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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2023-CP-28-00524
Appellate Case No. 2025-001943

Lynn Marie Sanborn
as Personal Representative of the Estate of Shirley Mallory,

Respondent,

v.

Palmetto Springdale Operating, LLC, d/b/a Springdale Healthcare Center
and Ashley Lloyd,

Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A No. 2023-CP-28-00524
	)	
Lynn Marie Sanborn as Personal	)	
Representative of the Estate of Shirley	)	
Mallory,	)	
	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANTS'
	)	MOTION TO STAY AND COMPEL
Versus	)	ARBITRATION
	)	
Palmetto Springdale Operating, LLC d/b/a	)	
Springdale Healthcare Center and Ashley	)	
Lloyd,	)	
	)	
Defendants.	)	

This matter was before the Court on Thursday, July 17, 2025 in Kershaw County, South Carolina, upon Defendants Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd's Motion to Dismiss and Compel Arbitration. Oral argument was conducted in person. Attorney Stuart Hudson of Hughey Law Firm, LLC was present representing the interests of the Plaintiff. Attorney Matthew Riddle of Clement Rivers, LLP was present representing the interests of the Defendants. For the following reasons set forth herein, the Defendants' Motion to Dismiss and Compel Arbitration is hereby DENIED.

FACTS

Shirley Mallory was admitted to the Defendants' assisted living facility on or around January 24, 2020. The Defendants operate a long term care facility, licensed by the South Carolina Department of Health and Environmental Control, subject to R.61-17. Plaintiff alleges that while Shirley Mallory was a resident and under the Defendants' care, she was allowed to suffer a fall causing numerous injuries, leading to her decline and eventual death. Defendants are asking the court to bind Shirley Mallory to an Arbitration Agreement which was signed her daughter Lynn Sanborn, even though Lynn Sanborn did not have authority, in any manner, to waive Shirley Mallory's constitutional right to a jury trial and/or bind her to an Arbitration Agreement.

STANDARD OF REVIEW

A parties' right to a jury trial in South Carolina is governed by state law. Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978). While the Federal Arbitration Act (“FAA”) imposes a presumption favoring arbitration, the presumption does not apply to the “identity” of the parties who may be bound to such an agreement. Wilson v. Willis 426 S.C. 326, 335 827 S.E.2d 167, 179 (2019). In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. Id. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement to arbitrate exists in the first place...If no agreement is found to exist, the court must deny any application to arbitrate.” Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) citing S.C. Code Ann. § 15-48-20(a) (2005). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

In determining whether an agreement to arbitrate exists, “the court should apply ‘ordinary state-law principles that govern the formation of contracts.’” Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. THERE IS NOT AN ENFORCEABLE ARBITRATION AGREEMENT

a. Shirley Mallory's Health Care Power of Attorney Did Not Authorize Lynn Sanborn to Execute the Arbitration Agreement.

The exact issue before the court regarding the authority Lynn Sanborn had via the HCPOA (see Lynn Sanborn's filed Affidavit) with respect to Shirley Mallory and as a result her ability to bind her to an Arbitration Agreement and thereby waiving her constitutional right to a jury trial was recently addressed by the South Carolina Supreme Court in the case of Arredondo v SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 856 S.E.2d 550 (2021)(Attached hereto as "Exhibit B"). In Arredondo, SNH SE Ashley River Tenant, LLC ("Ashley River") was an assisted living facility. Once the resident, Hubert Whaley, was admitted to Ashley River an Arbitration Agreement was signed by Whaley's GDPOA and HCPOA, Thayer Arredondo. As in this case, it was not necessary for Thayer or Arredondo to sign the Arbitration Agreement in order for the resident Thayer to be admitted to the assisted living facility and be provided care. In Arredondo, the Court stated "[o]ur courts have looked to contract law when reviewing actions to set aside or interpret a power of attorney. The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties, and, in determining that intention, the court looks to the language of the contract. When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Accordingly, we look to the specific language of the GDPOA and HCPOA to determine whether either document authorized Arredondo to execute a pre-dispute arbitration agreement.*" *Id.* at 75 (emphasis added)(citations and quotations omitted). In addressing the GDPOA, the South Carolina Supreme Court in Arredondo stated "we look to the actual language of the GDPOA to determine what authority it granted Arredondo. While the GDPOA gave Arredondo significant authority to make business and property decisions for Whaley, the mere title of the document did not increase Arredondo's authority beyond the plain meaning of the provisions contained in the document." *Id.* at 80.

The South Carolina Supreme Court in Arredondo also addressed the authority granted by Health Care Power of Attorney (“HCPOA”). In addressing this issue, the Court stated, “Arredondo clearly had no authority to take any action under the first clause of subparagraph 11(d) unless the action taken was necessary to making, documenting, and assuring implementation of a decision concerning Whaley's health care. The only health care decision in play when Arredondo signed the arbitration agreement was Arredondo's decision to seek Whaley's admission into the facility. Consequently, we must determine whether signing the arbitration agreement was necessary to Arredondo making, documenting, and assuring implementation of that decision. Id. at 81. After its analysis, the Court held, “[t]he plain, ordinary, and popular meaning of the word 'necessary' is 'absolutely needed' or 'required.' We hold Arredondo's signature on the arbitration agreement was not 'absolutely needed' or 'required' to ensure Whaley's admission into the facility.” Id.

The same holding in Arredondo is applicable with regard to Shirley Mallory. Mallory's HCPOA applies only to healthcare decisions and did not grant Lynn Sanborn the authority to bind Shirley Mallory to arbitration agreements or waive her constitutional rights to a jury trial. Paragraph 4, subpart D of Mallory's HCPOA, states the following:

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

As in Arredondo this provision only authorized Lynn Sanborn to take these actions if ‘necessary’ for Shirley Mallory's healthcare. It was not necessary for Lynn Sanborn to sign Defendants' Arbitration Agreement in order for Shirley Mallory to be admitted to the Defendants' facility and receive nursing care. The Arbitration Agreement was optional. Just like Arredondo, Lynn Sanborn was only authorized to take necessary actions for Shirley Mallory's healthcare, signing the Arbitration Agreement was not necessary for Shirley Mallory's healthcare. Accordingly, Lynn

Sanborn DID NOT have the authority to sign the Arbitration Agreement and/or waive Shirley Mallory's constitutional right to a jury trial. As a result, with respect to the HCPOA, the Arbitration Agreement is not enforceable.

b. A Residency Agreement and an Arbitration Agreement are two separate Agreements, and one cannot be bound by the other. Accordingly, there is no equitable estoppel applicable in this matter.

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

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

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). A decision to admit a resident to a community residential care facility such as the Defendants' is a healthcare decision. As such, signing an Admission Agreement to a skilled nursing facility is a healthcare-related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an Admission Agreement involves making a healthcare decision, and an Arbitration Agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

This exact matter was also recently decided by the South Carolina Court of Appeals in Solesbee v. Fundamental Clinical And Operational Services, LLC d/b/a Magnolia Manor-Inman, where the Appellants, Magnolia Manor-Inman (“Magnolia”), argued the Arbitration Agreement merged with the Admission Agreement because merger is presumed when the instruments in question are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. Solesbee v. Fundamental Clinical And Operational Services, LLC d/b/a Magnolia Manor-Inman, 438 S.C. 638, at 647 (S.C. App. 2023). Under very similar facts to this case, the Court held “there was no merger in this case and Magnolia's equitable estoppel argument was properly denied.” Id. at 649.

The same is true here, there was no merger of the Admission Agreement and Arbitration Agreement and the Defendants’ equitable estoppel argument is denied.

c. Plaintiff did not Possess Statutory Authority to Bind Shirley Mallory under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

In addition to the Arredondo case discussed above, the South Carolina Adult Health Care Consent Act (“AHCCA”), defines “health care” as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care.” Id. A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for a patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

- (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:
- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

- (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
- (3) a person given priority to make health care decisions by another statutory provision;
- (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;
 - b. formal signing of a written property or marital settlement agreement; or
 - c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (6) a parent of the patient;
- (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
- (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
- (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendants have put forth no evidence that Shirley Mallory, the principle, held Lynn Sanborn out as her agent with the authority to bind her to an Arbitration Agreement or waive her constitutional right to a jury trial. Lynn Sanborn has testified by Affidavit that she was not Shirley Mallory's agent with authority to bind her to an Arbitration Agreement or waive her constitutional right to a jury trial. Additionally, the AHCCA only deals with "health care" related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word "legal" or "arbitration" mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The case of Coleman v. Mariner Health Care, et al., 407 S.C. 346, 755 S.E.2d 450 (2014), addresses the AHCCA. The Court in Coleman held that the sister of a nursing home resident could not bind the resident to an Arbitration Agreement at the time of admission, and that the Arbitration Agreement was not valid because it exceeded the scope of the sister's authority under the AHCCA. According to the Court, AHCCA specifically limited surrogates' authority to making health care decisions and associated financial arrangements. Arbitration is not a health care or related financial decision, and thus exceeds the authority granted by the AHCCA. Id. At 351-52,

755, S.E. 2d at 453.

