residents/Responsible Parties shall receive notice when they reach an account balance within \$200.00 of the resource amount allowed by Medicaid. The facility shall notify the party that should the amount be exceeded; they could lose eligibility for Medicaid or S.S.I.

(3) COMPREHENSIVE RESIDENT ASSESSMENT AND CARE PLAN

At the time Resident is admitted to Facility, Facility should have physician's orders for the Resident's immediate care. Upon admission to the Facility, Facility will make a comprehensive assessment of Resident's needs which shall include an assessment of Resident's capability to perform daily life functions and significant impairments in Resident's functional capacity. Within seven (7) days after completion of the Resident's comprehensive assessment, Facility will prepare an interdisciplinary plan of care which is designed to meet a Resident's medical, nursing and psychosocial needs that are identified in the Resident's comprehensive assessment. The Facility staff will meet regularly, no less often than once every ninety (90) days, to review and revise the Resident's care plan, if necessary. The Resident or Resident's Responsible Person is encouraged to attend and participate in all care plan meetings.

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(4) RESIDENT OBLIGATION

(a) Attending physician. Resident understands that he or she must maintain a personal attending physician at all times and that he or she has the right to designate his or her own personal attending physician. Resident further understands and agrees that any physician chosen by the Resident must agree to comply with the rules and regulations of Facility. Resident's initial physician selection must be made on the admission information sheet, but Resident may change his or her physician at any time by providing written notice to the Facility on the Change in Physicians' Services form provided by the Facility. If Resident is unwilling to designate an attending physician or is unable to obtain the services of an attending physician, Resident consents to treatment by the Facility Medical Director until such time as Resident designates an attending physician.

(b) Compliance with laws. Resident will comply with all federal and state laws relating to admission to the Facility and will abide by the rules of the Facility, a copy of which is provided to Resident, and which may be amended by the Facility from time to time.

(c) Personal effects. Resident will provide labeled personal clothing, personal items and effects, such as false teeth, dentures, bridges, retainers, hearing aids and eye glasses, as are needed by Resident at the Facility. If Facility Damages Resident's personal clothing and effects, Facility is responsible for replacement.

(d) Facility Not Responsible for Loss of Personal Articles: We strongly urge that the responsible party or other family member keep all valuables. The Facility is not liable for the loss of or damage to money, jewelry, glasses, dentures, hearing aids, documents, or other items of personal property if those items are not properly stored in a locked container. Locked containers are available upon request and offered upon admission to the Facility. If the Facility Damages Resident's personal clothing and effects, the facility is responsible for replacement.

*Resident/Responsible Party _____ accepted or _____ refused lockbox.

(e) Damage. Resident is responsible for the cost of repair or replacement of Facility property, or the property of other residents, which is damaged or destroyed by Resident, except for ordinary wear and tear.

(f) Authorization for care. The Resident consents to receive routine nursing care and emergency care and hereby authorizes the Facility to obtain necessary emergency hospital and medical care for Resident, subject to limitations, if any, imposed by the valid advance directive orders or laws.

(g) Notification. Resident authorizes Facility to notify Responsible Party in the event Facility is required by federal or state laws to notify an interested person of Resident's status in the Facility. Resident will notify Facility of any change in the authorized person to be notified.

(h) Pharmacy Services: I authorize the purchase of both routine and emergency drugs and supplies that will be needed through the pharmacy used by this facility. I understand that I can choose any pharmacy that I desire to provide pharmacy services to me, providing they conform to the Federal and State regulations governing the provision of pharmacy services in the nursing facilities.

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I also understand that it is the policy of this facility that residents may self-administer medications if approved to do so by the facility interdisciplinary team, and the resident's attending physician as long as this practice does not pose a danger to the resident or other residents in the facility. Unless otherwise directed, the facility will administer the resident's medication. I understand that a Tuberculin Skin Test will be administered for all residents admitted to this facility, as well as annual testing, and hereby release complete responsibility for the administration of the test and absolve the management of the facility the responsibility for any adverse effects suffered.

(i) **Permission to Release Facts about Social Security Record:**

I authorize the Social Security Administration to release information about myself to the facility. This consent is in effect until such time that I withdraw my authorization. I am the individual to whom the record pertains. I understand that any false representation to knowingly and willfully obtain information from Social Security Records is punishable by a fine of not more than \$5000.00 or 1 year in prison.

(j) **Authorization for Release of Medical Records:**

I authorize the release of medical records from any prior stay to the extent that they are needed or requested by my health care provider in this facility. It is understood that this authorization is revocable except to the extent that action has been taken in reliance thereon, and this authorization will remain in force for the designated time period in order to effectuate the purpose for which it was given. It is also understood that the facility releasing these records is released from all legal responsibilities that may arise from this act.

(5) RESIDENT'S RIGHTS

Resident hereby acknowledges receipt of the Statement of Resident's Rights prior to or upon admission to the Facility. Facility will explain the Resident's Rights as provided under law and applicable regulations prior to or upon admission to the Facility and before execution of the Statement of Resident's Rights. By executing the Statement of Resident's Rights, the Resident acknowledges a Statement of these rights has been provided and explained to the Resident. The Facility agrees to advise Resident at least annually of his or her rights throughout his or her stay at the Facility. Resident further understands and agrees that the Statement of Resident's Rights may be amended by Facility to assure compliance with all applicable federal, state and local laws, rules and regulations. In the event Facility amends or revises the Statement of Resident's Rights in accordance with above stated laws, Facility will advise Resident of the changes and will explain to Resident all such changes.

(6) RESIDENT'S PERSONAL ACCOUNTS AND/OR VALUABLES

(a) **Funds.** The Resident may choose to keep personal funds in accounts maintained by Facility. If Resident elects to have Facility manage Resident's personal funds, Resident shall execute the Resident Account Agreement which is included in Resident's admission package. The Resident Account Agreement allows Facility to manage Resident's personal funds in accordance with applicable federal and state regulations. In the event Resident chooses not to have Facility maintain Resident's Personal Funds, the Facility will not be responsible for any funds retained by Resident in Resident's room or on Resident's person, and Resident hereby indemnifies and holds Facility harmless from any loss suffered by Resident on account of his or her personal funds.

(b) Facility will make a list of Resident's personal items upon admission. Facility cannot and will not guarantee that Resident's property will be safe from damage or loss. Facility encourages Resident to not keep valuable property with the Facility.

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SIMPSONVILLE 001993

(c) Facility will not be liable for damage or loss of Resident's personal property due to Resident's neglect or failure to store valuable property in a safe storage area. Facility has the right to refuse to accept any personal property.

(7) OTHER RIGHTS OF RESIDENT AND FACILITY

(a) Room changes. Facility reserves the right to determine room assignment for all residents, but Facility will try to honor the request of the resident whenever possible. If Resident's room assignment is changed, Facility shall provide Resident and/or the Responsible Person with advance notice of the room change or roommates assignment.

(b) Confidentiality. Facility will maintain Resident's records in a confidential manner and will not release such records without the authorization of Resident or Resident's Responsible Person. Resident authorizes Facility to release records (a) to another health care institution, if Resident is transferred or discharged to such institution; (b) to an agency that provides funds and/or services for Resident; or (c) as authorized or required by law. Resident also authorizes Facility to make Resident's personal and medical records prepared and/or maintained by Facility available to Facility employees and agents.

(c) Release of information. Resident understands and acknowledges that certain agencies, institutions, third party payors, and certain laws and regulations require that medical and other clinical information concerning Resident must be released. Resident authorizes Facility to release information from his or her clinical records to any agency of the federal government or other appropriate state agency or to any health care institution or other provider to which Resident may be transferred or from which Resident may receive treatment.

(d) Tobacco policy. Resident and Resident's guests hereby agree to follow all Facility rules and regulation regarding smoking within the Facility and may smoke, if medically appropriate, only in designated areas, if any, under appropriate staff supervision. A Resident who wishes to smoke or chew tobacco shall provide at his/her own expense all tobacco supplies.

(e) Photographs. The Facility reserves the right to photograph the Resident at any time for identification or other medically related purposes. All other photographs of the Resident are subject to the consent of Resident.

(f) Personal furniture. If feasible, and in accordance with Facility policy, and State and Federal Regulations, Resident may use personal furniture and belongings.

(g) Telephone Access: The facility provides a telephone in a designated area. All long distance calls will be logged and charged to the resident's patient account

(8) TERMINATION OF AGREEMENT, DISCHARGE AND TRANSFER

(a) Resident may end this Agreement at any time before discharge by giving Facility written notice of his or her desire to leave Facility. Facility requests at least seven (7) days advance notice of departure in order to ensure proper discharge planning. The Resident will be responsible for all charges for all services provided by Facility up to and including the date of Resident's departure.

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(b) Facility may end this Agreement and transfer or discharge the Resident (i) for Resident's health and welfare; (ii) the health and safety of other persons in the Facility; (iii) where Resident's health has improved to the point where Resident no longer requires Facility's services; (iv) for non-payment of the Resident's charges as provided in this Agreement; or (v) in the event Facility closes.

(c) Facility will provide Resident with thirty (30) days advance notice of an involuntary transfer or discharge unless:

1. An emergency transfer is required because the safety of individuals would be endangered by Resident remaining in the Facility;
2. An emergency transfer is required because the health of individuals would be endangered;
3. Improvement in Resident's health allows transfer;
4. Resident has urgent medical needs; or
5. The Resident has not resided at the Facility for thirty (30) days.

Notice will be provided as soon as practicable if involuntary discharge is initiated for one (1) of these five (5) listed reasons.

The notice will set forth the reason for the transfer or discharge and the effective date of the transfer or discharge. The notice will also set forth Resident's rights to a hearing to appeal the Facility's decision to discharge or transfer Resident.

(d) In the event Facility terminates this Agreement and transfer or discharge is necessary, Resident and Resident's Responsible Person or other family member will cooperate with Facility in making arrangements to transfer and discharge Resident and to ensure that transfer or discharge is safe and orderly. If Resident or Resident's Responsible Person fails to cooperate or arrange for alternative placement, Facility will discharge Resident to Resident's personal residence or resident's responsible person's personal residence.

(e) If the Resident is transferred to an acute care or rehabilitation facility, the Agreement shall remain effective for sixty (60) days following each such transfer in anticipation of the Resident's readmission to the Facility. Upon readmission, this Agreement is reinstated in full.

(f) If Resident terminates this Agreement and leaves Facility against the advice of Resident's attending physician and/or the Facility, Resident agrees to assume full responsibility for any consequences of the discharge.

(9) FACILITY BED HOLD POLICY

(a) In the event Resident is transferred to a hospital or is otherwise absent from the Facility for therapeutic leave, the Facility will hold the Resident's bed at Resident's request in accordance with the Facility bed hold policy, which will become a part of this Agreement, and in accordance with all applicable laws and regulations.

A.R.

Resident Initials
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SIMPSONVILLE 001995

In the event Resident requests Facility to hold Resident's bed, Facility will hold Resident's bed in return for payment of its regular private pay per diem rate as provided in this Agreement.

If Resident is entitled to receive benefits under the Medical Assistance program, Facility will hold Resident's bed for the number of days required by the Medical Assistance program during which period Facility will accept the Medical Assistance bed-hold payments as payments in full. In the event a Medical Assistance Resident is absent from the Facility for more than the Medical Assistance paid days, Facility will continue to hold Resident's bed in return for Resident's agreement to pay Facility the same Medical Assistance per diem reimbursement rate as if the Resident was in the bed.

(b) In the event Resident or Resident's Responsible Person chooses not to reserve a bed as set forth herein, Resident has the right to be readmitted to the Facility to the first available bed in a semi-private room at the Facility, provided nevertheless, the Resident continues to require the services provided by the Facility. Resident understands and agrees that Facility may refuse to readmit any resident who poses a threat to the health or safety of any person in the Facility or who requires care greater than the Facility can provide.

(10) MISCELLANEOUS

(a) **Indemnification.** Resident will defend, indemnify and hold the Facility and/or its owners, managers, employees, agents, servants or assigns harmless from any and all claims, demands, suits and actions made against the Facility or any person for any loss suffered by Facility or any person due to Resident's negligence or intentional misconduct or that of any visitor or guest of Resident provided such indemnification is in accordance with applicable law which limits the Facility's ability to impose indemnification by law or regulation.

(b) **Civil Rights Compliance.** Facility will provide services at its Facility and will refer Resident for other services at other facilities without regard to race, color, religious creed, disability, handicap, ancestry, national origin, age or sex.

(c) **Amendment and Assignment.** This agreement may be amended only in writing signed by Facility and Resident or Resident's Responsible Person. Resident may not assign or otherwise transfer his or her rights or obligation under this Agreement except as provided by applicable law. If any rights of the Resident are to be exercised by a Responsible Person, the Responsible Person shall provide to Facility written documentation of the authority to act on behalf of Resident.

(d) **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

(e) **Entire Agreement.** This Agreement, together with all exhibits hereto, Resident's application form and Resident's nursing records constitute the entire contract between Facility and Resident with respect to the subject matter hereof. Resident warrants that all of the information provided by Resident in such documents is true and correct. Facility will not be liable for, nor be bound by, any statements, representations or promises made by any person representing or purporting to represent Facility unless such statements, representations or promises are set forth in this Agreement.

A.R.

Resident Initials
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SIMPSONVILLE 001996

(f) Plural; Singular; Gender. Whenever the context requires, references to the singular shall include the plural, and references to the male gender shall include the female.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws in which the Facility is located.

(h) Waiver of Provisions. The Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by the Facility unless such waiver is in writing by the Facility. Any waiver by the Facility will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of resident in this Agreement will remain in full force and effect.

(11) ACKNOWLEDGEMENTS

By signing the Admission Agreement, You acknowledge that you have been given and have read this Agreement in its entirety, and all its attachments. You agree that all information submitted as part of Your admission to the Facility is true and correct. You acknowledge that the Facility relies on the accuracy of all information submitted by You or Your behalf in determining whether to admit You to the Facility.

(a) Acknowledgment. Resident and Responsible Person acknowledge that they have had an opportunity to read and ask questions about this Agreement and have been offered a copy of the Agreement.

**THE PARTIES HERETO, BY SIGNING BELOW THIS 22 DAY OF
December 2021, MUTUALLY AGREE TO BE BOUND BY THE TERMS
OF THIS AGREEMENT AS SET FORTH HEREIN.**

Signature of Resident

E-SIGNED by Lynda Denise Knight
on 2021-12-23 09:55:09 EST

Signature of Facility Representative

E-SIGNED by Ashanti Rice
on 2021-12-23 11:11:17 EST

Daughter

Signature of Responsible Party, appropriate
Designation (payment responsibility is in
Accordance with paragraph 2(m) of the
Agreement)

Relationship to Resident

A.R.

Resident Initials
11

SIMPSONVILLE 001997

EXHIBIT D

SOUTH CAROLINA COMMUNITY LONG TERM CARE

CONSENT FORM

Client Name: Harold Rice

Social Security Number: [REDACTED]

I understand as part of my application for long term care services in the community or a Title XIX nursing home, my condition must be evaluated by the South Carolina Community Long Term Care Program.

This evaluation includes information provided by:

- a. my physician and medical records;
- b. professionals and organizations involved with my care; and,
- c. an interview with me and, if necessary, with my family.

I hereby authorize any social service professionals, organizations, doctors, nurses, or other medical personnel or medical facilities involved in my care to release to Community Long Term Care any medical information regarding my diagnoses and recommended treatment.