The Court of Appeals also addressed this issue in Solesbee, holding “the Act was never meant to affect anything other than health care decisions and the Arbitration Agreement was not a health care decision because Solesbee could get the health care services covered in the Admission Agreement without agreeing to arbitrate.” Solesbee v. Fundamental Clinical And Operational Services, LLC d/b/a Magnolia Manor-Inman, 438 S.C. 638, at 650 (S.C. App. 2023). Therefore Dover, the person who signed the Arbitration Agreement, “did not have any authority to sign the Arbitration Agreement for Solesbee via the Act or a power of attorney.” Id.

ii. **S.C. Bill of Rights for Residents of Long-Term Care Facilities**

South Carolina Bill of Rights for Residents of Long-Term Care Facilities is codified in S.C. Code Ann. §44-81-10, et seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin, or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(3). This is substantially the same as the AHCCA. Under the Bill of Rights, decision making is limited to health care decisions, not legal decisions.

II. The Federal Arbitration Act (FAA) Does Not Mandate Enforcement of this Agreement.

Under the FAA, arbitration is required when there is a valid Arbitration Agreement and a dispute exists which is within the scope of the Agreement. Under the arbitration clause, neither prong is satisfied. As discussed, there is no valid Arbitration Agreement because Lynn Sanborn did not have the legal authority to execute a valid Arbitration Agreement. Second, Plaintiff’s claims include negligence, negligence per se, wrongful death and survivorship. Nowhere in the Defendants’ Arbitration Agreement are those causes of action listed. Accordingly, the FAA does not apply.

III. There is No Need for Limited Jurisdictional Discovery as The Parties had Already Agreed to Conduct Full Discovery Prior to The Motion to Dismiss Being Heard and It Would Have No Effect on This Determination.

The parties agreed to conduct discovery prior to the motion being filed and determined therefore, limited jurisdictional discovery is moot. Additionally, the Court of Appeals in Solesbee also addressed this issue holding “[b]ecause we find the trial court correctly held there was no merger of the Agreements and Magnolia's equitable estoppel argument was properly denied, we also find the court did not err in denying its request for further discovery when it would not have changed the result. Solesbee v. Fundamental Clinical And Operational Services, LLC d/b/a Magnolia Manor-Inman, 438 S.C. 638, at 651 (S.C. App. 2023). The same applies here and the Defendants request for limited Jurisdictional Discovery is denied.

CONCLUSION

Based on the reasons set forth above, the Court respectfully DENIES the Defendants’ Motion to Dismiss and Compel Arbitration.

IT IS SO ORDERED.



Kershaw Common Pleas

Case Caption: Lynn Marie Sanborn Pr , plaintiff, et al VS Palmetto Springdale
Operating, Llc , defendant, et al
Case Number: 2023CP2800524
Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800524

Lynn Marie Sanborn Pr et al
PLAINTIFF(S)

Palmetto Springdale Operating, 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter is before the Court on Defendants' Motion for Reconsideration pursuant to Rule 59(e) SCRCP ("the Motion"), which was timely filed on August 18, 2025. The Motion asks this Court to alter, amend, or reconsider its Order denying Defendant's motion to compel arbitration, entered August 7, 2025. After reviewing the applicable law and considering arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Therefore, the Motion to Alter, Amend, or Reconsider is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/21/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Kershaw Common Pleas

Case Caption: Lynn Marie Sanborn Pr , plaintiff, et al VS Palmetto Springdale
Operating, Llc , defendant, et al

Case Number: 2023CP2800524

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

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July 20, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A No.
	)	
Lynn Marie Sanborn as Personal Representative of the Estate of Shirley Mallory,	)	
	)	
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Demanded)
Versus	)	
	)	
Palmetto Springdale Operating, LLC d/b/a	)	
Springdale Healthcare Center and Ashley Lloyd,	)	
	)	
Defendants.	)	

The Plaintiff, Lynn Marie Sanborn as Personal Representative of the Estate of Shirley Mallory, complaining of the Defendants, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd ("Defendants"), alleges as follows:

1. The Plaintiff is a citizen and resident of Kershaw County, South Carolina.
2. Upon information and belief, the Defendant, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center, is a business corporation organized and existing pursuant to the laws of the State of Delaware which conducts business in Kershaw County, South Carolina at 146 Battleship Road, Camden, South Carolina.
3. Upon information and belief, the Defendant, Ashley Lloyd, is a citizen and resident of Kershaw County, South Carolina and is the administrator of Springdale Healthcare.
4. The Defendants had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through skilled nursing facilities and they are personally, jointly and severally liable for the acts and omissions committed.
5. The Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the residency of Shirley Mallory.
6. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.

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

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

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

9. On the application for the license in effect at the time of Shirley Mallory's injury, Springdale Healthcare Center, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-17 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Shirley Mallory's injury.

10. The State of South Carolina required that Springdale Healthcare Center have policies and procedures that accurately reflected actual practice regarding care, treatment, procedures, and services - including nursing services, the operation of the facility, and how Springdale Healthcare Center was going to meet the specialized needs of the residents with Alzheimer's disease and/or related dementia such as Shirley Mallory - and the State of South Carolina required that Springdale Healthcare Center make the policies and procedures available be accessible to staff. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

11. The State of South Carolina required that Springdale Healthcare Center have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Shirley Mallory, based on assessment data, e.g., social services, which was to be implemented for the benefit of Shirley Mallory as well as other residents. Springdale Healthcare Center acknowledged its

awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

12. The State of South Carolina required that Springdale Healthcare Center keep a record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, and directed that it was required to be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

13. Shirley Mallory's injuries constituted reportable incidents.

14. The State of South Carolina required that Springdale Healthcare Center keep a legible and complete medical record, to include and any all incidents involving Shirley Mallory as well as other residents. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

15. The State of South Carolina required Springdale Healthcare Center to describe in its care plan for Shirley Mallory as well as other residents the services that Springdale Healthcare Center was going to furnish to her, *i.e.*, what assistance Springdale Healthcare Center was going to provide to her, how much assistance Springdale Healthcare Center was going to provide to her, who at Springdale Healthcare Center was going to provide the assistance, how often, and when. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

16. The State of South Carolina required that Springdale Healthcare Center to administer treatment and services to Shirley Mallory as well as other residents in a caring and humane manner, *effectively* and *safely*, and staff were required to respond to a signal system call from a resident to provide care or assistance in a prompt manner. Springdale Healthcare Center acknowledged its awareness of this

requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

17. The State of South Carolina required Springdale Healthcare Center to provide appropriate staff members in numbers and training to perform those duties that result in compliance with 61-17, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise, and to provide training and qualifications for the tasks performed in compliance with all State, Federal, and local laws, and current professional organizational standards. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

18. The State of South Carolina required Springdale Healthcare Center to ensure that staff members Direct care staff members, in addition to meal service staff have at least the following qualifications: ability to render care and services to residents in an understanding and gentle manner; sufficient education to be able to perform their duties and have a working knowledge of regulations applicable to their scope of work. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

19. The State of South Carolina required Springdale Healthcare Center to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs and that direct care staff be assigned only duties for which they are trained. Further, the State of South Carolina required Springdale Healthcare Center to have licensed nurse staff members currently and continuously licensed to practice nursing in South Carolina during the period they are staff members, and that only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse. Springdale Healthcare Center acknowledged its

awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

20. The State of South Carolina required Springdale Healthcare Center to have an adequate number of licensed nurses be on duty to meet the total nursing needs of residents. Licensed nursing staff were required to be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

21. The State of South Carolina required Springdale Healthcare Center to ensure staff members were provided the necessary training to perform the duties for which they were responsible and that, before performing any duties, all newly-hired staff members were to be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members were to be instructed in the provisions of S.C. Code Ann. Section 43-35-5 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in 61-17. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

22. The State of South Carolina required Springdale Healthcare Center to ensure all staff were provided inservice training programs that identify training needs related to problems, needs, care of residents and infection control and were sufficient to assure staff's continuing competency. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

23. The State of South Carolina required Springdale Healthcare Center to acknowledge its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

24. The State of South Carolina required Springdale Healthcare Center to ensure all entries in the resident record were legible and complete, and separately authenticated and dated promptly by the individual, identified by name and discipline, responsible for providing or evaluating the service or care furnished. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

25. The State of South Carolina required Springdale Healthcare Center to admit only individuals identified as appropriate for the level of care, services, or assistance offered. The facility was required to establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations, and permitted to admit and retain only those individuals whose needs could be met by the accommodations and services for which the facility is licensed. Anyone who had a need for medical care for acute illness or injury that was beyond the scope of the facility to provide, and where hospitalization was consistent with the individual's condition was not permitted to be retained as a resident. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

26. The State of South Carolina required Springdale Healthcare Center to have practices that promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices were required to be in compliance with applicable regulations and guidelines of the Occupational Safety and Health Administration, *e.g.*, the Bloodborne Pathogens Standard; the Centers for Disease Control and Prevention, *e.g.*, Immunization of Health-Care Workers: Recommendations of the Advisory Committee

on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's South Carolina Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable State, Federal and local laws and regulations. The State of South Carolina required Springdale Healthcare Center to have an infection control/QI committee that meets at least annually to address infection control issues consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping staff to assure compliance with 61-17 regarding infection control. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

27. The State of South Carolina required Springdale Healthcare Center to have a written, implemented quality improvement program that provided effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility. Springdale Healthcare Center acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

28. Shirley Mallory was admitted to the Defendants' facility, Springdale Healthcare Center, on or about January 24, 2020.

29. While at the facility, Ms. Mallory was allowed to suffer a fall on or about June 25, 2021, which resulted in injuries, as well as her death.

30. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent nursing home care to Shirley Mallory.

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

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

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

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

35. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to Shirley Mallory.

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

FOR A FIRST CAUSE OF ACTION
(Negligence)

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

38. The Defendants undertook the duty to render nursing home care to Shirley Mallory in accordance with the prevailing and acceptable professional standards of care for nursing homes and their employees and agents in the national community and as further required by the state and federal laws applicable to the same.

39. Notwithstanding undertaking that duty and while Shirley Mallory was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and

treatment of Shirley Mallory and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Shirley Mallory, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to comply with those provisions of 61-17 recited above and to which the Defendants' swore under oath subject to penalty of perjury that they would comply;
- b. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- c. In failing to properly supervise the personnel and staff and employees at the Defendants' facility with regard to Shirley Mallory's care;
- d. In failing to properly revise and modify plans of care for Shirley Mallory in response to Shirley Mallory's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of Shirley Mallory, so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Shirley Mallory from suffering from injury and pain;
- h. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of fall prevention issues at the Defendants' facility, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper fall prevention;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate fall prevention procedures were available to agents, servants and employees of the Defendants;
- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- l. In failing to ensure that Shirley Mallory had proper care;
- m. In failing to properly document significant clinical findings;

- n. In failing to properly document the medical records of Shirley Mallory;
- o. In failing to follow and ensure that its employees follow the South Carolina Residence Bill of Rights for Long Term Care Facilities, South Carolina Department of Health and Environmental Control Regulation 61-17;
- p. In failure to provide sufficient number of personnel to meet the needs of residents;
- q. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;
- r. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- s. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- t. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- u. In failing to notify family members or authorities after incidents;
- v. In failing to transfer Shirley Mallory to a higher level of care as needed, and
- w. In such other particulars as may be ascertained through discovery or shown at trial.

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

FOR A SECOND CAUSE OF ACTION
(Negligence per se)

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

42. The Defendants are a long term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

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

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

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

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

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

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

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

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendants would adequately staff the skilled nursing facility and she would enjoy confident and adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to her;

- d. Such other misrepresentations as may be set forth above in this Complaint or as may later be set forth;

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

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

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

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

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

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

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

56. As a result of the Defendants' fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

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

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

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

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

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

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

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

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

h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Negligence - Wrongful Death)

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

68. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, Shirley Mallory suffered from severe debilitating injuries which resulted in her death, as a result of which Shirley Mallory's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, the likes of which no person should endure, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et.

seq., Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A SIXTH CAUSE OF ACTION
(Negligence - Survivorship)

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

70. Shirley Mallory's estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, has incurred expenses in the form of funeral and burial expenses. The Plaintiff is further informed and does believe that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, as stated, Shirley Mallory suffered fear, physical pain, and suffering, medical expense and mental and emotional distress and anguish in the time before her death, for which Shirley Mallory's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

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

HUGHEY LAW FIRM, LLC

s/ A. Stuart Hudson

D. Nathan Hughey (SC Bar #68409)

A. Stuart Hudson (SC Bar #71691)

Bradley H. Banyas (SC Bar #101668)

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Attorneys for Plaintiff

July 20, 2023

Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

) C/A No.

**Lynn Marie Sanborn as Personal
Representative of the Estate of Shirley
Mallory,**

Plaintiff,)

**AFFIDAVIT OF CHARLOTTE SHEPPARD,
DNP, RN-BC, LHRM, WCC, CNEcl**

Versus

**Palmetto Springdale Operating, LLC d/b/a
Springdale Healthcare Center and Ashley
Lloyd,**

Defendants.)

1. My name is Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl and I am over the age of eighteen, of sound mind and otherwise competent to make this Affidavit, which I make based upon my background, education, training, and experience. This affidavit is also based upon my own personal knowledge.

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

3. I have actual professional knowledge and experience in my area of practice, Registered Nursing, including my specialty within this area, which is nursing home and long term care. In addition to the above, I have been in the active practice of the area of my specialty, in the profession of Registered Nursing in the State of Florida for at least three of the last five years preceding this opinion.

4. I am familiar with the standard of care applicable to the Defendants' during the time of Shirley Mallory's residency in the Defendants' facility, and the standard of care and skill exercised by reasonably prudent facilities, management companies, operating companies, and other healthcare providers under similar conditions as those involving Shirley Mallory.

5. I have reviewed records and / or documents relating to Shirley Mallory from the facilities where Shirley Mallory was treated. Based on my review of these records, I find that there is at least one deviation from the standard of care on behalf of the Defendants during her residency.

6. Without limitation, my review of records and/or documents relating to Shirley Mallory show the following:

- Shirley Mallory was admitted to Springdale Healthcare Center on or about January 24, 2020.

- On or about June 25, 2021, Ms. Mallory was allowed to suffer a fall which resulted in injuries, as well has her death.

7. In my professional opinion, the Defendants deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding circumstances as those presented by Shirley Mallory. In particular, in my opinion, without limitation, the Defendants deviated from the standard of care in the following particulars:

- Failing to properly monitor Shirley Mallory;
- Failing to appropriately care plan for Shirley Mallory;
- Failing to prevent falls;
- Failing to place interventions as necessary to prevent Shirley Mallory from suffering falls;
- Failing to timely address injuries by Shirley Mallory;
- Failing to properly supervise the nurses, administrators, physicians, and other agents and employees,
- And other particulars.

8. Additionally, it is my opinion that Shirley Mallory's injuries were proximately caused by the Defendants' deviations.

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

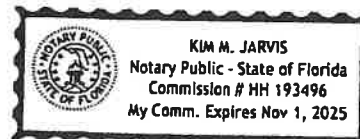
Charlotte Sheppard
Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl

Sworn to me this 8th day of Aug, 2022.

Kim M. Garies

Notary Public for Florida

My commission expires: Nov. 1, 2025



Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl

8419 Spring Forest Lane
 Wesley Chapel, FL 33544
 csheppard1@me.com
 (813) 960-4379

EXPERIENCE**Galen College of Nursing, St. Petersburg, FL*****Instructor of Nursing*****5/01 – Present**

Provide nursing education to students through theory based educational processes and clinical instruction. Education and clinical preparation of students in the practice of nursing for acute care hospitals, long-term care facilities and other nursing practice settings.

Independent Nurse Consultant***Nurse Consultant*****12/98 – Present**

Evaluation and identification of appropriate standards of care for specific settings. Providing consultation in record review, quality care improvement, staffing analysis, resident and patient placement, staff training and risk control.

Baldomero Lopez State Veterans' Nursing Home, Land O' Lakes, FL***Staff Nurse, Charge Nurse, Nursing Supervisor*****2/03 – 7/08**

The provision and supervision of medication and treatment administration. Direct supervision of all patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary/nursing process including assessment, planning, implementation and evaluation of each resident's individualized needs.

Manor Care of Carrollwood, Tampa, FL***RN Supervisor*****12/00 – 1/03**

Direct supervision of patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary process. Provision and supervision of medication and treatment administration. Daily evaluation and staffing development in-patient care areas

RheoTherapy Centers of Tampa Bay, Largo, FL***Staff Nurse*****12/97 – 3/99**

Responsibilities included, assessments and total patient care of geriatric population, initiating and terminating apheresis procedures, continuous patient monitoring including telemetry, monthly QI and QA projects as responsible for overseeing equipment maintenance in the patient care setting. Developed policy and procedure manual in conjunction national physician advisory panel.

FirstStat Nursing Services, Tampa FL***Staff Nurse*****07/95 – 09/97**

Duties included pediatric and adult/geriatric in home critical care services. Delivery of services to patients requiring specialized assessment related to G-Tubes, Pacemakers, tracheostomies, and ventilators. Temporary nurse staffing in Pinellas, Pasco and Hillsborough counties.

Vivra Renal Care, Largo, FL

Preceptor/Staff Nurse

11/94 – 12/97

Responsibilities included provision of hemodialysis treatments, in-service training and monthly employee education, coordinate quality improvement program, coordinate staff assignments as well as patient scheduling. Develop, implement and reassess interdisciplinary patient care plans. Accomplishments included development and implementation of statewide home hemodialysis program.

St. Petersburg Healthcare Center, St. Petersburg, FL

Charge Nurse

8/94 – 7/95

Responsibilities included CNA assignments, total resident assessment and care delivery, supervision of staff, delivery of medications and treatments and participation in the interdisciplinary care planning process.