I hereby authorize Community Long Term Care to release information on my behalf to physicians, hospitals, health and human service organizations, health and human service agencies, family members and/or other persons directly involved with my care.

I understand if my current or future diagnosis includes Alzheimer's Disease, senile dementia or a similar disorder, my records may be reviewed by the statewide Alzheimer's Disease and Related Disorders Registry, and I, or my responsible party, may be contacted for additional information.

Use the space below to indicate the name of any organization, agency or person to whom you do not choose to release information.

This consent shall remain in effect until _____, revoked by me in writing, or until such time as my case is closed by Community Long Term Care.

December 23, 2021 GMT

E-SIGNED by Ashanti Rice
on 2021-12-23 11:13:39 EST

Date:

Signature of Client or Responsible Party

Daughter / POA

If Signed by Responsible Party, State Relationship and Authority to Sign.

December 23, 2021 GMT

E-SIGNED by Lynda Denise Knight
on 2021-12-23 09:57:44 EST

Date:

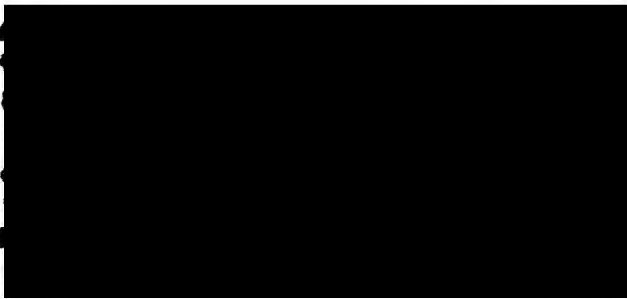
Signature of Witness

DHHS Form 121 (Revised 10/02)

ELECTRONICALLY FILED - 2025 Sep 09 7:23 PM - GREENVILLE - COMMON PLEAS - CASE#2025CP2302077

EXHIBIT E

RESOLVED:
RESOLVED:
RESOLVED:
RESOLVED:
RESOLVED:
RESOLVED:
RESOLVED:
RESOLVED:



Documents Filed to Patient

Power of Attorney	Living Will	Clinical Unknown	Study Attachment	Consent Form	ABN Waiver	After Visit Summary	Lab Result Scan	Code Status	MyChart Status
Filed on 02/06/18	Filed on 08/28/18	Not on File	Not on File	Not on File	Not on File	Filed	Not on File	[Redacted]	Active (w/ proxy users)

Patient Employment

Employer: RETIRED

Address:

City:

State:

Zip:

Phone:

Occupation:

Employee?: No

Guarantor Information

Name:

SSN:

Address:

City:

State: SC

Zip: 29681

Phone:

Employer: RETIRED

Address:

City:

State:

Zip:

Phone:

Guar DOB:

Bed Days

Further reviews needed: Yes

Primary Coverage



Next review: None

No nights documented for this coverage.

Secondary Coverage:



Next review: None

No nights documented for this coverage.

Non-Coverage-Specific Avoidable Nights: 0

SIMPSONVILLE 002030

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

)

CIVIL ACTION NO.: 2025-CP-23-02077

Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice,

)

)

)

Plaintiff,

)

MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL ARBITRATION

v.

)

Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute,

)

)

)

Defendant.

)

Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (“the Facility”) has moved to dismiss this action and compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The basis of the Facility’s Motion is that a valid and enforceable arbitration agreement exists between the parties. To prove this, the Facility primarily relies on a number of cases from other state and federal jurisdictions. In doing so, the Facility attempts to minimize and distract from South Carolina statutory law and four precedential decisions of the Supreme Court of South Carolina and the Court of Appeals which are nearly identical to the case at hand and define the current law of South Carolina pertaining to arbitration agreements within the health care facility context: *Arredondo*, *Coleman*, *Thompson*, and *Hodge*. These cases all agree that a signatory cannot bind a nonsignatory to an

arbitration agreement presented by a health care facility in conjunction with admission unless the signatory has authority to act on the non-signatory's behalf.

The Arbitration Agreement relied upon by the Facility was signed by Ashanti Rice in her individual capacity at a time when she did not have authority under a valid power of attorney to enter any such agreement on the decedent's or his Estate's behalf, and therefore his Estate cannot be bound by the Agreement or its delegation provision. Further, the Arbitration Agreement was separate from and does not merge with the Admission Agreement, and even if it did, the Estate is not seeking to enforce any part of the Admission Agreement, so it is not equitably estopped from denying the Arbitration Agreement's validity. Lastly, the Facility has not pointed to any evidence that Ms. Rice had actual or apparent authority derived from a statute or common law principles to enter the Arbitration Agreement on behalf of Mr. Rice, and South Carolina law is clear that only the representations and conduct of the principal himself, and not the actions of his purported agent, can create the agency relationship. Therefore, no valid agreement was ever formed between Mr. Rice, his Estate, and the Facility, and the Facility's Motion should be denied by the Court in its entirety.

FACTUAL BACKGROUND

The Plaintiff in this wrongful death and survival action is the Estate of Mr. Harold Rice and his Personal Representative on behalf of his wrongful death beneficiaries. The Estate commenced this action on March 31, 2025, alleging wrongful death and survival claims because of the care and treatment provided to

Mr. Rice while he was a resident at Defendant's skilled nursing home facility. (*See generally* Compl.). Specifically, Mr. Rice fell numerous times between December of 2021 and July 2022 after being assessed as a high fall risk by the Facility. (Compl. ¶¶ 4-8). Mr. Rice passed away on July 28, 2022 after being diagnosed at the hospital with an acute fracture of the lumbar spine. (*Id.* at ¶¶ 10, 12).

On May 8, 2025, the Facility filed a Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, relying on an Arbitration Agreement that was signed by Ashanti Rice in her individual capacity on December 23, 2021, and a durable health care power of attorney that was signed by Mr. Rice on July 29, 2013, designating Ms. Rice as his agent for the purpose of making health care decisions on his behalf during periods of mental incompetence. (Ex. A, Arbitration Agreement, Ex. B, Health Care POA). Ms. Rice signed the Arbitration Agreement instead of Mr. Rice due to Mr. Rice's documented dementia and severe cognitive impairment at the time of admission. (Ex. C, Dec. 23, 2021 ST Daily Treatment Note). A durable financial power of attorney was also executed by Mr. Rice granting Ms. Rice narrow authority to make financial decisions on his behalf, but it was never recorded in Greenville County, and the health care power of attorney was also never recorded. (Ex. D, Financial POA; Ex. E, Sullivan Aff. ¶ 3).

ARGUMENT

While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement for the simple reason that Ms. Rice did not have authority to execute the Arbitration Agreement on Mr. Rice's behalf at the time it was entered.

While there is a presumption in favor of arbitration, it only applies to the scope of an arbitration agreement; “it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement.” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Neither of the executed powers of attorney were sufficient to authorize Ms. Rice to enter an arbitration agreement on behalf of Mr. Rice or his Estate for numerous reasons. Therefore, neither the Arbitration Agreement itself or its delegation clause are binding on the Estate, and any threshold issues of contract formation are for the Court, and not an arbitrator, to decide.

To the extent that the Facility maintains that the Estate is equitably estopped from denying the validity of the Arbitration Agreement due to Ms. Rice’s execution of the Facility’s Admission Agreement, there is an ambiguity as to merger that must be construed against the Facility, and even if the documents merged, the Estate is not equitably estopped from denying the validity of the Arbitration Agreement because it is not trying to assert rights arising from any other part of the Arbitration Agreement or Admission Agreement. Additionally, there is no evidence that Ms. Rice had actual or apparent authority to act on Mr. Rice’s behalf at the time she entered the Arbitration Agreement, as there is no evidence that Mr. Rice ever consciously represented or implied to the Facility that Ms. Rice was his agent for the purpose of entering an arbitration agreement. For these and the following reasons, the Facility’s motion should be denied.

- I. **The threshold issue of whether an arbitration agreement was entered between Mr. Rice or his Estate and the Facility is for the Court, and not an**

arbitrator, because at the time the Arbitration Agreement was entered Ms. Rice did not have authority to act on their behalf, so the Estate is a nonsignatory to the Agreement's delegation clause and it cannot be enforced against it.

The Facility maintains that because the Arbitration Agreement contained a delegation clause, any questions of contract formation must be determined by an arbitrator. The delegation clause states that “the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability, scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement” This may hold true for a dispute between a signatory and the Facility, both of whom would be “Parties” to the Agreement, but it cannot be enforced against a nonsignatory who has never assented to delegate such matters to an arbitrator in the first place, any more than an arbitration agreement itself could not be enforced without mutual assent from a nonsignatory.

In *Szantho v. THI of N.M. at Sunset Villa, LLC*, 2025-NMCA-006, 570 P.3d 203 (Ct. App. N.M. 2025), the same issue was presented to the Court of Appeals of New Mexico. The court stated

[W]hen faced with a motion to compel arbitration, the court must first determine whether the parties to the litigation have agreed to arbitrate Only if the answer is “yes” do courts proceed to consider whether the parties have agreed to delegate questions of arbitrability to the arbitrator With these principles in mind, we turn to the case at hand. The crux of the parties’ dispute is who decides – the court or the arbitrator – whether Father, a non-signatory, is bound by the arbitration agreement. Resolution of this question depends on whether the issue is one of contract formation or contract enforceability As

we explain, the questions presented are a matter of contract *formation*, and therefore, the district court did not err in deciding as a threshold matter whether Father, a non-signatory, had agreed to arbitrate Because Son did not have authority to bind Father to the agreement, the arbitration agreement at issue is, at most, a contract between Defendants and Son *in his individual capacity*.

Id. at *14-15, 570 P.3d at 210-11.

The Facility’s argument for delegation is nonsensical because in this case, the Estate disputes that it or Mr. Rice ever agreed to the Arbitration Agreement or its delegation clause to begin with. Therefore, if the Estate is correct, it never consented to the delegation of questions of contract formation to the arbitrator, and to delegate the question of contract formation to the arbitrator without first determining whether the Estate is bound to the Agreement would violate general contract principles regarding mutual assent:

[A]lthough California has a strong policy favoring arbitration, there is no public policy favoring the arbitration of disputes the parties did not agree to arbitrate. When a party seeks to compel arbitration, the *trial court* – not the arbitrator – must initially determine in a summary proceeding whether an agreement to arbitrate exists. “To presume arbitrability without first establishing, independently, consent to arbitration is to place the proverbial cart before the horse.”

Naganuma v. Windsor Oakridge Healthcare Ctr., Case No. A162113, 2022 Cal. App. Unpub. LEXIS 939, at *5 (Cal. Ct. App. Feb. 16, 2022) (citations omitted). Here, regardless of whether a delegation clause was entered between Ms. Rice in her individual capacity and the Facility, Mr. Rice and his Estate never consented to delegate anything to the arbitrator because, as will be demonstrated below, Ms. Rice did not have authority to enter the Agreement on their behalf, and any questions of contract formation are properly decided by the Court.

II. Ms. Rice arguably may have had authority to make health care decisions for Mr. Rice, as well as any financial decisions necessitated by those decisions, but she did not have authority to waive Mr. Rice's and/or the Estate's right to a jury trial.

At the time Mr. Rice was admitted to Defendant's facility, he had executed a health care power of attorney granting Ms. Rice authority to take actions *necessary* to assuring implementation of his health care, including granting a release from liability *required* by any health care provider. (Mot. Compel Arbitration, Ex. B, Health Care POA, pg. 4). Therefore, the health care power of attorney only grants authority to make ancillary decisions related to Mr. Rice's health care if they are *necessary* to obtain health care, and the subject Arbitration Agreement was undisputedly optional. The Estate concedes that Mr. Rice did not have the capacity to consent or enter the Facility's Admission Agreement on the date of his admission to its facility.¹ Therefore, any authority that Ms. Rice had to consent to arbitration on behalf of Mr. Rice (and his Estate) must have derived from the durable financial power of attorney, the Adult Health Care Consent Act or common law agency principles.

The durable financial power of attorney was also ineffective on the date the Arbitration Agreement was entered. A durable financial power of attorney is only effective after the principal becomes incapacitated if the power of attorney has been recorded in the county where the principal resides at the time the instrument is recorded. Here, Mr. Rice was incapacitated at the time of his admission to

¹ If Mr. Rice did have capacity to contract, then the health care power of attorney would be invalid, and Ms. Rice would not have had authority to enter the Admission Agreement.

Defendant's facility, as documented by the Facility's own treatment notes. However, not only was the financial power of attorney not recorded at the time of his admission, but it was also not recorded in Greenville County, where Mr. Rice resided. Since the durable financial power of attorney did not meet the statutory requirements and was not effective, Ms. Rice could not be empowered by it to initiate legal proceedings on Mr. Rice's behalf or waive his rights.

A. The durable financial power of attorney was not effective when the Arbitration Agreement was signed.

The durable financial power of attorney signed by Mr. Rice is governed by the South Carolina Uniform Power of Attorney Act. *See* S.C. Code Ann. § 62-8-103. The durable financial power of attorney purports to narrowly grant Ms. Rice authority to make financial decisions for Mr. Rice. (Ex. E). It does not provide that Ms. Rice may obtain and pay for legal advice or initiate or defend legal and administrative proceedings for Mr. Rice. Therefore, on its face, the DFPOA does not grant Ms. Rice authority to waive Mr. Rice's or his Estate's rights to a jury trial. However, even if did contain such a broad grant of authority beyond financial decision making, the subject financial power of attorney does not meet the requirements of the Act and was therefore not effective at the time that Ms. Rice signed the Arbitration Agreement.

Under the Act, a durable financial power of attorney is not effective after the principal's incapacity unless "the power of attorney has been recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded After the principal's incapacity and before recordation,

the agent's authority cannot be exercised." S.C. Code Ann. § 62-8-109(c). The Arbitration Agreement was entered on December 23, 2021, but the durable financial power of attorney was never recorded. Therefore, since Mr. Rice was incapacitated at the time the Arbitration Agreement was signed by Ms. Rice, Ms. Rice did not have the authority to enter the Agreement on Mr. Rice's behalf.

Incapacity under the South Carolina Uniform Power of Attorney Act is a broader term than its usage under the South Carolina Health Care Power of Attorney Act and South Carolina Health Care Consent Act. S.C. Code Ann. § 62-8-102(5) provides that incapacity means "inability of an individual to manage property or business affairs because the individual has an impairment in the ability to receive and evaluate information or make or communicate decisions" Under the Uniform Power of Attorney Act, incapacity may be demonstrated by a "writing or other record" by a physician demonstrating that the principal is incapacitated within the meaning of section 62-8-102(5)(A).

A Daily Treatment Note for Mr. Rice documents that on December 23, 2021, Mr. Rice was suffering from dementia and a cognitive communication deficit. (Ex. , ST Daily Treatment Note). It also documents that Mr. Rice had a BIMS score of 4/10, indicating severe cognitive impairment. *See Gaddy v. Douglass*, 359 S.C. 329, 346, 597 S.E.2d 12, 21 (Ct. App. 2004) (noting that a patient with severe dementia cannot make rational decisions, understand the nature of his actions, or handle his business or legal affairs). This note was electronically signed by a physician and clearly sets forth that Mr. Rice was incapable of managing his own property and

business affairs due to an impairment in his cognitive function and ability to communicate.