EDUCATION

Duquesne University, Pittsburgh, PA

2021 - Doctorate of Nursing Practice

**Sigma Theta Tau, Epsilon Phi Chapter at Large / International Honor Society of Nursing

Capella University, Minneapolis, MN

2017 - Master of Science in Nursing

**With Distinction / Specialization: Nursing Education

University of Tampa, Tampa, FL

2001 - Bachelor of Science in Nursing

**Sigma Theta Tau, Delta Beta Chapter at Large / International Honor Society of Nursing

University of New York/ Regents College, Albany, NY

2000 - Associates Degree in Nursing

The Health Institute of Tampa Bay, St. Petersburg, FL

1994 - Practical Nurse Certification

LICENSURE, CERTIFICATIONS and MEMBERSHIPS

- o Multistate Registered Nurse Licensure
- o American Nurses Association, Florida Nurses Association
- o Assisted Living Facility Administrator Certification
- o Board Certification in Gerontological Nursing
- o Florida Health Care Risk Manager Licensure
- o Wound Care Certification / National Alliance of Wound Care
- o Academic Clinical Nurse Educator Certification / National League of Nursing

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
LYNN MARIE SANBORN AS	)	CASE NO. 2023-CP-28-00524
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF SHIRLEY	)	
MALLORY,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT PALMETTO SPRINGDALE
	)	OPERATING, LLC D/B/A SPRINGDALE
PALMETTO SPRINGDALE	)	HEALTHCARE CENTER'S ANSWER TO
OPERATING, LLC D/B/A	)	THE PLAINTIFF'S COMPLAINT
SPRINGDALE HEALTHCARE	)	
CENTER AND ASHLEY LLOYD,	)	
	)	
DEFENDANTS.	)	
	)	

TO: BRADLEY H. BANYAS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center ("the Facility" or "this Defendant"), by and through its undersigned counsel *and without waiving and hereby expressly reserving all defenses, including any and all rights to compel this matter to arbitration*, responds to the allegations set forth in Plaintiff's Complaint as follows:

1. Any and all allegations of Plaintiff's Complaint not hereinafter admitted, denied, qualified, or otherwise explained are hereby expressly denied and strict proof thereof is demanded.

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

3. In responding to the allegations set forth in Paragraph 2 of the Plaintiff's Complaint, this Defendant admits that it is a limited liability company organized and existing

pursuant to the laws of the state of Delaware which conducts business in Kershaw County, South Carolina. Any further allegations inconsistent with this response are denied.

4. The allegations set forth in Paragraph 3 of Plaintiff's Complaint are directed at parties other than this Defendant, and therefore no response is required. To the extent a response is required, those allegations are denied.

5. This Defendant denies the allegations set forth in Paragraph 4 of Plaintiff's Complaint as stated and demands strict proof thereof. To the extent the allegations set forth in the above Paragraph call for legal conclusions, no response is required.

6. This Defendant denies the allegations set forth in Paragraph 5 of Plaintiff's Complaint as stated. Without waiving said denial, this Defendant admits Ms. Mallory was a resident of the Facility and a fee was paid on her behalf for services related thereto. To the extent the allegations set forth in the above paragraph call for legal conclusions, no response is required. Any and all allegations inconsistent with this response or intended to allege liability or damages against this Defendant are denied.

7. Answering the allegations in Paragraph 6 of Plaintiff's Complaint, Defendant admits only that Plaintiff attached an affidavit to the Complaint. Defendant denies the sufficiency of the affidavit and denies any and all allegations and assertions contained therein to the extent they allege liability or damages against Defendant.

8. The allegations in Paragraph 7 of Plaintiff's Complaint state and/or call for legal conclusions and, therefore, no response is required. To the extent a response is required, this Defendant denies the allegations as written, as there is a valid and binding arbitration agreement between Plaintiff and this Defendant.

9. Answering the allegations in Paragraph 8 of Plaintiff's Complaint, Defendant admits that Ms. Mallory was a resident of the Facility at times relevant to this action. Defendant affirmatively states that at all times its employees and staff provided care to Ms. Mallory within the appropriate standard of care. To the extent the allegations in Paragraph 8 state and/or call for legal conclusions, no response is required. To the extent the allegations in Paragraph 8 are intended to allege liability or damage against this Defendant, the allegations are denied and strict proof is demanded.

10. Answering the allegations in Paragraph 9 of the Complaint, Defendant admits that as the licensed operator of a skilled nursing facility, the Facility is subject to certain applicable statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the standard of care. Defendant further affirmatively states that at all times care was provided to Ms. Mallory within the appropriate standard of care. To the extent that the allegations in Paragraph 9 of Plaintiff's Complaint state and/or call for a legal conclusion, no response is required. Any allegation in Paragraph 9 inconsistent with this response or intended to allege liability or damage against Defendant is denied.

11. Defendant denies the allegations of Paragraph 10 as written and would further submit that the allegations, as written, are confusing and prevent Defendant from providing a proper response. Without waiving said denial, Defendant admits that the Facility's employees had a duty to comply with the standard of care applicable to Ms. Mallory and would further assert that it did comply with the applicable standard of care. To the extent the allegations contained in Paragraph 10 of the Complaint state and/or call for legal conclusions, no response is required by Defendant. Any allegations in Paragraph 10 inconsistent with this response or intended to allege liability or damage against Defendant are denied.

12. Defendant denies the allegations in Paragraphs 11 and 12 of Plaintiff's Complaint as written. Without waiving said denial, the Facility admits that as the licensed operator of a skilled nursing facility, it is subject to certain statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the applicable standard of care. Further answering, Defendant admits only that the Facility's employees had a duty to comply with the standard of care applicable to Ms. Mallory. The allegations contained in Paragraphs 11 and 12 of the Complaint, in part, call for legal conclusions, and therefore no response is required by Defendant. Defendant affirmatively states that at all times care was provided to Ms. Mallory within the appropriate standard of care and that an appropriate care plan was in place. Any allegations in Paragraphs 11 and 12 inconsistent with this response or intended to allege liability or damages against this Defendant are denied.

13. The allegations in Paragraph 13 of Plaintiff's Complaint state and/or call for legal conclusions, and therefore no response is required by Defendant. To the extent a response is required, Defendant craves reference to the skilled nursing chart and records to establish the existence, nature, and condition of any of Ms. Mallory's alleged injuries.

14. Defendant denies the allegations in Paragraph 14 as written. In responding to the allegations in Paragraph 14 of the Complaint, the Facility admits that as the licensed operator of a skilled nursing facility, it is subject to certain statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the standard of care. Defendant admits only that the Facility's employees had a duty to comply with the standard of care applicable to Ms. Mallory. The allegations contained in Paragraph 14 of the Complaint, in part, state and/or call for legal conclusions, and therefore no response is required by Defendant. Defendant affirmatively states that at all times care was provided to Ms. Mallory within the appropriate

standard of care and that it kept a legible and complete record. Any allegations in Paragraph 14 inconsistent with this response or intended to allege liability or damages against Defendant are denied.

15. Defendant denies the allegations in Paragraphs 15 and 16 of Plaintiff's Complaint as written. Without waiving said denial, the Facility admits that as the licensed operator of a skilled nursing facility, it is subject to certain statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the standard of care. Defendant admits only that the Facility's employees had a duty to comply with the standard of care applicable to Ms. Mallory. The allegations contained in Paragraphs 15 and 16 of the Complaint, in part, state and/or call for legal conclusions, and therefore no response is required by Defendant. Defendant affirmatively states that at all times care was provided to Ms. Mallory within the appropriate standard of care including the care plan implemented for her. Any allegations in Paragraphs 15 and 16 inconsistent with this response or intended to allege liability or damages against Defendant are denied.

16. Defendant denies the allegations in Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of Plaintiff's Complaint as written. In responding to these allegations, the Facility admits that as the licensed operator of a skilled nursing facility, it is subject to certain applicable statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the standard of care. Further answering, Defendant admits only that the Facility's employees had a duty to comply with the standard of care applicable to Ms. Mallory. To the extent the allegations contained in these Paragraphs state and/or call for legal conclusions, they do not require a response. Defendant affirmatively states that at all times relevant, care was provided to Ms. Mallory within the appropriate standard of care. Any allegations set forth in the

above referenced Paragraphs which are inconsistent with this response or intended to allege liability or damages against Defendant are denied.

17. Answering the allegations in Paragraph 28 of Plaintiff's Complaint, the Defendant admits that Ms. Mallory was admitted to the Facility but would crave reference to her records concerning the date of the admission. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

18. The Defendant denies the allegations set forth in Paragraph 29 of Plaintiff's Complaint and demands strict proof thereof.

19. Defendant admits the allegations set forth in Paragraph 30 of Plaintiff's Complaint insofar as it is alleged that the Facility was a licensed skilled nursing facility and was required to provide care to Ms. Mallory in accordance with the applicable standard of care. Defendant affirmatively states that at all times relevant, care was provided to Ms. Mallory within the appropriate standard of care. Any allegation inconsistent with the above response or intended to allege liability or damages as to Defendant is hereby denied.