Thus, under S.C. Code Ann. § 62-8-109(c) the power of attorney was only effective if it was recorded in the county where Mr. Rice resided at the time of recordation. The financial power of attorney was never recorded. (Ex. , Financial Power of Attorney). Since it was not recorded in the county where Mr. Rice resided, the power of attorney was not effective and Ms. Rice was not permitted to exercise any authority granted by the power of attorney under section 62-9-109(c). Regardless, since the Arbitration Agreement was signed by Ms. Rice at a time when Mr. Rice did not have contractual capacity but before recordation of the durable financial power of attorney, the power of attorney was not effective, and could not have been a source of authority for Ms. Rice to enter the Arbitration Agreement.

B. Under *Arredondo*, the health care power of attorney did not grant Ms. Rice authority to make unnecessary decisions that were incidental to Mr. Rice's medical care, such as entering the Arbitration Agreement.

The subject health care power of attorney only grants the attorney-in-fact authority to take actions incidental to Mr. Rice's health care if they are "necessary." (Mot. Compel Arbitration, Ex. B, Health Care POA, pg. 4). Here, as in most nursing home cases, the Arbitration Agreement was optional. While the relevant provision of the health care power of attorney authorizes Ms. Rice to pursue legal action and to grant waivers required by health care providers, in *Arredondo* the Supreme Court of South Carolina analyzed its language under identical circumstances and determined that the exact language contained in the subject power of attorney does

not grant authority to an attorney-in-fact to make decisions regarding arbitration unless they are necessary and required for admission. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 80-85, 856 S.E.2d 550, 556-59 (2021).

The health care power of attorney in *Arredondo* had identical language to the subject power of attorney in this action concerning the agent's powers to pursue legal action and grant waivers. *Id.* at 80-81, 856 S.E.2d at 556-57. The court noted that the first sentence of the clause only permitted the agent to exercise the authority described therein if the action taken was *necessary* to "making, documenting, and assuring implementation" of a decision concerning the principal's health care. *Id.* at 81, 856 S.E.2d at 557. After determining that the signing of the arbitration agreement was not necessary to the principal's admission, and that it was a voluntary, standalone agreement, the court determined that a waiver of the principal's right to a jury trial was not "required", and that the agent did not have authority to grant the waiver. *Id.* at 81-83, 856 S.E.2d at 557-58.

Lastly, the court held that the provision's grant of authority to pursue legal action also did not authorize the agent to enter the arbitration agreement, as it only authorized the agent to pursue legal action to "force compliance with [the principal's] wishes as determined by [the principal's] agent, or to seek actual or punitive damages for the failure to comply", and therefore had no significance to the facts before the Court. *Id.* at 84-85, 856 S.E.2d at 558-59. Since the same facts and language are presented to the Court in this action, under *Arredondo*, the subject health care power of attorney did not grant Ms. Rice the authority to enter the

Arbitration Agreement on Mr. Rice's behalf. Thus, the only remaining avenues of authority available for Ms. Rice to have entered the Arbitration Agreement are under the Adult Health Care Consent Act or common law agency principles.

C. The Adult Health Care Consent Act only grants authority to make health care decisions, and not the decision to waive Mr. Rice's (and his Estate's) right to a jury trial.

The Adult Health Care Consent Act pertains to adults who are “unable to appreciate the nature and implications of [their] condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner.” S.C. Code Ann. § 44-66-20(8). Under the Act, health care is defined as

[A] procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

S.C. Code Ann. § 44-66-20(1). In contrast, arbitration is a means of resolving a legal dispute outside of the typical civil litigation process – a definition unrelated to physical or mental condition. *See* Black's Law Dictionary, 125 (10th ed. 2014).

Therefore, independently of any valid and effective power of attorney, the Act may have given Ms. Rice authority to consent on behalf of Mr. Rice to the provision of medical care, including placement in Defendant's facility, as well as authority to make certain financial decisions on behalf of Mr. Rice which he would be obligated to pay. This authority “extends primarily to traditional health care decisions, and only secondarily to the financial decisions necessitated by those decisions.” *Coleman*

v. Mariner Health Care, Inc., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). Most jurisdictions, including South Carolina, have held that execution of an arbitration agreement is not a health care decision. *See Johnson v. Kindred Healthcare, Inc.*, 466 Mass. 779, 789-90, 2 N.E.3d 849, 857-58 (Mass. 2014) (collecting cases).

Consequently, even if Ms. Rice could have had authority to make health care decisions on Mr. Rice's behalf under the Act, she did not have authority to sign an arbitration agreement waiving his right to a jury trial such that she would later be bound to the agreement in her role as the Personal Representative of his Estate. The Supreme Court of South Carolina has held that a surrogate without proper legal authority cannot bind a person, or that person's estate, to arbitration. In *Coleman*, the circuit court refused to compel arbitration because the sister of a nursing home resident who signed the arbitration and admission agreements lacked authority to bind the resident to the arbitration agreement.

In affirming the circuit court's order, the Supreme Court found that, although the South Carolina Adult Health Care Consent Act gave the sister authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement. *Coleman*, 407 S.C. at 352, 755 S.E.2d at 453-54. The court reasoned that the Act only extends authority to surrogates to make traditional health care decisions and financial decisions that arise out of those decisions. Extending this reasoning to the present circumstances, since Ms. Rice lacked legal authority under the executed powers of attorney and the Act to enter into a contract

not necessary to Mr. Rice's health care, the Arbitration Agreement is void and unenforceable unless Ms. Rice had authority under common law agency principles.

III. **Ms. Rice did not have actual or apparent authority to enter the Arbitration Agreement.**

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

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

The Facility has not produced any evidence indicating that Ms. Rice had actual authority to enter the Arbitration Agreement on Mr. Rice's behalf or to waive the Estate's right to a jury trial. For the reasons mentioned above, neither of the executed powers of attorney nor the Adult Health Care Consent Act bestowed Ms. Rice with the authority to enter the Arbitration Agreement. The simple fact that Ms. Rice signed the Facility's Agreements so that her father could be admitted to Defendant's facility and receive health care in no way indicates a manifestation of authority by Mr. Rice to waive his right to a jury trial or agree to arbitration. There is no evidence that Mr. Rice ever manifested any form of assent establishing Ms. Rice as his agent beyond the limited authority bestowed by the health care and financial powers of attorney, which only purported to give Ms. Rice authority to enter agreements necessary to Mr. Arches' health care and to make strictly financial decisions. The Facility has pointed to language in the Arbitration Agreement indicating that the executing party of the Agreement had authority to sign on the resident's behalf. However, this language is not a representation made by Mr. Rice to the Facility that his daughter had authority to act on his behalf. Instead, it is a representation made by Ms. Rice in her individual capacity, using language that was drafted by the Facility, and fails to meet the requirement of a manifestation from the principal.

In fact, the Facility's position has been directly addressed and disagreed with by the Supreme Court in *Hodge*. In *Hodge*, the facility argued that a husband had

taken over his wife's medical affairs and had authority to enter an arbitration agreement on her behalf. The court described the apparent authority as follows:

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

Hodge, 422 S.C. at 572, 813 S.E.2d at 307. (emphasis added) (citations and punctuation omitted). The court then went on to disagree with the exact arguments advanced in this case by the Facility, stating that merely because a family member signs an arbitration agreement, admissions agreement, and other forms does not make them an agent, especially when there is no valid power of attorney and there is no evidence that the principal represented the family member was their agent for the purpose of signing an arbitration agreement. *Id.* at 573-74, 813 S.E.2d at 308.

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

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

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

actual authority. *Thompson*, 426 S.C. at 55, 784 S.E.2d at 686. The court did not take the same view of the circumstances:

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

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

The Facility's assertion that Ms. Rice held "inherent agency powers" to act on behalf of Mr. Rice is wholly unsupported by South Carolina law. First, the theory proposed by the Facility has no supporting South Carolina authorities outside of a passing mention of the term in an abrogated case. *See Smith v. Fitton and Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (abrogated by *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004)). If anything, *Smith* makes clear that the inherent agency powers theory finds no support in South Carolina law. *Id.* ("[A]ppellant has offered no authority, and we have found none, that [individual] would have inherent agency power . . ."). Second, South Carolina law is clear that an individual does not have inherent agency powers concerning health care or financial matters and other affairs of their family members. *Hinson v. Roof*, 128

S.C. 470, 475, 122 S.E. 488, 490 (1924) (“The marriage relation of the parties . . . is not necessarily enough to establish the fact that the one is the agent of the other. There must be other proof.”); S.C. Jur. *Agency* § 6 (1994) (“No presumption arises from the fact of the marital relationship, without more, that [a spouse] is the agent of [the other spouse].”) (footnote omitted).

Regardless of whether Ms. Rice held herself out as an agent for Mr. Rice, there is no evidence that at any point Mr. Rice himself made representations or voluntarily placed the Facility in a position which would indicate a conscious or implied representation to the Facility that Ms. Rice was specifically authorized to enter arbitration agreements on Mr. Rice’s behalf. Ms. Rice’s position and sole authority, if she had any, would have been derived from the executed health care power of attorney or the Adult Health Care Consent Act, a statutory construct, neither of which bestowed authority to enter arbitration agreements for the reasons described above. Despite the Facility’s contentions, Mr. Rice never consciously and personally held Ms. Rice out or represented to the Facility that Ms. Rice was authorized to act on his behalf in connection with arbitration, and the Facility has produced no evidence supporting its argument, making the Arbitration Agreement invalid and unenforceable.

IV. **The Estate is not equitably estopped from denying the validity of the Arbitration Agreement because it is not seeking to enforce rights arising from the Admission Agreement or Arbitration Agreement, and the Agreements do not merge.**

The Estate cannot be equitably estopped from denying enforcement of the Arbitration Agreement by Ms. Rice’s signing of the Admission Agreement.

“Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements.” *Kelly v. Logan, Jolley & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that *the party to be estopped* (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting the estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on the conduct of the party to be estopped. *Id.* The Facility cannot demonstrate that the Estate or Mr. Rice made any false representations as far as the subject powers of attorney were concerned because Ms. Rice was acting in her individual capacity at the time she signed the Arbitration Agreement.

Additionally, since Ms. Rice did not have authority to sign the Arbitration Agreement under the executed powers of attorney or the Adult Health Care Consent Act, the fact that she signed the Arbitration Agreement in her individual capacity and is now a party to this action as a nonsignatory in her capacity as Personal Representative of the Estate does not bind the Estate to the Arbitration Agreement, at least as far as equitable estoppel is concerned. The Court of Appeals addressed this concept in *Thompson v. Pruitt Corp.*:

Respondent is attempting to use equitable estoppel against [the patient’s] estate based on actions that [patient’s daughter] took *in her individual capacity*. The fact that [the patient’s daughter] is *now the personal representative for [the patient’s] estate* is of no moment; we

will not hold this circumstance against [the patient's] estate. Simply put, [the patient's] estate is the plaintiff in this case, and Respondent has alleged no conduct on the part of [the patient's] estate, that has affected Respondent's position. This, too, is a necessary element of an equitable estoppel defense.

Thompson, 416 S.C. 43, 61, 784 S.E.2d 679, 689 (Ct. App. 2016).

Equitable estoppel arguments within the health care facility context are frequently premised on a direct benefits theory of estoppel, i.e., that since Mr. Rice benefited from the terms of an Admission Agreement that Ms. Rice signed in her individual capacity, Ms. Rice should be estopped as the Personal Representative of Mr. Rice's Estate from denying the validity of the Arbitration Agreement. *See Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). However, as the Supreme Court explained in *Wilson*, to successfully assert direct benefits estoppel, the arbitration agreement must be a clause within the larger admissions agreement, and the plaintiff must be seeking to assert causes of action *that arise from and are created by the entire contract. Id.*

“Under direct benefits estoppel, a nonsignatory is estopped from refusing to comply with an arbitration clause *when it receives a direct benefit from a contract containing an arbitration clause.*” *Id.* (punctuation omitted) (emphasis added). In this case, the Facility's Arbitration Agreement is not a clause in its Admission Agreement, so the Facility seeks to combine the two Agreements under a theory of merger. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents

together. The theory is that the instruments are effectively one instrument or contract.

Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). Any ambiguity as to merger is to be construed against the drafter. *See Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 129 n.4, 713 S.E.2d 799, 805 n.4 (Ct. App. 2011).

Here, as will be explained below, the subject Admission Agreement and optional Arbitration Agreement are separate documents that do not merge because there is ambiguity within the documents. However, even if the Agreements merged, the Estate does not assert a breach of contract claim or allege a violation of contractual duties arising from the Admission Agreement, and instead has brought its lawsuit under a negligence theory arising from common law duties that are independent from the Admission Agreement.

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

Wilson, 426 S.C. at 343, 827 S.E.2d at 176. Therefore, even if the Agreements merged, the Estate is not seeking to enforce rights that solely exist under the Admission Agreement, so it is not unfair or inequitable for the Estate, which did not sign the Admission Agreement or Arbitration Agreement, to deny the validity of the Arbitration Agreement.

Regardless, the Admission Agreement and Arbitration Agreement are separate contracts that do not merge due to the ambiguous nature in which they were drafted by the Facility. *See Hodge v. UniHealth Post-Acute Care of Bamberg LLC*, 422 S.C. 544, 561-63, 813 S.E.2d 292, 308 (Ct. App. 2018); *Thompson v. Pruitt Corp*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016); *Coleman*, 407 S.C. at 352, 755 S.E.2d at 450. *Coleman* refused to apply the doctrine of merger to admission and arbitration agreements because language in the contracts “recognize[d] the ‘separateness’ of the admission and arbitration agreements.” *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. *Thompson* and *Hodge* applied *Coleman* and provided further examples of factors demonstrating “separateness and preventing merger.” *Thompson*, 416 S.C. at 52, 784 S.E.2d at 684; *Hodge*, 422 S.C. at 563, 813 S.E.2d at 302. It is important to note that arbitration agreements and admission agreements for assisted living facilities serve two wholly distinct purposes.

Upon seeking the admission of Mr. Rice to Defendant’s facility, Ms. Rice was presented with two documents, an Admission Agreement and an Arbitration Agreement, in her individual capacity. The Arbitration Agreement is separate from the Admission Agreement and contains no provision for medical, nursing, or health care services to be provided to Mr. Rice, nor does it require any financial commitment to pay for such services.²

² The Arbitration Agreement was presumptively optional under federal law. *See* 42 C.F.R. § 483.70(n). There is no language within the Arbitration Agreement indicating that it was a prerequisite to admission, and Defendant has represented that the Arbitration Agreement was optional.

The Arbitration Agreement is separately titled “Confidential Voluntary Arbitration Agreement”, is paginated separately as nine pages, and contains its own signature lines. Further, the Arbitration Agreement by its very language distinguishes between itself and the Admission Agreement, stating that the Arbitration Agreement represents “the Parties’ entire agreement regarding disputes and supersedes all prior agreement . . . and constitutes a complete and exclusive statement of the terms of the Agreement between the Parties with respect to its subject matter” while referring to the Admission Agreement as its own separate document: “The Parties agree that the Facility bills Medicare . . . and thus the Admission Agreement is connected to interstate commerce.” While the Arbitration Agreement provides that it becomes a part of the Admission Agreement once executed, when viewed alongside the other details of the agreements, it creates an ambiguity as to merger when taken in context of the totality of the circumstances, and “the law is clear that any ambiguity in such a clause is construed against the drafter”, i.e., the Facility. *See Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

As discussed above briefly, in this case there were two separate agreements that did not merge. As in *Hodge*, the separate contracts here have separate signature pages and separate pagination. The Arbitration Agreement is a separate document designated with its own pagination. As in *Thompson*, the arbitration agreement announces its independence with its “Arbitration Agreement” title. The text of the Arbitration Agreement refers to Defendant’s Admission Agreement as a separate, standalone document. This language mirrors that addressed in *Coleman*

and *Thompson*, in which the Supreme Court and Court of Appeals found such language to be proof that an admission agreement was separate and did not merge with an arbitration agreement:

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

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

Since the arbitration and admission contracts have different pagination with different signature pages, and the arbitration contract is entitled "Confidential Voluntary Arbitration Agreement" at the top of its first page, these factors further indicate the Facility's intent for the Arbitration Agreement to stand by itself as an independent contract, at least when it serves its purposes to do so. *Thompson*, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n.1; *Hodge*, 422 S.C. at 562-63, 813 S.E.2d at 302. The Arbitration Agreement was not a precondition to admission.

Most importantly, the Arbitration Agreement provides that it will survive the termination of the Admission Agreement, which begs the question of how the Agreements have merged such that they are legally one and the same. The Arbitration Agreement can only be revoked by written notice within thirty days of it being signed, and that it is binding on a resident in perpetuity if not cancelled. The Admission Agreement, on the other hand, can be terminated unilaterally by the resident or Facility at any time with notice. *See Estate of Solesbee v. Fundamental Clinical and Operational Servs., LLC*, 438 S.C. 638, 648, 885 S.E.2d 144, 149 (Ct.

App. 2023) (noting that different revocation procedures for different agreements is a factor indicating an intent contrary to merger). The details of Defendant's Admission Agreement and Arbitration Agreement are nearly identical to those addressed by our Supreme Court in *Coleman, Hodges, and Thompson*. Defendant cannot meet its burden to prove merger. The merger of the Admission Agreement and Arbitration Agreement is at best ambiguous such that they should not be construed as a unit, and any equitable estoppel argument should therefore be denied by the Court.

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

In the alternative, the Facility requests a stay of its Motion to conduct additional discovery on the nature of Ms. Rice's agency relationship with her father. Such a stay should be denied because S.C. Code Ann. § 15-48-20 only permits a court to "summarily" proceed to the determination of whether arbitration is appropriate when an agreement to arbitrate has been contested. Here, the Facility has not presented any evidence of an agency relationship that would have given Ms. Rice authority to specifically enter the Arbitration Agreement.

There is nothing that could be gained by engaging in discovery to ascertain any information that could be gleaned from Ms. Rice. In *Hodge*, the court addressed a similar argument to that of the Facility and affirmed the trial court's refusal to compel the husband's deposition that would add nothing probative to a potential agency analysis, noting that "the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an

agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial. *Id.* at 579, 813 S.E.2d at 311. "The law is clear in this state that statements made by an agent concerning the existence or extent of his authority are insufficient standing alone to establish agency." *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 130, 399 S.E.2d 163, 165 (Ct. App. 1990).

Mr. Rice has passed away and cannot offer any testimony concerning agency. The only relevant and necessary evidence for the Court to make its determination is already available for the Court's review. Any further discovery with the goal of revisiting the arbitrability of this case would only serve to protract this litigation, offend section 15-48-20's mandate for an expedient determination of arbitrability, waste judicial resources, and increase costs for both parties unnecessarily. The Court should deny the request for additional discovery.

CONCLUSION

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

[SIGNATURE PAGE TO FOLLOW]

PARKER LAW GROUP, LLP

BY: /s/ League Creech.

League Creech

SC Bar.: 72755

Lee D. Cope

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SC Bar No.: 104225

P.O. Box 457

Hampton, SC 29924

(803) 943-2111

ATTORNEYS FOR THE PLAINTIFF

September 15, 2025
Hampton, South Carolina

PATIENT LAST NAME	FIRST NAME	MI	DATE OF BIRTH	HIC NO.
PROVIDER NAME	PROVIDER NO.		MRN/ID	
PHYSICIAN	PAYOR			
MEDICAL DIAGNOSIS Unsp dementia, unsp severity, without beh/psych/mood/anx (12/05/2021)				
TREATMENT DIAGNOSIS Cognitive communication deficit (12/23/2021), R48.8 Other symbolic dysfunctions (12/23/2021)				
START OF CARE 12/23/2021			END OF CARE	

Prior Hospitalization: From Date: To Date: NA

Reason For Referral:

Pt is a 68 y/o male with a PMH of prior CVA with residual left-sided weakness, dementia, who

Therapy Necessity:

Patient presents with moderate severe cognitive impairment and mild dysphagia influencing his ability to consume PO intake at PLOF and complete ADL's without assistance.= . Skilled intervention is necessary for cognitive and dysphagia tx . Without therapy, patient at risk for increased burden of care. .

Medical History Related to Diagnosis/Condition:

PMH of prior CVA with residual left-sided weakness, dementia,

Precautions:

Discharge Plans:

Pt reports he manages his medicines, finances and household ADL's independently. Pt reports he plans to return home on Regular Diet consistency.

Initial Assessment

Functional Deficits	Prior Level	Current Level	Anticipated
Language, Expressive	minimal (mostly normal, self-monitor/corrects)	mild (expresses needs 90% of time)	mild (expresses needs 90% of time)
Language, Auditory Comprehension	minimal (81-90% ability; compensatory strategies needed or needs more time)	marked (31-50% ability; understands basics; may require repetition/rephrasing)	moderate (51-70% ability; understands basics; infrequent repetition/rephrasing)
Cognition, Problem Solving	minimal (minimal problems, distractable)	marked (frequent direction required in several situations)	moderate (frequent direction required in occasional situations)
Cognition, Attention	minimal (minimal problems, distractable)	marked (frequent direction required in several situations)	mild (occasional direction needed, difficulty with memory)
Cognition, Orientation	person (x1)	person (x1)	person and place (x2)
Cognition, Recall	mild (occasional direction needed, difficulty with memory)	marked (frequent direction required in several situations)	moderate (frequent direction required in occasional situations)
Cognition, Safety-Judgement	mild (occasional direction needed, difficulty with memory)	marked (frequent direction required in several situations)	moderate (frequent direction required in occasional situations)
Cognition, Follow Commands	mild (occasional direction needed, difficulty with memory)	marked (frequent direction required in several situations)	moderate (frequent direction required in occasional situations)
Section C: Cognitive Patterns, C0200. Repetition of Three Words	N/A	Three	N/A
Section C: Cognitive Patterns, C0300. Temporal Orientation A. Able to recall year	N/A	Missed by 1 year	N/A
Section C: Cognitive Patterns, C0300. Temporal Orientation B. Able to recall month	N/A	Accurate within 5 days	N/A
Section C: Cognitive Patterns, C0300. Temporal Orientation C. Able to recall week	N/A	Incorrect or no answer	N/A
Section C: Cognitive Patterns, C0400. Recall A. Able to recall "sock"	N/A	Yes, no cue required	N/A

PATIENT LAST NAME	FIRST NAME	MI	DATE OF BIRTH	HIC NO.
PROVIDER NAME	PROVIDER NO.	MRN/ID		
PHYSICIAN	PAYOR			
MEDICAL DIAGNOSIS F03.90 Unsp dementia, unsp severity, without beh/psych/mood/anx (12/05/2021)				
TREATMENT DIAGNOSIS R41.841 Cognitive communication deficit (12/23/2021), R48.8 Other symbolic dysfunctions (12/23/2021)				
START OF CARE 12/23/2021			END OF CARE	
Standardized Tests MASA: 180 RIPA G: 4/10 Temporal orientation indicating severe cognitive impairment.				

Short Term Goal (s)	Current Level of Function	Goal	Goal Date
The patient can orient to person with 100% accuracy using no cues to increase reasoning skills during ADL's		The patient will orient to person and place with 70% accuracy using verbal cues to increase reasoning skills during ADL's	01/06/2022
The patient can complete problem solving tasks related to safety hazards in the SNF environment with 20% accuracy using verbal cues to increase reasoning skills during ADL's		The patient will generate an appropriate solution to a safety hazard scenario with 60% accuracy using verbal cues to increase reasoning skills during ADL's	01/06/2022

Long Term Goal(s)	Goal Date
The patient will exhibit adequate problem solving and safety awareness in the discharge destination using verbal cues with moderate impairment increase reasoning skills during ADL's.	01/19/2022

Rehab Potential: Good due to: Stable medical condition .

Contraindications: None at this time.

Requires skilled services to focus on:

- 92508 - Group Treatment of speech
- 92523 - Evaluation of speech sound production; with evaluation of language comprehension and expression

- 97129 - Therapeutic interventions - cognitive function 1st 15 min
- 97130 - Therapeutic interventions- cognitive function ea addl 15 min

Frequency/Duration: 5 times a week for 4 weeks

Electronically Signed by Therapist: _____ Date: 12/23/2021

I CERTIFY THE NEED FOR THESE SERVICES FURNISHED UNDER THIS PLAN OF TREATMENT AND WHILE UNDER MY CARE Certification:
 Physician Name: _____ Signature Required From 12/23/2021 To 01/19/2022

Physician Signature: _____ Date: 01/20/2022

I agree, and it is my intent, to sign this record/document, and I attest to the accuracy and authenticity of this electronic signature. I understand that submitting my signature in this fashion is the equivalent of having placed my handwritten signature on this record.

Physician Name: _____

ST DAILY TREATMENT NOTE

Rice SPA 2046

ELECTRONICALLY FILED - 202

PATIENT LAST NAME	FIRST NAME	MI	DATE OF BIRTH	HIC NO.
PROVIDER NAME	PROVIDER NO.	MRN/ID		
PHYSICIAN	PAYOR			
MEDICAL DIAGNOSIS				
F03.90 Unsp dementia, unsp severity, without beh/psych/mood/anx (12/05/2021)				
TREATMENT DIAGNOSIS				
R41.841 Cognitive communication deficit (12/23/2021), R48.9 Other symbolic dysfunctions (12/23/2021)				
START OF CARE 12/23/2021		END OF CARE		

DATE	12/26/2021	12/27/2021	12/28/2021	12/29/2021	12/30/2021	12/31/2021	01/01/2022
CPT Codes	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

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97129 Therapeutic interventions - cognitive function 1st 15 min	QTY		1		1	1	
	MIN		15		15	15	
	MOD						
	INIT		ES		AF	AF	
97130 Therapeutic interventions- cognitive function ea addl 15 min	QTY		1			1	
	MIN		16			15	
	MOD						
	INIT		ES			AF	
CONCURRENT MIN.							
CO-TREATMENT MIN.							
COUNTER INITIALS							

Date: 12/27/2021

97129 **Note Electronically Signed by Therapist:** () (12/27/2021)

Note: Patient seen this evening at b/s for cognitive tx. Oriented pt to place and situation with pt verbalizing good understanding; however, comprehension questionable. Reviewed safe swallowing strategies/precautions with pt able to immediately recall with 50% success.

97130 **Note Electronically Signed by Therapist:** () (12/27/2021)

Note: Continued cognitive tx. Education provided to pt regarding call bell system with pt able to provide return demo and understanding x2. Family present towards end of session (daughter) with daughter stating she her anticipated d/c plan for pt is LTC.

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97129 **Note Electronically Signed by Therapist:** () (12/29/2021)

Note: Pt seen at b/s for cognitive tx. Guided pt through safety awareness scenarios in SNF targeting using a call light. Pt completed task with 40% accuracy given moderate verbal cues. ST reviewed progress and completed pt's progress note with pt input.

Date: 12/30/2021

97129 **Note Electronically Signed by Therapist:** () (12/30/2021)

Note: Pt seen at b/s for cognitive tx focusing on orientation of place and time. Pt correctly responded with 20% accuracy increasing to 60% accuracy given moderate verbal/visual cues.

97130 **Note Electronically Signed by Therapist:** () (12/30/2021)

Note: Cognitive tx continued focusing on: problem solving/safety awareness with Medication and Health (Vision). Pt correctly responded with 50% accuracy increasing to 60% given mild verbal/visual cues.

Rehab Personnel Electronic Signature	Initials	Rehab Personnel Electronic Signature	Initials	Rehab Personnel Electronic Signature	Initials
()	AF	()	ES		

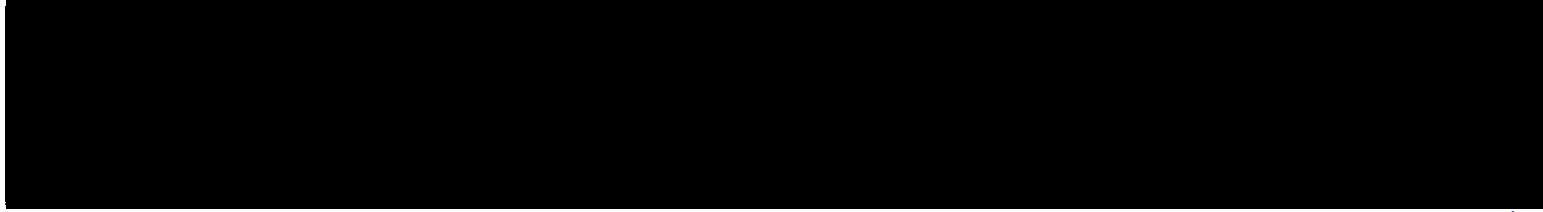
47 AM - GREENVILLE - COMM PLEAS - CASE#2

ST DAILY TREATMENT NOTE

Rice - SPA 2017

ELECTRONICALLY FILED

PATIENT LAST NAME [REDACTED]	FIRST NAME [REDACTED]	MI [REDACTED]	DATE OF BIRTH [REDACTED]	HIC NO. [REDACTED]
PROVIDER NAME 225 - [REDACTED] ([REDACTED])		PROVIDER NO. [REDACTED]		MRN/ID [REDACTED]
PHYSICIAN 1 [REDACTED] ([REDACTED])		PAYOR [REDACTED]		
MEDICAL DIAGNOSIS [REDACTED], F03.90 Unsp dementia, unsp severity, without beh/psych/mood/anx (12/05/2021)				
TREATMENT DIAGNOSIS [REDACTED] R41.841 Cognitive communication deficit (12/23/2021), R48.9 Other symbolic dysfunctions (12/23/2021)				
START OF CARE 12/23/2021			END OF CARE	



7 AM - GREENVILLE - COMMON PLEAS - CASE#2025CP2302077

Rehab Personnel Electronic Signature [REDACTED] ([REDACTED])	Initials AF	Rehab Personnel Electronic Signature [REDACTED] ([REDACTED])	Initials ES	Rehab Personnel Electronic Signature	Initials
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V. PRINCIPAL - I, HAROLD L. RICE residing at
Name of Principal

[Redacted]

Street Address of Principal

City of Greenville, State of SC, appoint
City of Principal State of Principal

the following as my Attorney-in-Fact, whom I trust with any and all my financial decision making power immediately upon the authorization of this form, and in the event that I should become incapacitated:

VI. ATTORNEY-IN-FACT - ASHANTI T. RICE residing at
Name of Attorney-in-Fact

[Redacted]

Street Address of Attorney-in-Fact

City of Greenville, State of SC grant
City of Attorney-in-Fact State of Attorney-in-Fact

the Attorney-in-Fact the legal authority to act on my behalf for any power legal under law in regard to my financial decisions under the State of

South Carolina
State

VII. SUCCESSOR ATTORNEY-IN-FACT (Optional) - If the Attorney-in-Fact named

above cannot or is unwilling to serve, then I appoint N/A
Name of Successor Attorney-in-Fact

residing at

[Redacted]
Street Address of Successor Attorney-in-Fact

City of _____, State of _____ grant
City of Successor Attorney-in-Fact State of Successor Attorney-in-Fact

the Attorney-in-Fact the legal authority to act on my behalf for any power legal under law in regard to my financial decisions under the State of

State



IX. THIRD PARTIES - I, the Principal, agree that any third party receiving a copy via: physical copy, email, or fax that I, the Principal, will indemnify and hold harmless any and all claims that may be put forth in reference to this Durable Power of Attorney Form.