20. Answering the allegations in Paragraphs 31, 32, and 33 of Plaintiff's Complaint, Defendant admits that the Facility was required to provide appropriate care to its residents in compliance with the governing standard of care. To the extent the allegations in Paragraphs 31, 32, and 33 of Plaintiff's Complaint state and/or call for legal conclusions, they do not warrant a response. Defendant would further assert that the referenced statutes and regulations do not establish the standard of care. Any allegation inconsistent with this response or intended to allege liability is denied.

21. Defendant denies the allegations in Paragraphs 34, 35, and 36 of Plaintiff's Complaint and demands strict proof thereof.

22. Answering the allegations in Paragraph 37 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

23. Answering the allegations in Paragraph 38 of Plaintiff's Complaint, Defendant admits the allegations only insofar as it alleges that Defendant owed a certain duty of care to Ms. Mallory. Defendant denies the alleged scope of the duty of care asserted by the Plaintiff. Any allegations inconsistent with this response are hereby denied and Defendant would further assert that it complied with the applicable standard of care in the care and treatment of Ms. Mallory.

24. Defendant denies the allegations in Paragraphs 39 and 40 of Plaintiff's Complaint, including all subparts.

25. Answering the allegations in Paragraph 41 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

26. Answering the allegations in Paragraph 42 of Plaintiff's Complaint, Defendant admits that as the licensed operator of a skilled nursing facility, the Facility is subject to certain statutes and regulations. However, Defendant affirmatively states that such statutes and regulations do not establish the standard of care or provide a cause of action. Defendant denies any and all allegations inconsistent with the above response.

27. Defendant denies the allegations in Paragraphs 43, 44, 45, and 46 of Plaintiff's Complaint.

28. Answering the allegations in Paragraph 47 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

29. Defendant denies the allegations in Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 of Plaintiff's Complaint, including all subparts.

30. Answering the allegations in Paragraph 58 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

31. The allegations in Paragraphs 59 and 60 of Plaintiff's Complaint state and/or call for legal conclusions, and therefore require no response from Defendant.

32. Defendant denies the allegations in Paragraphs 60, 61, 62, 63, 64, 65 and 66 of Plaintiff's Complaint, including all subparts.

33. Answering the allegations in Paragraph 67 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

34. Defendant denies the allegations in Paragraph 68 of Plaintiff's Complaint.

35. Answering the allegations in Paragraph 69 of Plaintiff's Complaint, Defendant restates its answers in the above paragraphs as if stated verbatim herein.

36. Defendant denies the allegations in Paragraph 70 of Plaintiff's Complaint.

37. Defendant denies the allegations set forth in Plaintiff's prayer for relief and judgment.

FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE

38. This Court lacks jurisdiction with respect to this Defendant and Plaintiff as to Plaintiff's claims because this matter should be compelled to arbitration pursuant to a valid arbitration agreement entered into between this Defendant and Plaintiff. Pursuant to § 4 of the Federal Arbitration Act (the "FAA"), this action must be stayed until the validity of the arbitration agreement entered into by Plaintiff and this Defendant is determined by this Court. Further, pursuant to the South Carolina Rules of Civil Procedure and the FAA, this matter should be dismissed or stayed pending final resolution of all claims pursuant to the valid arbitration

agreement. This Defendant hereby provides notice that a Motion to Compel Arbitration and associated Motion to Dismiss or Stay is forthcoming.

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

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

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

40. Plaintiff's claim for fraud/misrepresentation fails to meet the standards imposed by Rule 9(b) of the South Carolina Rules of Civil Procedure.

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

41. Plaintiff lacks standing to pursue some or all of the claims alleged.

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

42. Defendant asserts that some or all of the standards, regulations, and statutes which Plaintiff cites to and/or impliedly references do not create a standard of care applicable to Plaintiff's claims or any private right of action in this matter.

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

43. Defendant would assert that it complied with the applicable standard of care at all times during the timeframe alleged in Plaintiff's Complaint and did not proximately cause any damage to the Plaintiff or his decedent.

FURTHER ANSWERING AND

FOR A FURTHER AFFIRMATIVE DEFENSE

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

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

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

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

46. Defendant would affirmatively assert the defense of intervening and superseding negligence of one or more third parties not a party to this action. Defendant reserves the right to withdraw this defense at a later time as discovery progresses.

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

47. Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff's decedent were due to, caused by, or occasioned by a natural disease process over which Defendant had no control and, as such, Defendant pleads such a natural disease process as a complete or partial bar to this action, as the case may be.

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

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

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

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

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

50. Defendant hereby raises election of remedies as an affirmative defense to Plaintiff's claims.

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

51. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays the Court issue an order dismissing this case with prejudice or in the alternative, staying this matter until

the validity of the arbitration agreement is judicially resolved, and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

CLEMENT RIVERS, LLP

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

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

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*Attorneys for the Defendant Palmetto Springdale
Operating, LLC d/b/a Springdale Healthcare
Center*

Charleston, South Carolina

Dated: September 20, 2023

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
1.	Motion dated May 9 th .		3
2.	Exhibits 1 - 11.		3

I N D E X

PG.

(NOTE: No testimony taken.)

CERTIFICATE	13
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1 THE COURT: For the record this is
2 Sanborn versus Palmetto Springdale; Case 0524. We have
3 defendant's motion to stay.

4 MR. RIDDLE: Thank you, Your Honor. Matt
5 Riddle, Clement Rivers here on behalf of the defendants;
6 Springdale Health Care Center and Ashley Lloyd. Your
7 Honor, this is defendants' motion to stay this case and
8 compel arbitration. We filed this motion originally on
9 May 9th and then it was withdrawn and immediately refiled
10 on June 13th. We had filed a memo and Exhibits 1 - 11 with
11 our -- when this motion was previously set for a hearing
12 and I would just ask that that memo be made part of the
13 record for our motion today if there's objection to that?

14 THE COURT: All right, so made.

15 (Defendant's Exhibit 1
16 admitted into evidence.)

17 MR. RIDDLE: All right, and Exhibits 1 -
18 11. We did supplement Exhibit 1 in a filing with the
19 court yesterday, and I have a printed copy of that if you
20 need it here today. This is the memo and all of the
21 exhibits.

22 THE COURT: Okay. You can hand it to the
23 clerk and she'll pass it up.

24 MR. RIDDLE: All right. Thank you, Your
25 Honor.

1 (Defendant's Exhibits 1 - 11
2 admitted into evidence.)

3 MR. RIDDLE: So, Your Honor, this case
4 involves allegations of nursing home negligence. The
5 defendants contend that the plaintiff's claims must be
6 submitted to arbitration and request that the case be
7 stayed until the arbitration is completed.

8 Ms. Mallory was the resident of
9 Springdale Health Care Center. She was admitted to
10 Springdale on January 24, 2020, for skilled nursing care.
11 Her daughter is the plaintiff in this case, Ms. Lynn
12 Sanborn. Ms. Sanborn signed an admission agreement when
13 Ms. Mallory was admitted to the facility, and Ms. Sanborn
14 at the same time signed an arbitration agreement on behalf
15 of her mother. And so, the defendants, Your Honor, argue
16 that this arbitration agreement is enforceable, and the
17 case must be compelled to arbitration, and again we ask
18 that the circuit court case be stayed pending the
19 arbitration. And, Judge, we'll rely on the arguments set
20 forth in the memo that you have there, but I will briefly
21 give you an overview of the ground supporting motion and
22 just kind of hit some of the highlights that are in that
23 memo.

24 The FAA, The Federal Arbitration
25 Agreement, governs -- I'm sorry. The Federal Arbitration

1 Act governs this agreement, and the FAA requires that
2 arbitration agreements be treated like any other contracts
3 and not be given favorable or disfavorable view by the
4 court. And, Your Honor, the agreement in this case is
5 valid on its face. There's nothing in the document itself
6 that would make it unenforceable. It's been signed by the
7 parties, supported by consideration, sets forth all the
8 necessary terms of the contract, and it's not
9 unconscionable. And, Your Honor, the claims in this case
10 are within the subject of the arbitration agreement. So -
11 -- and I don't think the plaintiff takes any issue with
12 the agreement itself. My understanding is that the
13 plaintiff's dispute with the enforceability of the
14 arbitration agreement is the fact that it was signed by
15 Ms. Sanborn on behalf of her mother, and the plaintiff
16 contends that Ms. Sanborn did not have legal authority to
17 do so; did not have legal authority to sign the document
18 on behalf of her mother. And, of course, Your Honor, the
19 defendants contend that she did and that's all set forth
20 in our memo. Her signature on that document was effective
21 to make the agreement enforceable as to Ms. Mallory's
22 estate.

23 First of all, Your Honor, the plain
24 language in this document and the admission agreement
25 binds the plaintiff, the residence daughter, Ms. Sanborn.

1 The plaintiff attests in the agreement that she had
2 authority to sign on behalf of her mother. And, Your
3 Honor, we also rely on contract law agency principals so
4 that Ms. Sanborn had apparent -- or inherent authority to
5 sign on behalf of Ms. Mallory or in the alternative she
6 should be estopped from denying that she had agency to do
7 so.