X. COMPENSATION - The Attorney-in-Fact agrees not to be compensated for acting in the presence of the Principal. The Attorney-in-Fact may be, but not entitled to, reimbursement for all: food, travel, and lodging expenses for acting in the presence of the Principal.


XI. DISCLOSURE - I intend for my attorney-in-fact under this Power of Attorney to be treated, as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164

XII. PRINCIPAL'S SIGNATURE - I, HAROLD L. RICE, the Principal,
Printed Name of Principal

sign my name to this power of attorney this 29th day of
Da

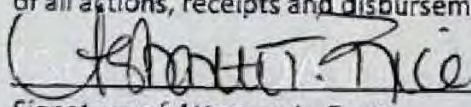
July, 2013 and, being first duly sworn, do declare to the
Mont
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undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in the power of attorney and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.


Signature of Principal

XIII. ATTORNEY-IN-FACT'S SIGNATURE - I, ASHANTI T. RICE
Name of Attorney-in-Fact

have read the attached power of attorney and am the person identified as the attorney-in-fact for the principal. I hereby acknowledge and accept my appointment as Attorney-in-Fact and that when I act as agent I shall exercise the powers for the benefit of the principal; I shall keep the assets of the principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.

 7/29/2013
Signature of Attorney-in-Fact *Date*

**-OFFICIAL-
DURABLE POWER OF ATTORNEY FORM**

I. NOTICE - This legal document grants you (Hereinafter referred to as the "Principal") the right to transfer unlimited financial powers to someone else (Hereinafter referred to as the "Attorney-in-Fact"), unlimited financial powers are described as: **all financial decision making power legal under law**. The Principal's transfer of financial powers to the Attorney-in-Fact are granted upon authorization of this agreement, and stay in effect in the event of incapacitation by the Principal (incapacitation is described in Paragraph II). This agreement does not authorize the Attorney-in-Fact to make medical decisions for the Principal. The Principal continues to retain every right to all their financial decision making power and may revoke this Durable Power of Attorney Form at anytime. The Principal may include restrictions or requests pertaining to the financial decision making power of the Attorney-in-Fact. It is the intent of the Attorney-in-Fact to act in the Principal's wishes put forth, or, to make financial decisions that fit the Principal's best interest. All parties authorizing this agreement must be at least 18 years of age and acting under no false pressures or outside influences. Upon authorization of this Durable Power of Attorney Form, it will revoke any previously valid Durable Power of Attorney Form.

II. INCAPACITATION - The powers granted to the Attorney-in-Fact by the Principal in this Durable Power of Attorney Form stay in effect upon incapacitation by the Principal, incapacitation is describes as: **A medical physician stating verbally or in writing that the Principal can no longer make decisions for them self.**

III. REVOCATION - The Principal has the right to revoke this Durable Power of Attorney Form at anytime. Any revocation will be effective if the Principal either:

- A. Authorizes a new Durable Power of Attorney Form. B.
- Authorizes a Power of Attorney Revocation Form.

IV. WITNESS & NOTARY - This document is not valid as a Durable Power of Attorney unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when the Principal signs or acknowledges the Principal's signature. It is recommended to have this Durable Power of Attorney Form notarized.

XIV. SUCCESSOR ATTORNEY-IN-FACT'S SIGNATURE (Optional) -

I, N/A have read the attached power of

Name of successor Attorney-in-Fact

attorney and am the person identified as the successor attorney-in-fact for the principal. I hereby acknowledge that I accept my appointment as Successor Attorney-in-Fact and that, in the absence of a specific provision to the contrary in the power of attorney, when I act as agent I shall exercise the powers for the benefit of the principal; I shall keep the assets of the principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate record of all actions, receipts, and disbursements on behalf of the principal.

N/A
Signature of Successor Attorney-in-Fact

Date

Notary Acknowledgement (Must be completed by Notary)

State of S.C County of Greenville Subscribed, Sworn and acknowledged before me by HAROLD L RICE, the Principal, and subscribed and sworn to before me by _____, witness, this July 29 day of 2013.

Mary M. Lasing
Notary Signature

Notary Public
In and for the County of Greenville

State of SC
My commission expires: Sept. 1st, 2019 Seal

Acknowledgement and Acceptance of Appointment as Attorney-in-Fact

I, ASHANTI T. RICE have read the attached power of attorney
Name of Attorney-in-Fact

and am the person identified as the attorney-in-fact for the principal. I hereby acknowledge that accept my appointment as Attorney-in-Fact and that when I act as agent I shall exercise the powers for the benefit of the principal; I shall keep the assets of the principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate of all actions, receipts and disbursements on behalf of the principal.

Ashanti Rice 7/29/2013
Signature of Attorney-in-Fact *Date*

Acceptance of Appointment as successor Attorney-in-Fact

I, N/A have read the attached power of
Name of successor Attorney-in-Fact

attorney and am the person identified as the successor attorney-in-fact for the principal. I hereby acknowledge that I accept my appointment as Successor Attorney-in-Fact and that, in the absence of a specific provision to the contrary in the power of attorney, when I act as agent I shall exercise the powers for the benefit of the principal; I shall keep the assets of the principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate record of all actions, receipts, and disbursements on behalf of the principal.

Signature of Successor Attorney-in-Fact *Date*

Witness Attestation

I, Sharena Johnson the first witness, and I Billy Latimore
Printed Name of First Witness *Printed Name of Second*

Witness the second witness, sign my name to the foregoing power of attorney being first duly sworn and do not declare to the undersigned authority that the principal signs and executed this instrument as him or her, and that I, in the presence and hearing of the principal, sign this power of attorney as witness to the principal's signing and that to the best of my knowledge the principal is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Sharena Johnson
Signature of First Witness

Billy Latimore
Signature of Second Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Ashanti Sullivan, as Personal)
Representative of the Estate of Harold)
Rice,)
)
Plaintiff,)
)
v.)
)
Simpsonville Community Healthcare,)
LLC d/b/a Simpsonville Post Acute,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2025-CP-23-02077

AFFIDAVIT OF ASHANTI SULLIVAN

The Affiant, Ashanti Sullivan, having been duly sworn testifies as follows:

1. I am over 18 and legally competent.
2. On December 23, 2021, I signed documents that were presented to me by Simpsonville Post Acute in relation to my father Harold Rice's admission to their facility. I signed the documents using my maiden name, Ashanti Rice.
3. At the time I signed the documents, my father had executed a durable financial power of attorney naming me as his attorney-in-fact for any financial decisions that needed to be made on his behalf. The power of attorney was never recorded with the Greenville County Register of Deeds.
4. At the time I signed the documents, my father was suffering from dementia and severe cognitive impairment such that he could not make or comprehend any decisions that were necessary to his finances or health.
5. Given his condition my father was incapable of representing or implying to Simpsonville Post Acute that I specifically had authority to consent to arbitration on his

behalf. My father never told me that I had authority to consent to arbitration on his behalf.

6. I never purposefully represented to Simpsonville Post Acute that I had authority to consent to arbitration for my father or his estate and only signed the documents it presented to me during my father's admission to its facility.

7. At the time of his admission to Simpsonville Post Acute there were no additional documents beyond the health care power of attorney and financial power of attorney granting me authority to act on behalf of my father or his estate.

Ashanti Sullivan
Ashanti Sullivan

Sworn to and subscribed before me:

Kendra Janel Meeks Rice
Notary Public

Date:

September 15, 2025



STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 DEFENDANT’S REPLY TO PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS, STAY LITIGATION AND DISCOVERY, AND COMPEL ARBITRATION

PLEASE TAKE NOTICE that Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (hereinafter “Defendant”), by and through its undersigned counsel, submits this Reply to Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, pursuant to the Honorable William C. McMaster, III’s grant of leave for Defendant to file a reply within seven (7) days of the Parties’ September 16, 2025 hearing.¹

LAW AND ANALYSIS

I. Plaintiff’s Arguments Against Merger and Direct Benefits Estoppel are Insufficient to Deny Compelling Arbitration

A. Merger

The Admission Agreement and Arbitration Agreement merged because they plainly express that they merge upon the Arbitration Agreement’s execution and they are not ambiguous. “In the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together.” *Klutts Resort Realty, Inc. v. Down’Round Development Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (emphasis added).

¹ Defendant incorporates all arguments previously made in its Memorandum in Support of Defendant’s Motion to Dismiss, Stay, and Compel Arbitration.

Plaintiff's memorandum in opposition and oral argument do not refute the satisfaction of the four (4) primary elements on merger. *See also Pl. Mem. Opp. Def. Mtn.*, Exhibit E, Affidavit of Ashanti Sullivan, ¶ 2. Here, Plaintiff contests the merger of the Admission Agreement and the Arbitration Agreement on the basis that they are ambiguous:

While the Arbitration Agreement provides that it becomes a part of the Admission Agreement once executed, when viewed alongside the other details of the agreements, it creates an ambiguity as to merger when taken in context of the totality of the circumstances . . .

Pl. Mem. Opp. Def. Mtn., p. 23 (emphasis added). Moreover, Plaintiff acknowledges that the plain language of the Arbitration Agreement states that it “becomes part of the Admission Agreement once executed.” South Carolina law prohibits parties from creating ambiguity in order to avoid the plain language of the contract.

Moreover, “[i]t is a question of law for the court [as to] whether the language of a contract is ambiguous.” *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (internal citations omitted). “Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract.” *Id.* A plaintiff “cannot create an ambiguity when it does not exist within the four corners.” *Id.* (citing *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945) (“words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.”))

Here, the Court should find that the Arbitration Agreement and Admission Agreement merged, as a matter of law. The Arbitration Agreement states that “[u]pon execution, this Agreement shall become part of the Admission Agreement.”² The Plaintiff's arguments against

² The Admission Agreement's applicable merger clause states “Entire Agreement. This Agreement, together with all exhibits hereto, Resident's application form and nursing records constitute the entire contract between Facility and Resident . . .” *See Def. Mem. Supp.*, Exhibit C, p. 10. The Admission Agreement does not explicitly reference the Arbitration Agreement because the agreement to arbitrate is optional.

this provision's application require the Court to "create an ambiguity" to reach a result contrary to the plain language of the Arbitration Agreement and Admission Agreement.

Plaintiff's references to *Hodge*, *Coleman*, *Solesbee*, and *Thompson* are misapplied.³ None of those cases involve an arbitration agreement that stated "[u]pon execution, this Agreement shall become part of the Admission Agreement." Here, the intent of the parties to merge the Arbitration Agreement and the Admission Agreement is explicitly stated in unambiguous terms.

The Plaintiff instead asks the court to create an ambiguity to avoid its obligation to arbitrate by using *Hodge*, *Coleman*, *Solesbee*, and *Thompson's* reasoning on arbitration agreements and admission agreements wholly different to the Arbitration Agreement and Admission Agreement in this case. Despite the clear statement of merger in this case, Plaintiff uses those four cases and isolated, narrow provisions in the Agreements to argue the two agreements cannot merge because (1) they are separately paginated; (2) they have different titles; (3) they are separately signed; and (4) the agreement to arbitrate, outside a thirty-day termination window, is binding on a resident in perpetuity.

The fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed,⁴ provides no reasonable inference of an intent contrary to merger, in this case, where parties have explicitly agreed to merge the Agreements. Instead, all it does is point out that the Admission Agreement and the Arbitration Agreement are different instruments, which does not actually suggest anything about the intent of the parties on whether they should be construed together. The question of merger does not even arise unless there are multiple, different instruments involved. The very nature of merger is to

³ *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016); and *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 651, 885 S.E.2d 144, 150 (Ct. App. 2023).

⁴ The South Carolina common law rule for finding merger requires that each document be signed. See *Klutts Resort Realty, Inc.*, 268 S.C. at 88, 232 S.E.2d at 24 ("executed at the same time, by the same parties. . .").

merge separate documents. Additionally, most, if not all, arbitration clauses, withstand the termination or end of performance obligations under a contract. *See e.g. Dixon v. Pattee*, 442 S.C. 233, 245, 898 S.E.2d 158, 164 (Ct. App. 2023) (reversing trial court order denying motion to compel arbitration when lawsuit was filed in 2017 and performance of construction contract completed on or before 2008).

Therefore, the Court should find, as a matter of law, that the Arbitration Agreement and Admission Agreement merged because the parties unambiguously agreed that the Arbitration Agreement “shall become part of the Admission Agreement” upon execution.

B. Direct Benefits Estoppel

The Plaintiff is estopped from refusing to arbitrate because Plaintiff received direct benefits under the merged agreement and is now estopped from refusing to arbitrate. It appears that Plaintiff’s primary argument in opposition to the application of direct benefits estoppel is that the Arbitration Agreement and the Admission Agreement did not merge.⁵ But as stated above, the plain unambiguous language of the Arbitration Agreement and Admission Agreement support merger. Accordingly, Plaintiff’s memorandum does not refute that Mr. Rice received a direct benefit under the merged agreements and is estopped from refusing to arbitrate this action.

“A nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause.” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012). “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.” *Id.*, 400 S.C. at 291, 733 S.E.2d at 602.

⁵ To the extent Plaintiff alleges that direct benefits estoppel does not apply to tort actions, cases referred to by Plaintiff analyze the applicability of direct benefits estoppel in nursing home medical malpractice actions. *See Thompson*, 416 S.C. at 59, 784 S.E.2d at 688.

Here, Mr. Rice accepted and received direct benefits pursuant to the Admission Agreement, which were his residency at Defendant's facility and his treatment and care from the Defendant's facility. Plaintiff cannot now deny the enforceability of the agreement to arbitrate, which merged with the Admission Agreement upon execution of the Arbitration Agreement. Therefore, this Court should compel arbitration because having received direct benefits under the merged agreement, Plaintiff is estopped from refusing to comply with its equally binding provision requiring arbitration of this dispute.

II. Evidence Exists Showing Ashanti Rice Sullivan Possessed Apparent/Inherent Agency Authority to Enter into the Arbitration Agreement on Harold Rice's Behalf

Plaintiff makes blanket assertions that Mr. Rice, as principal, never made representations or voluntarily placed the Defendant Facility in a position to reasonably believe that Ashanti Rice Sullivan had authority to enter into the Arbitration Agreement. But it is undisputed that the (1) Health Care Power of Attorney ("HCPOA") and (2) Durable Financial Power of Attorney ("DFPOA") are both representations of the Principal, Mr. Rice.

"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).

The HCPOA Mr. Rice executed empowered Ashanti Rice Sullivan to "authorize [h]is admission to or discharge, even against medical advice, from any hospital, nursing care facility or service." Importantly, the HCPOA expressed that "[i]n exercising this authority, my agent [Ashanti Rice Sullivan] shall follow my desires as stated in this document or otherwise expressed by me or known to my agent." Def. Mem. Supp., Exhibit B, p. 4.

In the context of apparent authority, the HCPOA was a representation by the principal, Mr. Rice. In making that statement, Mr. Rice represented Ashanti Rice Sullivan should follow, not

only the desires included in that document but also those “desires expressed by [him] or known to [his] agent.” It would have been reasonable for Defendant to believe that Ashanti Rice Sullivan was authorized to execute the Admission Agreement, including the Arbitration Agreement.