8 And then finally, Your Honor, and I will
9 focus the court on this portion of the memo which is kind
10 of the -- I think the real crux of our argument, is that
11 the admission agreement and the arbitration agreement were
12 signed at the same time for the same purpose of admitting
13 Ms. Mallory to Springdale Health Care Center and by the
14 same parties. So, Ms. Sanborn signed the admission
15 agreement, and she signed the arbitration agreement at the
16 same time. Your Honor, therefore, we argue that based on
17 contract law and principals those two documents are merged
18 and they should be considered in effect one contract such
19 that Ms. Sanborn must be estopped from accepting the
20 benefits of one portion of the contract which would be
21 admission of her mother to the facility, prevision of room
22 and board, prevision of nursing -- skilled nursing care,
23 and then, you know, she shouldn't be permitted to accept
24 those benefits while at the same time, you know, denying
25 another portion of the contract which would be the

1 arbitration provision. Now, there are some -- there are a
2 line of cases that have found that in these circumstances
3 or in those particular cases a nursing home admission
4 agreement and a separate arbitration agreement for one
5 reason or another did not merge under contract laws, and
6 we addressed those issues in our brief and, you know, we
7 would contend, the defendants, contend that this case is
8 distinguishable from those -- from that precedence which
9 Coleman is one of the cases, Thompson and Hodge are the
10 three sort of precedence that we contend are
11 distinguishable from the present case.

12 And then finally, Your Honor, there is a
13 2023 Court of Appeals case Solsby that's referenced in our
14 memo that, you know, we concede is contrary to our
15 argument in this case, and respectfully, you know, we're
16 taking the position that Solsby was incorrectly decided.
17 And that again, for the grounds set forth in our memo,
18 we're arguing against precedence as for Solsby and will
19 concede to that case involves the same -- the very same
20 admission agreement and arbitration agreement that we have
21 here but there are issues that were not addressed by the
22 Solsby court that we contend would support enforceability
23 of the agreement here, and then as far as why the two
24 agreements, the admission agreement, and the arbitration
25 agreement in the Solsby court side why they did not merge,

1 Your Honor, we contend that that was incorrectly decided.

2 We've got other cases that are pending on
3 appeal on this very issue, and we're hoping to get some
4 more clarity from the appellate courts on the law on that
5 issue, but, you know, the court of appeals have
6 affirmatively told us that, you know, this -- they're not
7 -- that these arguments are not frivolous and that they're
8 -- that we are, you know, permitted to continue making
9 what the defendants view are, you know, very valid
10 arguments for the merger and estoppel grounds to support
11 our enforceability of the arbitration agreement. And so,
12 I did just want to clarify that to the court, you know, we
13 understand the Solsby decision is contrary to us, but for
14 those reasons, you know, we're arguing that it was
15 incorrectly decided.

16 So, Your Honor, we're -- you know, we
17 requested the arbitration agreement be enforced and that
18 this case be referred to arbitration. The case be stayed
19 pending arbitration. We did, Your Honor, mention in there
20 that if there are any facts or circumstances that the
21 court would require, you know, or would help aid in the
22 court's decision on this matter that we'd be permitted to
23 conduct discovery in the form of depositions around the
24 agency issues without waiving our rights to assert
25 arbitration. Mr. Hudson, plaintiff's counsel, has, you

1 know, agreed before today that we, you know, would not be
2 waiving our rights to assert arbitration if we, you know,
3 conducted discovery or otherwise engaged the courts in
4 this case. And I understand his position in that regard
5 but, Your Honor, if there's anything that the court would
6 require that would aid your decision, we'd be happy to
7 conduct those depositions or provide any other information
8 that may be necessary to aid your decision. So, thank
9 you.

10 THE COURT: Thank you.

11 Yes, sir.

12 MR. HUDSON: Your Honor, Stuart Hudson on
13 behalf of the plaintiff, Lynn Sanborn, who's the personal
14 representative of the estate of her mother, Shirley
15 Mallory. The arguments here regarding the validity of the
16 arbitration agreement obviously come down to whether or
17 not she had the authority to bind her mother to an
18 arbitration agreement, and waive her rights to a -- waive
19 her constitutional rights to a jury trial. The case on
20 point is the Supreme Court Case of Arredondo versus Ashley
21 River Tenant which clearly states that in that case which
22 is very similar to this case that even though the person
23 that signed the arbitration agreement had a healthcare
24 power of attorney and a general durable power of attorney
25 that because those documents did not allow for the power

1 to waive someone's constitutional right and bind an
2 arbitration specifically then therefore, they did not have
3 the authority to do so. In this case, there was no
4 general durable power of attorney; there was only a
5 healthcare power of attorney. And the healthcare power of
6 attorney is attached to our memo clearly states that only
7 actions can be taken necessary with respect to healthcare
8 decisions. Signing the arbitration agreement was not
9 necessary to allow for admission into the facility. It
10 was not necessary for any of her healthcare decisions and
11 therefore the healthcare power of attorney did not allow
12 her the authority to bind her mother to an arbitration
13 agreement because it wasn't a necessary healthcare
14 decision. In order to get to any of these other issues
15 the arbitration agreement has to be binding and obviously
16 the Solsby case he's already discussed with respect to the
17 estoppel; the unjust enrichment and all of those things is
18 contradictory to their position. Certainly, their
19 position that she converted benefit to Ms. Mallory, you
20 know, her allegations are that there was no benefit
21 whatsoever because they killed her mother. So, we
22 disagree that there was any benefit whatsoever if you get
23 that far, but the case in Arredondo is very clear. The
24 Supreme Court has ruled on this issue. I've argued this
25 many times; courts have all agreed with me that this has

1 been decided. There was no power to bind her to an
2 arbitration agreement and therefore it is invalid because
3 it is not binding. Thank you.

4 THE COURT: Thank you.

5 MR. HUDSON: Oh, also, I do want to
6 address the issue of jurisdiction and discovery.

7 THE COURT: Yes.

8 MR. HUDSON: We agreed that I would not
9 claim waiver so when he refiled it so that we can go ahead
10 and conduct discovery. So, that period of discovery that
11 he's asking for has already -- I've already agreed to that
12 prior to today. So, any additional discovery I don't see
13 how that would be necessary since we've already agreed he
14 could take it, none was done. And we've already provided
15 the court with an affidavit from Ms. Sanborn and they've
16 provided no evidence.

17 THE COURT: Thank you.

18 Any brief response?

19 MR. RIDDLE: Just briefly, Your Honor, as
20 to the Arredondo case, we're not relying on the healthcare
21 power of attorney to support our argument regarding the
22 enforceable of the arbitration agreement. We're relying
23 on the merger and equitable estoppel grounds that I
24 discussed. The contract agency arguments and the
25 provisions in the document itself that state that Ms.

1 Sanborn expressly told the facility that she had authority
2 based on her signature on that form and the language in
3 the contract itself. She expressly told the facility that
4 she had authority to sign on behalf of her mother. So,
5 we're not relying on the healthcare power of attorney so
6 Arredondo doesn't apply. Thank you.

7 THE COURT: All right. Let me take this
8 under advisement, review everything and get something to
9 y'all shortly.

10 MR. HUDSON: Thank you.

11 MR. RIDDLE: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 END OF PROCEEDINGS
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF KERSHAW)

5
6 I, Crystal Banks, Official Court
7 Reporter/Transcriber, do hereby certify that the
8 foregoing is a true, accurate and Complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the hearing of the captioned case,
11 relative to appeal, in the Court of Civil Court for
12 Kershaw County, South Carolina, on the day of July 17,
13 2025.

14 I do further certify that I am
15 neither of kin, counsel nor interest to any party
16 hereto.
17

18
19
20
21
22 Crystal Banks

23 Crystal Banks,

24 Court Reporter/Transcriber
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
LYNN MARIE SANBORN AS	)	CASE NO. 2023-CP-28-00524
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF SHIRLEY MALLORY,	)	
	)	
PLAINTIFF,	)	
	)	DEFENDANT PALMETTO SPRINGDALE
vs.	)	OPERATING, LLC d/b/a SPRINGDALE
	)	HEALTHCARE CENTER'S MOTION TO
PALMETTO SPRINGDALE	)	STAY OR DISMISS ACTION AND
OPERATING, LLC d/b/a SPRINGDALE	)	COMPEL ARBITRATION
HEALTHCARE CENTER AND ASHLEY	)	
LLOYD,	)	
	)	
DEFENDANTS.	)	
	)	

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

PLEASE TAKE NOTICE that Defendant, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd ("Defendants"), by and through its undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying or dismissing this action and compelling arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Lita Continetti's admission to the Facility. (See Arbitration Agreement attached as Exhibit A). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff's claims be submitted to arbitration.

Defendants further request that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions

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

CLEMENT RIVERS, LLP

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

D. Jay Davis, Jr., SC Bar # 12084

Matthew O. Riddle, SC Bar # 76650

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Attorneys for the Defendants Palmetto

Springdale Operating, LLC d/b/a Springdale

Healthcare Center and Ashley Lloyd

Dated: October 20, 2023
Charleston, South Carolina

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

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

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

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

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

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

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

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

Lynn Sanborn 1/24/20
Resident/Representative Signature Date

Printed Name of Resident/Representative

*William J. Adams 1-24-20
Authorized Agent of Facility Date

Printed Name & Title

DEFENDANT'S
EXHIBIT

A

Original: Business File • Photocopy: Resident/Representative

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A No. 2023-CP-28-00524
	)	
Lynn Marie Sanborn as Personal Representative of	)	
the Estate of Shirley Mallory,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF LYNN MARIE SANBORN
	)	
Versus	)	
	)	
Palmetto Springdale Operating, LLC d/b/a	)	
Springdale Healthcare Center and Ashley Lloyd,	)	
	)	
Defendants.	)	

1. My name is Lynn Marie Sanborn and I am over the age of eighteen (18) and of sound mind and otherwise competent to make this affidavit under penalty of perjury. This affidavit is also based upon my own personal knowledge.

2. I reside at 53 Leatherwood Drive, Lugoff, South Carolina, 29078.

3. I am the daughter of Shirley Mallory

4. I have never been the legal guardian of Shirley Mallory, nor have I ever had that power conferred on to me by any Power of Attorney or Court Appointed Guardianship or Conservatorship.

5. I was appointed Health Care Power of Attorney on February 12, 2020 ("Exhibit A") however it did not provide me any authority to make legal decisions for my mother, Shirley Mallory, bind her to an arbitration agreement or waive her right to a jury trial.

6. I was never asked by any Springdale Healthcare Center employee if I was Shirley Mallory's legal guardian, nor if I had legal authority to bind her to arbitration, which I did not.

7. I was not explained by any Springdale Healthcare Center employee what an arbitration agreement was.

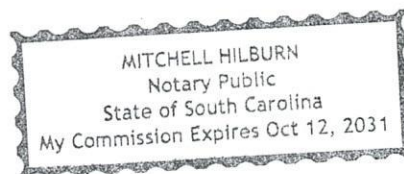
8. I did not have any actual or apparent legal authority to bind Shirley Mallory to arbitration.

9. My mother suffered greatly and died as a result of the Defendants' failures, and I want her claim to be heard by a jury, as is her constitutional right.

Lynn Marie Sanborn
Lynn Marie Sanborn

Sworn to me this 12 day of December, 2023.

[Signature]
Notary Public for South Carolina
My commission expires: 10-12-2031



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
LYNN MARIE SANBORN AS	)	CASE NO. 2023-CP-28-00524
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF SHIRLEY MALLORY,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANTS' MOTION TO STAY
	)	ACTION AND COMPEL ARBITRATION
PALMETTO SPRINGDALE	)	
OPERATING, LLC d/b/a SPRINGDALE	)	
HEALTHCARE CENTER AND ASHLEY	)	
LLOYD,	)	
	)	
DEFENDANTS.	)	
	)	

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

PLEASE TAKE NOTICE that Defendants, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd ("Defendants"), by and through their undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying or dismissing this action and compelling arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Shirley Mallory's admission to the Facility. (See Arbitration Agreement attached as Exhibit A). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff's claims be submitted to arbitration.

Defendants further request that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions

or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

CLEMENT RIVERS, LLP

By: /s/ Matthew O. Riddle

D. Jay Davis, Jr., SC Bar # 12084

Matthew O. Riddle, SC Bar # 76650

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Attorneys for the Defendants Palmetto

Springdale Operating, LLC d/b/a Springdale

Healthcare Center and Ashley Lloyd

Dated: May 9, 2025

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A No. 2023-CP-28-00524
	)	
Lynn Marie Sanborn as Personal Representative of	)	
the Estate of Shirley Mallory,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
Versus	)	MOTION TO STAY AND COMPEL
	)	ARBITRATION
Palmetto Springdale Operating, LLC d/b/a	)	
Springdale Healthcare Center and Ashley Lloyd,	)	
	)	
Defendants.	)	

The Plaintiff, Lynn Marie Sanborn as Personal Representative of the Estate of Shirley Mallory, hereby serves his Memorandum in Opposition to Defendants' Motion to Stay and Compel Arbitration.

FACTS

Shirley Mallory was admitted to the Defendants' assisted living facility on or around January 24, 2020. The Defendants operate an long term care facility, licensed by the South Carolina Department of Health and Environmental Control, subject to R.61-17. Plaintiff alleges that while Shirley Mallory was a resident and under the Defendants' care, she was allowed to suffer a fall causing numerous injuries, leading to her decline and eventual death. Defendants are asking the court to enforce bind Shirley Mallory to an Arbitration Agreement which was signed her daughter Lynn Sanborn, even though Lynn Sanborn did not have authority, in any manner, to waive Shirley Mallory's constitutional right to a jury trial and/or bind her

to an arbitration agreement. [See filed Affidavit of Lynn Sanborn attached hereto as “Exhibit A”]

STANDARD OF REVIEW

A parties' right to a jury trial in South Carolina is governed by state law. Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978). While the Federal Arbitration Act (“FAA”) imposes a presumption favoring arbitration, the presumption does not apply to the “identity” of the parties who may be bound to such an agreement. Wilson v. Willis 426 S.C. 326, 335 827 S.E.2d 167, 179 (2019). In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. Id. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement to arbitrate exists in the first place...If no agreement is found to exist, the court must deny any application to arbitrate.” Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) citing S.C. Code Ann. § 15-48-20(a) (2005). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

In determining whether an agreement to arbitrate exists, “the court should apply ‘ordinary state-law

principles that govern the formation of contracts.” Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. THERE IS NOT AN ENFORCEABLE ARBITRATION AGREEMENT

a. Shirley Mallory’s Health Care Power of Attorney Did Not Authorize Lynn Sanborn to Execute the Arbitration Agreement.

The exact issue before the court regarding the authority Lynn Sanborn had via the HCPOA (attached to Lynn Sanborn’s filed Affidavit) with respect to Shirley Mallory and as a result her ability to bind her to an Arbitration Agreement waiving her constitutional right to a jury trial was recently addressed by the South Carolina Supreme Court in the case of Arredondo v SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 856 S.E.2d 550 (2021)(Attached hereto as “Exhibit B”). In Arredondo, SNH SE Ashley River Tenant, LLC (“Ashley River”) was an assisted living facility. Once the resident, Hubert Whaley, was admitted to Ashley River an Arbitration Agreement was signed by Whaley’s GDPOA and HCPOA, Thayer Arredondo. As in this case, it was not necessary for Thayer or Arredondo to sign the Arbitration

Agreement in order for the resident Thayer to be admitted to the assisted living facility and be provided care. In Arredondo, the Court stated “[o]ur courts have looked to contract law when reviewing actions to set aside or interpret a power of attorney. The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties, and, in determining that intention, the court looks to the language of the contract. When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Accordingly, we look to the specific language of the GDPOA and HCPOA to determine whether either document authorized Arredondo to execute a pre-dispute arbitration agreement.*” Id. at 75 (emphasis added)(citations and quotations omitted). In addressing the GDPOA, the South Carolina Supreme Court in Arredondo stated “we look to the actual language of the GDPOA to determine what authority it granted Arredondo. While the GDPOA gave Arredondo significant authority to make business and property decisions for Whaley, the mere title of the document did not increase Arredondo's authority beyond the plain meaning of the provisions contained in the document.” Id. at 80.

The South Carolina Supreme Court in Arredondo also addressed the authority granted by Health Care Power of Attorney (“HCPOA”). In addressing this issue, the Court stated, “Arredondo clearly had no authority to take any action under the first clause of subparagraph 11(d) unless the action taken was necessary to making, documenting, and assuring implementation of a decision concerning Whaley's health

care. The only health care decision in play when Arredondo signed the arbitration agreement was Arredondo's decision to seek Whaley's admission into the facility. Consequently, we must determine whether signing the arbitration agreement was necessary to Arredondo making, documenting, and assuring implementation of that decision. Id. at 81. After its analysis, the Court held, "[t]he plain, ordinary, and popular meaning of the word 'necessary' is 'absolutely needed' or 'required.'" We hold Arredondo's signature on the arbitration agreement was not 'absolutely needed' or 'required' to ensure Whaley's admission into the facility." Id.

The same holding in Arredondo is applicable with regard to Shirley Mallory. Mallory's HCPOA applies only to healthcare decisions and did not grant Lynn Sanborn the authority to bind Shirley Mallory to arbitration agreements or waive her constitutional rights to a jury trial. Paragraph 4, subpart D of Mallory's HCPOA, states the following:

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

As in Arredondo this provision only authorized Lynn Sanborn to take these actions if 'necessary' for Shirley Mallory's healthcare. It was not necessary for Lynn Sanborn to sign Defendants' Arbitration Agreement in order for Shirley Mallory to be admitted to the Defendants' facility and receive nursing care. The

Arbitration Agreement was optional. Just like Arredondo, Lynn Sanborn was only authorized to take necessary actions for Shirley Mallory's healthcare, signing the Arbitration Agreement was not necessary for Shirley Mallory's healthcare. Accordingly, Lynn Sanborn DID NOT have the authority to sign the Arbitration Agreement and/or waive Shirley Mallory's constitutional right to a jury trial. As a result, with respect to the HCPOA, the Arbitration Agreement is not enforceable.