Inherent authority is 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*, *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004).⁶ “The powers of an agent are, *prima facie*, coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.” *Cange v. Stotler & Co.*, 826 F.2d 581, 590-91 (7th Cir. 1987)

Plaintiff’s opposing memorandum quotes *Smith* out of context in the following sentence:

If anything, *Smith* makes clear that the inherent agency powers theory finds no support in South Carolina law. *Id.* (“[A]ppellant has offered no authority, and we have found none, that [individual] would have inherent agency power . . .”)

Pl. Mem. Opp. Def. Mot. Dism., p. 17. But the Court in *Smith* says the following in full:

There was no testimony that the mechanic who allegedly ‘accepted’ the work had actual or apparent authority to do so. Furthermore, appellant has offered no authority, and we have found none, that Campbell’s mechanic would have inherent agency power to accept work for replacement of a utility pole.

Smith, 264 S.C. at 134, 212 S.E.2d at 926. The Court in *Smith* was referring to whether an individual possessed actual, apparent, or inherent “authority” to perform an act. Reading that

⁶ Defendant contends that Plaintiff wrongly suggests that the Supreme Court’s holding in *Smith* was entirely abrogated or that it abrogated any precedent relating to “inherent authority.” *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975), *abrogated on other grounds*, *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004). Specifically, the Court in *Dorrell* held that “a contractor’s duty of care is not extinguished upon the completion and acceptance of the contractor’s work.” *Dorrell*, 361 S.C. at 320, 605 S.E.2d at 16. *Dorrell* did not mention “inherent authority,” which Defendant uses *Smith* in support of.

excerpt in full, the Supreme Court is discussing whether they could find inherent “authority” in that specific case, not whether South Carolina recognizes inherent authority.

Here, Ashanti Rice Sullivan possessed inherent authority to enter the Arbitration Agreement. Ashanti Rice Sullivan had actual authority to enter into the Admission Agreement pursuant to the HCPOA. Because it became part of the Admission Agreement upon execution, Ashanti Rice Sullivan had the inherent authority to enter into the Arbitration Agreement.

The Plaintiff has pointed to *Arredondo*, which holds that a HCPOA did not confer actual authority to enter an arbitration agreement because the arbitration agreement was not “required” or “necessary” to the Admission Agreement. *See Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 73, 856 S.E.2d 550, 552 (2021) (reversing court of appeals holding that plaintiff had “actual authority to execute the arbitration agreement” when arbitration agreement was not required or necessary to exercising HCPOA authority). The Court in *Arredondo* did not mention “inherent authority” or “apparent authority.” That case only discussed whether the HCPOA conferred actual authority to an agent to enter into an arbitration agreement.

Here, Ashanti Rice Sullivan possessed inherent agency authority to enter into the Arbitration Agreement because the Arbitration Agreement was incidental to the admission of Harold Rice, her principal. She admittedly executed the Arbitration Agreement “in relation to [her] father Harold Rice’s admission to [the] facility.” *Pl. Mem. Opp. Def. Mtn.*, Exhibit E, Affidavit of Ashanti Sullivan, ¶ 2. In other words, the Arbitration Agreement was incidental to executing documents, such as the Admission Agreement, which Ashanti Rice Sullivan did have the actual authority to execute pursuant to the HCPOA. Therefore, Ashanti Rice Sullivan possessed the apparent and inherent agency authority to enter into the Arbitration Agreement.

CONCLUSION

Defendant Simpsonville Community Healthcare, LLC respectfully requests the Court stay these proceedings and compel this Action to arbitration. The Arbitration Agreement merged with the Admission Agreement and Plaintiff is estopped from refusing arbitration. Ashanti Rice Sullivan possessed the apparent and inherent authority to execute the Arbitration Agreement. If the Court is not inclined to grant Defendant's motion to compel, it requests limited jurisdictional discovery as to the validity of the Arbitration Agreement and a renewed opportunity to be heard.⁷

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*Attorneys for Defendant Simpsonville Community
 Healthcare, LLC d/b/a Simpsonville Post Acute*

September 23, 2025
 Charleston, South Carolina

⁷ Plaintiff's memorandum in opposition cites to S.C. Code Ann. § 15-48-20 to argue that limited discovery should not alternatively be permitted. § 15-48-20 is a section of the South Carolina Uniform Arbitration Act ("SCUAA"). A state law that "singles out" arbitration agreements, directly conflicts with the FAA and is preempted by the FAA. *Soil Remediation Co. v. Nu-Way Env't, Inc.*, 323 S.C. 454, 459, 476 S.E.2d 149, 152 (1996) (holding that notice requirements in the SCUAA were preempted by the FAA). § 15-48-20 is preempted by the FAA because it is a conflicting state law that applies only to arbitration agreements.

Under the FAA, the "[o]ne thing the district court may never do is find a material dispute of fact does exist" and then deny the motion without holding "any trial to resolve that dispute of fact." *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015). The HCPOA and DFPOA are representations of the principal and evidence creating a material dispute of fact. Defendant should be allowed limited discovery as to certain references made by Ashanti Rice Sullivan as "POA" and "legal representative" for Mr. Rice. A prior medical care provider record indicated a "POA" was filed on February 6, 2018. Additionally, Plaintiff offered an affidavit of Ashanti Rice Sullivan, personal representative for the estate, in connection with this motion. Defendant should be given the opportunity to cross-examine her.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 DEFENDANT’S MOTION TO RECONSIDER ORDER DENYING DEFENDANT’S MOTION TO DISMISS, STAY LITIGATION AND COMPEL ARBITRATION

Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (“Defendant”), by and through its undersigned counsel, hereby respectfully submits this Motion for Reconsideration, pursuant to Rule 59(e), of the Court’s September 26, 2025 Order (“Order”) denying Defendant’s Motion to Dismiss, Stay Litigation, and Compel Arbitration (“Underlying Motion”) as to Plaintiff’s wrongful death and survival action (“Action”). Defendant respectfully contends the Order contains clear errors of law and results in manifest injustice, and it further respectfully makes this motion to insure its arguments are ruled upon and preserved for appellate review to the extent necessary in light of the Court’s Form 4 Order.¹

SUMMARY OF ARGUMENT

Defendant asks the Court to reconsider the Order and compel this Action to arbitration. Respectfully, the Order erroneously rules that the delegation clause contained in the Arbitration Agreement does not mandate that the Action be sent, along with any questions as to enforcement and arbitrability, to arbitration. The Parties expressly delegated any question of enforceability and arbitrability to an arbitrator.

¹ Defendant incorporates all arguments previously made in its Reply and Memorandum of Law in Support of Defendant’s Motion to Dismiss, Stay, and Compel Arbitration.

Respectfully, the Order erroneously denies compelling arbitration pursuant to the doctrine of merger and direct benefits estoppel. While the Order granted Defendant's request for thirty (30) days of limited discovery as to the validity of the Agreement, any evidence obtained through limited discovery will only be probative in determining whether Ashanti Rice Sullivan had actual, apparent, or inherent authority to execute the Arbitration Agreement. The enforcement of the Arbitration Agreement under Defendant's merger and estoppel arguments do not require any showing of actual, apparent, or inherent agency authority. Defendant's merger and estoppel arguments, as considered together, serve as a standalone basis for compelling arbitration. Agency authority is not relevant in determining whether Plaintiff is bound by the arbitration agreement under Defendant's merger and estoppel argument.

Defendant additionally moves to reconsider the Order pursuant to its apparent and inherent agency authority arguments. Specifically, Defendant respectfully contends that the Court's Order denying the underlying motion is erroneous because Defendant offered sufficient evidence to show that Ashanti Rice Sullivan possessed apparent and inherent agency authority to execute and bind Mr. Harold Rice to the Arbitration Agreement.

LEGAL STANDARD

The decision to grant or deny a motion under Rule 59(e), SCRCF, lies within the sound discretion of the trial court. *Pollard v. Cnty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). Rule 59(e), SCRCF, provides, "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." "A party may wish to file [a Rule 59(e)] 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." *Elam v. South Carolina Dept. of Transp.*, 602 SE 2d 772 (SC 2004). The

“purpose of [a motion under] Rule 59(e), SCRCF, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992).

LAW AND ANALYSIS

I. Defendant Respectfully Requests the Court to Reconsider the Order and Expressly Rule on each Issue Raised by Defendant in Support of the Underlying Motion and Memoranda of Law in Support

“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis added by Court).

II. The Order is Erroneous because the Arbitration Agreement, Whether Standing Alone, or as Merged with the Admission Agreement is Valid and Involves Interstate Commerce

The Arbitration Agreement, which concerns the provision of skilled nursing services and care, involves interstate commerce. *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

Additionally, a valid agreement to arbitrate exists. “An arbitration agreement, of course, is a contract.” *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025). A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing three elements. *Id.* In South Carolina, [t]he necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581

S.E.2d 161 (2003). Defendant undisputedly signed the Arbitration Agreement constituting a valid offer. Consideration exists because the mutual agreement to arbitrate is valid consideration. *See Lampo*, 445 S.C. at 313, 914 S.E.2d at 144. Additionally, Defendant agreed to provide Harold Rice a residence at Defendant’s facility, as well as skilled nursing services and treatment, in return for monetary payment.

III. The Order is erroneous because it Fails to Consider the Delegation Clause, which Requires an Arbitrator to Determine Whether the Arbitration Agreement is Enforceable Against Plaintiff

“The FAA presumes parties intend that the court, rather than an arbitrator, will decide ‘gateway’ issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute.” *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). “The parties may, of course, delegate these gateway issues to an arbitrator as long as there is ‘clear and unmistakable’ evidence of such delegation.” *Id.* If such a delegation occurs, the court retains the right and duty to determine if the delegation is valid and enforceable “as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause[.]” *Id.*

The Arbitration Agreement, whether or not merged with the Admission Agreement as set forth below, undisputedly contains a delegation clause.

7.4 Except as otherwise provided in this Agreement, the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability, scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement or the Admission Agreement, as well as to resolve the Parties’ underlying disputes, as it is the Parties’ intent to avoid involving the court system. The Arbitrator shall also be responsible for resolving issues pertaining to procedure, discovery, admissibility of evidence, or any other matter of dispute between the Parties relating to the Arbitration.

See Exhibit A, Def. Mem. Supp. Mot. Dism.

Specifically, there is a valid agreement to delegate this Action to an Arbitrator in the present case. The agreement is signed by Defendant and consideration exists as set forth above. Plaintiff solely challenges validity of the Arbitration Agreement as a whole on the basis that Ashanti Rice Sullivan did not have the authority to bind Mr. Rice to the Arbitration Agreement. Though, the four corners of the Arbitration Agreement set forth that Ashanti Rice Sullivan signed the Arbitration Agreement as a legal representative and power of attorney for Mr. Rice. As such, the Arbitration Agreement purports to be a valid contract, executed by parties having the authority to bind themselves to arbitration.

The Plaintiff makes no discreet challenge to the delegation clause itself. To the extent that Plaintiff challenges the enforceability of the delegation clause or the Arbitration Agreement or challenges the arbitrability of the Plaintiff's claims, these matters must be decided by an arbitrator. Specifically, the authority of Ashanti Rice Sullivan to execute the Arbitration Agreement on Harold Rice's behalf is an issue of enforceability. Enforceability has been expressly delegated to the arbitrator, who is free to remand the case back to this Court when ruling on the issue of enforceability.

The cases cited by Plaintiff in opposition to compelling arbitration pursuant to the delegation clause are inapplicable. The New Mexico court of appeals decision in *Szantho* does not apply to South Carolina FAA cases. *Szantho v. THI of N.M. at Sunset Villa, LLC*, 2025-NMCA-006, 570 P.3d 203 (Ct. App. N.M. 2025). Moreover, that case does not involve a delegation clause pursuant to the FAA. Instead, it involves New Mexico's state arbitration act, which has no bearing on this Action. The present motion is brought pursuant to the FAA. Second, *Naganuma* does not apply to this case or any other case in the nation. *See Naganuma v. Windsor Oakridge Healthcare Ctr.*, Case No. A162113, 2022 Cal. App. Unpub. LEXIS 939, at *5 (Cal. Ct. App. Feb. 16, 2022).

That case is a California unpublished opinion, which is explicitly prohibited from being cited to under their rules as “noncitable.” That is why the case is “red flagged.” That is why no court, state or federal, has cited *Naganuma*. Plaintiff has not provided any applicable authority to refute the delegation clause. The Court should reconsider the Order and compel arbitration pursuant to the delegation clause contained in the Arbitration Agreement.

IV. Without Waiving the Foregoing, the Order is Erroneous because Plaintiff Failed to Offer Sufficient Evidence to Rebut the Presumption that the Arbitration Agreement and Admission Agreement Merged

The rule for merger is “[i]n the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together.” *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (emphasis added). The four (4) *prima facie* elements of merger set forth above are satisfied in this case and Plaintiff appears to agree that they are satisfied. Merger is presumed because these *prima facie* elements are satisfied. The Plaintiff has the burden to prove that the parties did not intend for the Admission Agreement and the Arbitration Agreement to merge. The Plaintiff failed to show this because the plain language of the Admission Agreement and the Arbitration Agreement expressly require that they merge.

The Arbitration Agreement unambiguously states: “[u]pon execution, this Agreement shall become part of the Admission Agreement.” The intent that the Admission Agreement and the Arbitration Agreement merge is an explicit term contemplated and agreed to by both parties. The Court should reconsider the Order and rule that the intent of the parties was to merge the Arbitration Agreement and Admission Agreement solely because the Parties expressly agreed that they intended the instruments to merge.

By virtue of her signature, Ashanti Rice Sullivan is “presumed to have read, understood, and assented to [the] terms” in the Arbitration Agreement. This includes the term providing that the Arbitration Agreement “shall” become part of the Admission 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.”). The Arbitration Agreement and the Admission Agreement merged because the four (4) *prima facie* elements were satisfied and no intent contrary to merger exists; the Arbitration Agreement explicitly states that it “shall become part of the Admission Agreement” upon execution.

Importantly, the Admission Agreement was also a necessary prerequisite for the execution of the Arbitration Agreement. Without the Admission Agreement, there could be no Arbitration Agreement, and the intent to merge the Admission Agreement and Arbitration Agreement inherently arises under these circumstances. While the Plaintiff has presented that the Arbitration Agreement, standing alone, was not required for Mr. Rice’s admission to Defendant’s Facility, this cannot serve as evidence of an intent contrary to merger.

If the Court rules that such an argument supports an intent contrary to merger, there would go the operation of contracts in almost every major industry would be in jeopardy. Take for example one familiar industry. In the hearing on the Underlying Motion, Plaintiff’s Counsel opposed Defendant’s Underlying Motion by comparing this case to the sale of motor vehicles. In the automotive sales industry, retail installment sales contracts for the purchase of new and used vehicles include as addenda optional additions that a buyer may wish to purchase. Plaintiff’s argument against merger in this scenario would be on the basis that the addenda were not required to effectuate the underlying retail sales installment contract. However, every retail installment sales contract includes such addenda, and they are uniformly enforced as part of a contract. Courts

regularly enforce the arbitration provisions contained in the underlying retail installment sales contract, including to the addenda that merged with them.

Accordingly, the present case is entirely different than *Hodge*, *Coleman*, *Solesbee*, and *Thompson*, which the Plaintiff uses as the sole basis to refute the Parties' intent to merge.² None of those cases involve an arbitration agreement that stated “[u]pon execution, this Agreement shall become part of the Admission Agreement.” None of those cases involved or discussed arbitration and admissions agreements that contained terms where the parties expressly agreed to merger. Applying the facts of those cases here would nullify the terms of the Admission Agreement and Arbitration Agreement in this case. Nevertheless, armed with those four cases, the Plaintiff argues that an ambiguity exists because the two different instruments contained (1) separate page numbers, (2) different titles, (3) separate signatures, and (4) the agreement to arbitrate, outside a thirty-day termination window, is binding on a resident in perpetuity.

In the present case, no ambiguity exists. “When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense.” *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377–78, 373 S.E.2d 584, 586 (1988); *see also Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945) (“words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.”)). The plain language of the Arbitration Agreement provides that it “shall become part

² *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016); and *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 651, 885 S.E.2d 144, 150 (Ct. App. 2023).

of the Admission Agreement” and this provision should rightfully be enforced as the Parties’ true intention.

Even if the Court finds ambiguity, *in arguendo*, Plaintiff’s argument nevertheless fails to support any ruling that an intent contrary to merger exists. First, the fact that the Arbitration Agreement and Admission Agreement are separately signed cannot support intent contrary to merger as a matter of law. The very rule that undisputedly governs the determination of merger requires that each agreement be separately signed. *See Klutts Resort Realty, Inc. v. Down’Round Development Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (merger only exists “where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction . . .”) (emphasis added). Second, the fact that the Arbitration Agreement bears separate page numbers and titles cannot be probative in finding the existence of intent contrary to merger. The very purpose of the doctrine of merger is to merge different instruments. Importantly, two different instruments would not even exist if the page numbers were chronological or titled the same. This argument would defeat the entire purpose of the doctrine of merger because there would be no instruments to merge. *See e.g. Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016) (“trial court erred in . . . ignoring the language of the Addendum and Prepaids . . . these documents must be read as a whole because they all concerned one course of conduct . . . we find the [plaintiff’s] claims . . . are not outside the scope of the limitation of liability clause.”).

Next, *Masters v. KOL, Inc.* directly contradicts the Plaintiff’s argument that no merger should be found when the arbitration agreement survives the termination of the underlying contract. In that case, the South Carolina Court of Appeals held that arbitration agreements, such

the one here, are enforceable even though they may provide that they are enforceable after the termination of the underlying contract.

[T]he parties may include with the original contract a provision that they intend to survive the termination of the contract, such as an arbitration clause; in such a case, the provision will survive not only the termination of the agreement, but also its novation and the substitution of a new contract.

Masters v. KOL, Inc., 431 S.C. 28, 39, 846 S.E.2d 893, 899 (Ct. App. 2020) (quoting 30 Williston on Contracts § 76:46 (4th ed.)) (emphasis added) (reversing trial court’s denial of compelling arbitration).

V. The Order was Erroneous in Ruling that the Plaintiff was Not Estopped from Refusing to Arbitrate under Direct Benefits Estoppel

The Court should reconsider the Order because Plaintiff received direct benefits from the merged agreement and is now estopped from refusing to arbitrate.

“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.” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012). “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.” *Id.*, 400 S.C. at 291, 733 S.E.2d at 602. 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); *Wilson v. Willis*, 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019) (“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.”).

The Court should reconsider the Order because Plaintiff is estopped from refusing to arbitrate under the merged agreement. Here, Harold Rice accepted and received direct benefits pursuant to the Admission Agreement. As a direct benefit flowing from the merged agreement, Defendant provided Harold Rice with every night's stay, every meal, every amenity/service, every instance of care/treatment, and essentially every moment while he was a resident at the Facility. The Admission Agreement itself was a prerequisite to admission to the facility. Because Plaintiff's residency and treatment flow from the Admission Agreement, as merged with the Arbitration Agreement, any claim asserted in this Action likewise flows from the Admission Agreement. Plaintiff cannot now refuse to arbitrate and deny the enforceability of the Arbitration Agreement, which merged with the Admission Agreement. Therefore, this Court should reconsider the Order and compel arbitration because having received direct benefits under the merged agreement, Plaintiff is estopped from refusing to comply with its equally binding provision requiring arbitration of this dispute.

VI. The Order is Erroneous because Ashanti Rice Sullivan Possessed Apparent and Inherent Authority to Execute the Agreement on Behalf of Mr. Rice³

Respectfully, the Order is erroneous because Ashanti Rice Sullivan possessed apparent and inherent agency authority.⁴

³ The basis for reconsidering the Order and enforcing the Arbitration Agreement under an apparent and inherent agency authority theory is completely separate and distinct from its enforcement pursuant to merger and direct benefits estoppel.

⁴ Defendant offered evidence of apparent and inherent agency authority and requested a jury trial as to the validity of the Arbitration Agreement pursuant to 9 U.S.C. § 4 of the FAA. The Fourth Circuit Court of Appeals notes that, when a motion to compel arbitration "presents unresolved questions of material fact, the FAA 'call[s] for an expeditious and summary hearing' to resolve those questions." *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015) (alteration in original). Section 4 of the FAA provides that when "the making of the arbitration agreement . . . [is] in issue, the court shall proceed summarily to the trial thereof." 9 U.S.C. § 4. The Order should be reconsidered because Ashanti Sullivan possessed the inherent and apparent authority to execute and bind Harold Rice to the Arbitration Agreement. Nevertheless, Defendant undisputedly offered evidence of Ashanti Rice Sullivan's apparent and inherent agency authority to sign the Arbitration Agreement on behalf of Harold Rice, which ultimately entitles Defendant to a jury trial on the issue of validity of the Arbitration Agreement.

A. The Order is Erroneous because Ashanti Rice Possessed Inherent Authority to bind Harold Rice to the Arbitration Agreement

Inherent authority is 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*, *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004).⁵ “The powers of an agent are, *prima facie*, coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.” *Cange v. Stotler & Co.*, 826 F.2d 581, 590-91 (7th Cir. 1987) (“Judge Learned Hand articulated this concept of inherent agency power when he upheld a jury verdict for plaintiff based on a contract the jury found to be an unconditional engagement for a singing tour despite the principal's instructions to its agent to engage the singer only for such recitals as he could later persuade record dealers to book her for, instructions which were not told to plaintiff”) (citing *Kidd v. Thomas A. Edison, Inc.*, 239 F. 405, 405 (S.D.N.Y.), *aff'd*, 242 F. 923 (2d Cir. 1917)).

The basis for the doctrine of inherent agency is that, as between an equally innocent principal and third party, the third party should prevail. Third parties, such as Defendant, should not be disadvantaged because it dealt with an agent rather than a principal.

⁵ Defendant contends that Plaintiff wrongly suggests that the Supreme Court’s holding in *Smith* was entirely abrogated or that it abrogated any precedent relating to “inherent authority.” *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975), *abrogated on other grounds*, *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004). Specifically, the Court in *Dorrell* held that “a contractor’s duty of care is not extinguished upon the completion and acceptance of the contractor’s work.” *Dorrell*, 361 S.C. at 320, 605 S.E.2d at 16. *Dorrell* did not mention “inherent authority,” which Defendant uses *Smith* in support of. Additionally, the Court in *Smith* was referring to whether an individual possessed actual, apparent, or inherent “authority” to perform an act. Reading that excerpt in full, the Supreme Court is discussing whether they could find inherent “authority” in that specific case under those specific facts, not whether South Carolina recognizes inherent authority.

The Order neglected to consider that the Health Care Power of Attorney (“HCPOA”) serves as a basis to rule that Ashanti Rice Sullivan had the inherent agency authority to execute and bind Mr. Rice to the Arbitration Agreement. Ashanti Rice Sullivan undisputedly had the actual authority to enter into the Admission Agreement. Because the Arbitration Agreement was incidental to the Admission Agreement, Ashanti Rice Sullivan possessed inherent authority to bind Mr. Rice to the Arbitration Agreement. Defendant should not be disadvantaged for acting in accordance with the express representations of Ms. Sullivan’s Authority. Therefore, the Court should reconsider the Order and compel this Action to arbitration because Ashanti Rice Sullivan had the inherent authority to bind Mr. Rice to the Arbitration Agreement.

B. The Order is Erroneous because Ashanti Rice Possessed Apparent Authority to bind Harold Rice to the Arbitration Agreement

“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).

The Order neglected to consider that the Health Care Power of Attorney that Mr. Rice executed empowered Ashanti Rice Sullivan to “authorize [h]is admission to or discharge, even against medical advice, from any hospital, nursing care facility or service.” Importantly, the HCPOA expressed that “[i]n exercising this authority, my agent [Ashanti Rice Sullivan] shall follow my desires as stated in this document or otherwise expressed by me or known to my agent.” Def. Mem. Supp., Exhibit B, p. 4.

The HCPOA is a representation of the principal to a third party such as Defendant here. In making that statement, Mr. Rice represented Ashanti Rice Sullivan should follow, not only the desires included in that document but also those “desires expressed by [him] or known to [his]

agent.” Additionally, Ashanti Rice Sullivan exercised those actual agency powers, as represented by the principal Harold Rice, in a way that would lead a reasonable third-party to believe that Ashanti Rice Sullivan had the apparent authority to execute the Arbitration Agreement. Ashanti Rice Sullivan signed the Arbitration Agreement as a legal representative with the authority to execute the Arbitration Agreement. It would have been reasonable for Defendant to believe that Ashanti Rice Sullivan, through the Harold Rice’s initial representations and Ashanti Rice Sullivan’s subsequent representations, was authorized to execute the Admission Agreement, including the Arbitration Agreement.

Respectfully, the Order erred in relying on Plaintiff’s primary argument against apparent authority in precedent set forth in cases such as *Arredondo*. The Court in *Arredondo* held that a HCPOA did not confer actual authority to enter an arbitration agreement because the arbitration agreement was not “required” or “necessary” to the Admission Agreement. *See Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 73, 856 S.E.2d 550, 552 (2021) (reversing court of appeals holding that plaintiff had “actual authority to execute the arbitration agreement” when arbitration agreement was not required or necessary to exercising HCPOA authority). The Court in *Arredondo* did not mention “inherent authority” or “apparent authority.” That case only discussed whether the HCPOA conferred actual authority to an agent to enter into an arbitration agreement. Respectfully, it is not applicable to whether the principal’s representation here, the HCPOA, along with all the coinciding representations of the agent Ashanti Rice Sullivan, conferred apparent or inherent authority. Respectfully, the Court should reconsider the Order and rule that Ashanti Rice Sullivan had the apparent and inherent authority to bind Mr. Rice to the Arbitration Agreement.

CONCLUSION

Defendant Simpsonville Community Healthcare, LLC respectfully requests the Court Reconsider its Order. Ashanti Rice Sullivan signed the Arbitration Agreement, which expressly set for that it merged with the Admission Agreement and Plaintiff is estopped from refusing arbitration.

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October 6, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	CIVIL ACTION NO.: 2025-CP-23-02077
)	
Ashanti Sullivan, as Personal)	
Representative of the Estate of)	
Harold Rice,)	
)	
Plaintiff,)	
)	
v.)	
)	
Simpsonville Community Healthcare,)	
LLC d/b/a Simpsonville Post Acute,)	
)	
Defendant.)	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION FOR RECONSIDERATION**

Defendant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (“the Facility”) has moved the Court to reconsider its September 26, 2025 order denying the Facility’s motion to dismiss, stay litigation, and compel arbitration. Because the Facility fails to point to any part of the order that is clear legal error, and because it does not point to any new evidence or dispositive arguments that were not available when the Court heard its motion to compel arbitration, the motion for reconsideration should be denied.

I. The Court correctly decided the issue of contract formation, which must be determined by a court and not an arbitrator under the Federal Arbitration Act.

Plaintiff submits this memorandum to address a number of points that were either not argued to the Court at the hearing on this matter (although they were briefed by the parties) or are misrepresentations of the facts. The Facility continues

to maintain that the delegation clause contained within the Facility's separate arbitration agreement precludes the Court from determining whether a valid arbitration agreement was ever formed between the parties. In doing so, the Facility states that "[t]he Parties expressly delegated any question of enforceability and arbitrability to an arbitrator." If this were true, then the Facility's position would be correct, and questions concerning the scope, enforceability, and arbitrability of the agreement would be delegated to an arbitrator.

What the Facility continues to ignore is that the real parties in interest to the wrongful death and survival actions are the wrongful death beneficiaries and the estate of Harold Rice, and none of these parties ever signed the arbitration agreement at issue. *See Glenn v. E.I. Du Pont de Nemours & Co.*, 254 S.C. 128, 140, 174 S.E.2d 155, 161 (1970) ("The right of action is, of course, vested by statute in the personal representative, who is only a trustee for the beneficiaries, the beneficiaries, in a sense, being the real parties in interest."); *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 242, 734 S.E.2d 148, 159 (2012) ("Unlike damages in a wrongful death action, which are for the benefit of the decedent's family, damages in a survival action are for the benefit of the decedent's estate."). Neither the wrongful death beneficiaries, the estate, nor Ms. Sullivan as their representative ever agreed to delegate anything to an arbitrator.

The fact that Ms. Sullivan signed the arbitration agreement in her individual capacity (and not as an agent of Mr. Rice because there was no valid source of authority) does not mean that the wrongful death beneficiaries and the estate are

bound to that assent just because now she is named as Plaintiff in this action in a representative capacity. The Court of Appeals addressed this concept in *Thompson v. Pruitt Corp.*:

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

Thompson, 416 S.C. 43, 61, 784 S.E.2d 679, 689 (Ct. App. 2016). Because the estate and the wrongful death beneficiaries did not assent to delegate any issues concerning the arbitration agreement to an arbitrator, no delegation provision or arbitration agreement was ever formed between the parties, and the Court is permitted to determine the gateway issue of contract formation.

Under the Federal Arbitration Act, contract formation issues are always reserved to the courts for decision, even in the presence of a delegation clause. *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 296-97, 130 S. Ct. 2847, 2855-56, 177 L. Ed. 2d 567 (2010). The principle follows from the fundamental premise that arbitration is "strictly a matter of consent." *Id.* at 299 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)). "To take the question of contract formation away from the courts would essentially force parties into arbitration

when the parties dispute whether they ever consented to arbitrate anything in the first place.” *Dr.’s Assocs., Inc. v. Alemayehu*, 934 F.3d 245, 251 (2d Cir. 2019).

Preserving for the courts the contract-formation question comports with the requirement in section 4 of the FAA that courts enforce arbitration agreement only “upon being satisfied that the making of the agreement for arbitration . . . is not in issue.” 9 U.S.C. § 4. The question of contract formation is always one for the Court, and here, Plaintiff has disputed that a valid arbitration agreement was ever formed between the Facility, the wrongful death beneficiaries, the estate, or herself in a representative capacity for those parties. *See Saket Singh v. Anesthesia Assocs. of Rock Hill, P.A.*, C/A. No. 0:25-cv-0696-CMC-SVH, 2025 U.S. Dist. LEXIS 90806, at *17 n.9 (D.S.C. May 13, 2025) (stating that issues of contract formation cannot be delegated to an arbitrator).¹

To the contrary of the Facility’s argument, determining whether Ms. Sullivan had authority to enter the arbitration agreement on Mr. Rice, his estate, and his wrongful death beneficiaries’ behalf is an issue of contract formation, and not enforceability. Enforceability asks whether “agreements once properly made” may be enforced. *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 255, 137 S.

¹ Additionally, under the *Prima Paint* and *Rent-A-Center* doctrines, Plaintiff does not have to make a discrete challenge to the delegation clause to make it an issue for the Court. Plaintiff broadly challenges the formation of both the arbitration agreement and the delegation provision. *See e.g., Ahlstrom v. DHI Mortg. Co., L.P.*, 21 F.4th 631, 635 (9th Cir. 2021) (“We agree with our sister circuits and hold that parties cannot delegate issues of formation to the arbitrator.”); *Theresa D. v. MBK Senior Living LLC*, 73 Cal. App. 5th 18, 26, 288 Cal. Rptr. 3d 87, 92 (Cal. Ct. App. 2021) (“*Rent-A-Center* does not support defendants’ position because it does not suggest that a party may be forced to submit to an arbitrator the existence, validity, or enforceability of an arbitration agreement if the party *has not agreed to do so*, either personally or through someone authorized to agree to arbitration on her behalf.”).

Ct. 1421, 197 L. Ed. 2d 806 (2017). Because Plaintiff disputes that a valid arbitration agreement was ever formed between the real parties to this dispute in the first place, this gateway issue must first be determined by the Court prior to determining whether any remaining issues such as arbitrability, enforceability, and scope may be delegated to an arbitrator. Virtually every jurisdiction to have ruled on this issue has unanimously found that under the FAA, questions of contract formation cannot be delegated to an arbitrator. *E.g.*, *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 234 (4th Cir. 2019) (“Section 4 thus requires that the district court – rather than an arbitrator – decide whether the parties have formed an agreement to arbitrate.”). The Facility, in attempting to discredit the case law previously cited by the undersigned for this proposition, such as *Naganuma v. Windsor Oakridge Healthcare Ctr.*, Case No. A162113, 2022 Cal. App. Unpub. LEXIS 939 (Cal. Ct. App. Feb. 16, 2022), fails to recognize that the rule is virtually universal. The Court was correct not to delegate the resolution of the Facility’s motion to an arbitrator.

II. There is no presumption of merger and in fact, when a nonsignatory is resisting arbitration, there is a presumption against arbitration and therefore merger.

In its motion, the Facility incorrectly argues that there is a presumption of merger under South Carolina law when documents are executed at the same time and for the same purpose, and that presumably any ambiguity in the contract documents demonstrative of the drafter’s intent therefore cannot be construed against the drafter. To be clear, South Carolina law has never held that there is an

evidentiary presumption of merger under any circumstances. Further, the Facility's argument makes little sense and misrepresents the language of *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014), as the merger rule makes clear that there is an exception to any presumption of merger when *anything* exists which would indicate a contrary intention. Ambiguity in the contract documents as to whether they merge or are standalone agreements is clearly *something* which could indicate contrary intent, and any such ambiguities within the contract documents should always caution against a finding of merger.

More importantly, South Carolina law explicitly provides that a presumption against arbitration (and by necessity, merger) arises where the parties resisting arbitration (here, the wrongful death beneficiaries and the estate) are nonsignatories to the written agreement to arbitrate. *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). The Facility's merger argument is of no moment either way because even if the arbitration agreement and the admission agreement did merge, Plaintiff in her representative capacity is not estopped from denying the formation of the arbitration agreement because she is not trying to enforce the terms of the arbitration or admission agreements, and the substance of the wrongful death and survival claims arise from common law duties and not the admission or arbitration agreements. *See Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 ("But 'when the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law,'

direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen "but for" the contract's existence.*").

III. There is no precedent, binding or persuasive, supporting the Facility's theory that Ms. Sullivan had "inherent" authority to waive rights belonging to the decedent, his estate, and his beneficiaries just because he executed a health care power of attorney designating Ms. Sullivan as his attorney-in-fact for health care decisions.

The Facility claims that it offered evidence to the Court demonstrating that Ms. Sullivan had apparent and "inherent" authority to sign the arbitration agreement on behalf of Mr. Rice, his estate, and the wrongful death beneficiaries. On its motion, the Facility only presented an executed health care power of attorney and its admission and arbitration agreements. As argued to the Court in Plaintiff's previous memorandum, none of these are representations made by Mr. Rice to the Facility concerning Ms. Sullivan's authority to enter an arbitration agreement such that they could be construed as evidence of apparent authority, and the Facility was therefore not entitled to a trial on the issue of authority under section 4 of the FAA. *See Moore v. N. Am. Van Lines*, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992) ("The basis of apparent authority is representations made by the principal to the third party and reliance by the third party on those representations.").

Perhaps sensing this, on reconsideration the Facility has primarily committed to its argument that Ms. Sullivan had some form of "inherent" authority to bind Mr. Rice, his estate, and his wrongful death beneficiaries to arbitration because she was his health care power of attorney. Under the Facilities inherent authority theory, because Ms. Sullivan was authorized to make health care

decisions on his behalf, she also had authority to take actions incidental to those decisions, which would include entering arbitration agreements. This argument has been flatly rejected by the Court of Appeals and the Supreme Court numerous times. *E.g.*, *Hodge v. UniHealth Post-Acute Care of Bamberg*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016). Likewise, the Facility's alternative argument that a health care power of attorney creates apparent authority for an attorney-in-fact to enter arbitration agreements is just an end-run around the holdings from cases such as *Hodge* and *Thompson*.

Besides, nowhere within the subject HCPOA does it ever purport to give broad authority to Ms. Sullivan to commence legal proceedings or waive legal rights. The HCPOA, which is the standard form codified by S.C. Code Ann. § 62-5-504, is strictly confined to only permit the attorney-in-fact to make health care decisions. Under the Facility's argument, an attorney-in-fact would have expansive, unchecked authority to do a multitude of acts not encompassed within the HCPOA just because those acts are tangentially related to health care and someone mistakenly believed that the agent had such authority. The Facility's rule turns the entire apparent authority analysis on its head by placing a premium not on what the principal manifested to the opposing party, but instead on what the opposing party claims that it believed.

CONCLUSION

The Court's order is not in error. A health care facility cannot bind nonsignatories to arbitration agreements without mutual assent. For these reasons and those set forth in Plaintiff's previous memorandum and at the hearing on the Facility's motion to compel, the Plaintiff respectfully requests that the Court deny the Facility's motion for reconsideration.

PARKER LAW GROUP, LLP

BY: /s/ John E. Parker, Jr.

Lee D. Cope
SC Bar No. 14361
League B. Creech
SC Bar No. 72755
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Hampton, SC 29924
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ATTORNEYS FOR THE PLAINTIFF

October 22, 2025
Hampton, South Carolina

RECEIVED

Nov 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-02077

Ashanti Sullivan, as Personal
Representative of the Estate of
Harold Rice,

Respondent,

v.

Simpsonville Community
Healthcare, LLC d/b/a
Simpsonville Post Acute,

Appellant.

NOTICE OF APPEAL

Appellant Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute (“Appellant”) appeals the order of the Honorable William C. McMaster, III entered on September 26, 2025 (the “Order”) and the order of the Honorable William C. McMaster, III entered on October 24, 2025 (the “Order on Motion to Reconsider”). Appellant received written notice of entry of the Order on September 26, 2025, and served and filed a timely motion to reconsider the Order on October 6, 2025. Appellant received written notice of entry of the Order on Motion to Reconsider on October 24, 2025.

BURR & FORMAN, LLP

s/Daniel S. McQueeney, Jr.

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115 Fairchild Street, Suite 200
Ph. 843.341.4918
*Attorneys for Appellant
Simpsonville Community
Healthcare, LLC d/b/a
Simpsonville Post Acute*

November 7, 2025
Charleston, South Carolina

RECEIVED

Nov 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-02077

Ashanti Sullivan, as Personal
Representative of the Estate of
Harold Rice,

Respondent,

v.

Simpsonville Community
Healthcare, LLC d/b/a
Simpsonville Post Acute,

Appellant.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, and Order No. 2024-04-24-01(d), I certify that I have served the Notice of Appeal on Respondent Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice (the "Respondent"), by electronic mail to the Respondent's counsel of record utilizing counsel's primary email address listed in the Attorney Information System, on November 7, 2025, as follows:

- (1) Lee Deer Cope at lcope@parkerlawgroupsc.com;
- (2) League Creech at lcreech@parkerlawgroupsc.com; and
- (3) John Elliott Parker, Jr. at jayparker@parkerlawgroupsc.com

See Exhibit A, attached hereto and incorporated herein by reference.

BURR & FORMAN, LLP

s/Daniel S. McQueeney, Jr.
Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 6802
Email: cmcqueeney@burr.com
115 Fairchild Street, Suite 200

Ph. 843.341.4918
*Attorneys for Appellant
Simpsonville Community
Healthcare, LLC d/b/a
Simpsonville Post Acute*

November 7, 2025
Charleston, South Carolina

EXHIBIT A

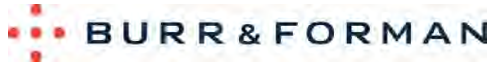
McQueeney, Chip

From: McQueeney, Chip
Sent: Friday, November 7, 2025 10:23 AM
To: 'jayparker@parkerlawgroupsc.com'; 'lcreech@parkerlawgroupsc.com';
'lcope@parkerlawgroupsc.com'
Cc: Crites, J. Bennett; Stewart, Nick; Tabrizian, Cameron
Subject: Notice of Appeal in Case No. 2025-CP-23-02077, Sullivan v Simpsonville Community
Healthcare, LLC
Attachments: Notice of Appeal(63507261.2).pdf; Order - Motion to Dismiss_Stay_Compel_Protection
Denied(62885323.1).pdf; Order Form 4 - Motion to Reconsider Denied(63324696.1).pdf

Attached for service upon you, please find the notice of appeal in the above-referenced matter, as well as copies of the orders being appealed. I will plan to copy you on my email to the Court of Appeals filing the attachments. Please let me know if you have any questions or concerns.

Thanks.

Chip McQueeney
S.C. Bar No. 6802



Burr & Forman LLP
115 Fairchild Street, Suite 200
Daniel Island, SC 29492

Tina Nestor
tnestor@burr.com
Direct Dial: 843.973.6825
Direct Fax: 843.973.6825

Office 843.972.6177
BURR.COM

October 10, 2025

VIA CERTIFIED MAIL

Prisma Health Records Custodian
(Greenville Memorial Hospital)
c/o Prisma Health Legal Affairs
[REDACTED]
Greenville, SC 29601
[REDACTED]

Re: Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice v.
Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute
Civil Action No. 2025-CP-23-05077
Client No. 0051272.158

Dear Madam/Sir:

This law firm represents the Defendant in the above-referenced matter. Enclosed is a Subpoena for a complete copy of the requested documents.

This is not a subpoena for medical records, only documents that relate to the transfer of decision making powers for Harold Rice, as listed in Exhibit A of the subpoena.

Please return the documents, **along with a signed and notarized Affidavit of Records Custodian** stating that the copies are a true, accurate and complete copy of all of the requested documents, as kept in the normal course of business. These documents must be received by this office on or before **Wednesday, October 22, 2025**. We will, of course, pay for any reasonable expenses incurred in complying with our request. However, should the fee exceed \$200.00, please contact me first for approval. If you have additional questions pertaining to the release of these records, please contact me at 843.973.6825 / tnestor@burr.com.

Very truly yours,

Tina Nestor
Paralegal to Cameron A. Tabrizian

Enclosures

cc: Lee D. Cope, Esquire (via email)

AL • DE • FL • GA • MS • NC • SC • TN

STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice,

Plaintiff,

SUBPOENA DUCES TECUM

v.

Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute,

Case Number: 2025-CP-23-02077

Defendant.

Pending in Greenville County

TO: Prisma Health Records Custodian (Greenville Memorial Hospital) c/o Prisma Legal Affairs

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

Table with 2 columns: PLACE OF TESTIMONY, COURTROOM. Row 1: PLACE OF TESTIMONY, COURTROOM. Row 2: DATE AND TIME, AM

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

Table with 2 columns: PLACE OF DEPOSITION, DATE AND TIME. Row 1: PLACE OF DEPOSITION, DATE AND TIME. Row 2: DATE AND TIME, AM

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects: SEE ATTACHED EXHIBIT "A").

Table with 2 columns: PLACE, DATE AND TIME. Row 1: PLACE (Burr & Forman LLP, 115 Fairchild Street, Suite 200, Daniel Island, SC 29492), DATE AND TIME (Wednesday, October 22, 2025 by 4:00 p.m.)

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Table with 2 columns: PREMISES, DATE AND TIME. Row 1: PREMISES, DATE AND TIME. Row 2: DATE AND TIME, AM

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

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

Handwritten signature of Cameron A. Tabrizian

10/10/2025

Cameron A. Tabrizian

Attorney/Issuing Officer's Signature Attorney for Defendant Greenville Post Acute, LLC

Date

Print Name

Attorney's Address and Telephone Number : Burr & Forman LLP, 115 Fairchild Street, Suite 200, Daniel Island, SC 29492, 843.973.6825

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE [REDACTED] Greenville, SC 294601	
SERVED ON Prisma Health Records Custodian (Greenville Memorial Hospital), c/o Prisma Legal Affairs		MANNER OF SERVICE <i>Certified Mail Return Receipt Requested</i>
SERVED BY Tina Nestor		TITLE <i>Paralegal</i>

DECLARATION OF SERVER

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

Executed on _____

SIGNATURE OF SERVER

Tina Nestor
Burr & Forman LLP
115 Fairchild Street, Suite 200
Daniel Island, SC 29492

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

(c) Protection of Persons Subject to Subpoenas.

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

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

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

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

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

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

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

(iv) subjects a person to undue burden.

(B) If a subpoena:

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

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

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

(d) Duties in Responding to Subpoena.

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED

EXHIBIT "A"

1. **Power of Attorney Documents, including but not limited to General Power of Attorney, Limited Power of Attorney, Springing Power of Attorney, Financial Power of Attorney, Health Care Power of Attorney and any other document partially or completely transferring decision making powers from Harold Rice to any other person or entity;**

2. **Advance Directives;**

3. **Living Wills and Testamentary Wills;**

4. **Conservatorships;**

5. **Guardianships;**

6. **Trusts; and**

7. **Any other contract or document purporting to transfer any or all decision making power from HAROLD RICE, DOB: [REDACTED], SSN XXX-XX-[REDACTED], to any other person or entity.**

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Plaintiff, vs. Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Defendant.	CASE NO: 2025-CP-23-02077 AFFIDAVIT OF RECORDS CUSTODIAN

The undersigned, hereby certifies that the enclosed documents are a complete, true and accurate copy of the records as kept in the normal course of business at Greenville Memorial Hospital.

SIGNED: _____
POSITION: _____
TODAY'S DATE: _____
COMPANY NAME: _____
ADDRESS: _____

SWORN to before me this
____ day of _____ 2025

Notary Public for _____
My Commission Expires: _____

Nestor, Tina

From: Nestor, Tina
Sent: Friday, October 10, 2025 11:46 AM
To: Lee Cope; Shanna Jarrell
Cc: Tabrizian, Cameron
Subject: Sullivan/Rice v. Simpsonville Post Acute
Attachments: 10-10-25 GMH - SDT for non-medical records.pdf

Good morning, Lee and Shanna –

See attached subpoena to Greenville Memorial Hospital regarding the above matter.

Have a great weekend!

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties 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
May 22 2026
SC Court of Appeals

Respectfully submitted,
BURR & FORMAN LLP

s/ Cameron Tabrizian
J. Bennett Crites, III, SC Bar No. 71695
Daniel S. "Chip" McQueeney, Jr., SC Bar No. 101250
Nicholas C.C. Stewart SC, Bar No. 102434
Cameron Tabrizian, SC Bar No. 106448
115 Fairchild Street, Suite 200
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(843) 973-6814
Attorneys for Appellant

May 6, 2026
Charleston, South Carolina