CONCLUSION

Based on the reasons set forth above, the Plaintiff respectfully requests the Defendants' Motion Stay and Compel Arbitration be denied.

Respectfully Submitted,

s/A. Stuart Hudson

D. Nathan Hughey (SC Bar #68409)

A. Stuart Hudson (SC Bar #71691)

Bradley H. Banyas (SC Bar #101668)

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Attorneys for the Plaintiff

June 10, 2025

Mt. Pleasant, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
LYNN MARIE SANBORN AS	)	CASE NO. 2023-CP-28-00524
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF SHIRLEY	)	
MALLORY,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANTS' MEMORANDUM IN
	)	SUPPORT OF MOTION TO STAY
PALMETTO SPRINGDALE	)	ACTION AND COMPEL ARBITRATION
OPERATING, LLC D/B/A	)	
SPRINGDALE HEALTHCARE	)	
CENTER AND ASHLEY LLOYD,	)	
	)	
DEFENDANTS.	)	
	)	

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

Defendants Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd (“Defendants”), by and through their undersigned counsel, submit this memorandum in support of their motion, filed May 9, 2025, to compel the claims asserted against it in this action to arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has sued Defendant alleging deficiencies relating to care/treatment Mr. Shirley Mallory (“Ms. Mallory”) received while he was a resident of the Facility. In conjunction with Ms. Mallory’s admission to the Facility, his daughter Lynn Marie Sanborn (Plaintiff in this case) executed an Arbitration Agreement on his behalf that is enforceable—or, more specifically, that Plaintiff should be estopped to deny the enforceability of—that covers the entirety of Plaintiff’s

claims against the Facility. As such, Defendant respectfully requests that this Honorable Court stay the pending action and compel Plaintiff's claims to arbitration.

BACKGROUND

With the help of Ms. Sanborn, Ms. Mallory was admitted to Springdale on or around January 24, 2020 for skilled nursing care. Ms. Sanborn handled the paperwork in conjunction with her mother's admission, and in so doing, Ms. Sanborn executed an Admission Agreement and an Arbitration Agreement on her mother's behalf. (See **Exhibits 1** and **2**, respectively, attached hereto) (to be supplemented).

Based on the Admission Agreement and pursuant to the terms thereof, Ms. Mallory was admitted to the Facility and received skilled nursing care and treatment. During her stay at the Facility, Ms. Mallory received and accepted the benefits of the Admission Agreement, which included the Facility furnishing her a room, providing routine meals, and rendering nursing, personal, and custodial care. Plaintiff has never challenged any agreement's validity until now. To the best of Defendant's knowledge, even now, Plaintiff has not asserted that the Admission Agreement is invalid or that Ms. Mallory entered the Facility unwillingly or without consent.

Ms. Sanborn explicitly represented that she was authorized to admit her mother to the Facility and execute documents on her behalf, including the Arbitration Agreement. Indeed, the very first provision of the Admission Agreement states that *all information provided to the Facility* is truthful and correct, which would, of course, include Ms. Sanborn's authority to bind her mother. (See **Ex. 1**) (to be supplemented). Ms. Sanborn signed the Admission Agreement on behalf of her mother as her responsible party and representative.

The Arbitration Agreement provides:

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's

Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules. (See **Ex. 2**).

The Arbitration Agreement further provides:

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law. (See **Ex. 2**).

Regarding Ms. Sanborn's authority to sign on behalf of her mother, the Arbitration Agreement states:

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

(See **Ex. 2**).

Because the acts complained of by Plaintiff fall within the scope of the Arbitration Agreement, the Court should stay these proceedings and compel this matter to arbitration pursuant to the FAA.

ARGUMENT

I. THE FAA GOVERNS THE ARBITRATION AGREEMENT.

The Arbitration Agreement, by its terms and by law, is governed by the FAA. For one reason, the Arbitration Agreement expressly states that the FAA applies:

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

(See **Ex. 2.**) This must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020) (“We first consider whether the FAA applies. We hold it does, for two reasons. First, the [subject contract] provides the parties ‘specifically agree that this transaction involves interstate commerce.’ We must enforce this agreement like any other contract term.”) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (finding the FAA applied because the parties had agreed the subject contract involved interstate commerce)).

Moreover, and in any event, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363; *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause). Our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

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

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”¹ and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] leaves no place for the exercise of discretion by a . . . court, but instead *mandates* that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis added); *see also* 9 U.S.C. § 4 (“The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*”) (emphasis added).

While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Under the FAA, “courts *must* place arbitration agreements on *equal footing with other contracts . . .*” *Concepcion* at 339 (emphasis added); *see also Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses,

¹ *Allied-Bruce*, 513 U.S. at 270.

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

III. THE ARBITRATION AGREEMENT IS VALID ON ITS FACE.

The Arbitration Agreement is valid on its face. In other words, there is nothing within the four corners of the document itself that calls its validity into question. It bears Ms. Sanborn’s signature on behalf of Ms. Mallory, along with her express representation that she is authorized to sign for Ms. Mallory.² It is countersigned by the Facility’s representative. It is duly supported by consideration and sets forth all necessary terms, containing, as it does, the parties’ mutual promises to submit a certain defined scope of disputes to binding arbitration³ before an arbitrator who is either agreed upon by the parties themselves or selected by the Court, in a proceeding to be conducted pursuant to the South Carolina ADR Rules, which will result in a decision that is enforceable in a court of competent jurisdiction. To require more just because an arbitration

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

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

agreement is in issue would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *Concepcion*, 563 U.S. at 339.

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

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

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

(See Ex. 2, ¶ 2.) Furthermore, on that same signature page, the Arbitration Agreement states clearly in bold lettering in a separate heading: "**I understand and agree that I am giving up and waiving my right to a jury trial.**" See Ex. 2, ¶ 6.

By signing the Arbitration Agreement and Admission Agreement, Ms. Sanborn, acting on behalf of Ms. Mallory, represented that she understood and assented to their terms. Indeed, she was given the option of entering into the Arbitration Agreement – *or not* – and she freely and voluntarily made the decision to proceed. The Arbitration Agreement was not a precondition of admission to the Facility and was not a “take it or leave it” contract in the sense that Ms. Sanborn did not have to agree to it on behalf of Ms. Mallory for her to be admitted to the Facility. Ms. Sanborn had the option not to enter into the Arbitration Agreement on behalf of her mother, yet she voluntarily did so, voluntarily did not retract her agreement thereto, and her mother stayed at the Facility and received skilled nursing care after admission.

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

When determining this aspect of unconscionability, this Court must focus on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 25, 644 S.E.2d at 668. Under the terms of the Arbitration Agreement, the parties are to select a third-party arbitrator *jointly* “from a panel having experience and knowledge of the health care industry.” *See Ex. 2*. If the parties are unable to agree upon such an arbitrator, the agreement vests the Court with authority to make a selection. The selected neutral arbitrator is vested with authority to hear the case and make a decision which is “binding on all parties.” As a result, it can only be

said that the Arbitration Agreement allows for complete mutuality of remedies. Neither party is given an advantage by its terms. The Arbitration Agreement simply binds the parties (both sides) to resolve disputes via arbitration. And there is nothing about the Arbitration Agreement—which, again, calls for arbitration conducted pursuant to the South Carolina ADR Rules—that would suggest it is not geared towards achieving an unbiased decision by a neutral decision-maker. Indeed, Rule 1 of the South Carolina ADR Rules expressly states, “These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply.”

Lastly, the United States District Court for the District of South Carolina and trial courts around South Carolina have upheld the validity of arbitration agreements nearly identical to the one at issue in this matter. In evaluating these arbitration agreements in the context of nursing home admissions, these courts have agreed that these agreements are not unconscionable. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) (attached hereto as **Exhibit 3**); *THI of S.C. at Columbia, LLC v. Wiggins, C/A* No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011) (Currie, J.); *Benson, infra*. Along similar lines, any holding that the Arbitration Agreement at issue is unconscionable simply because it was executed in the context of an admission to the skilled nursing facility would be in violation of the clear precedent under *Kindred* and the FAA, which require arbitration agreements to be placed on equal footing with all other types of contracts under state law. Accordingly, any argument by Plaintiff that the Arbitration Agreement is unconscionable is without merit.

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

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

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

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

A. The Plain Language of the Agreement Binds Plaintiff.

According to the plain language of the Arbitration Agreement and consistent with her actions during the admissions process, Ms. Sanborn represented herself to admissions personnel at the Facility as her mother's representative with the authority to sign documents and enter agreements on her behalf.⁴ It was clearly Ms. Sanborn's intention to bind her mother according to the terms of the Admission Agreement and Arbitration Agreement. Moreover, Ms. Sanborn evinced no intentions or directions to the contrary. Accordingly, the plain language of the Arbitration Agreement confirms that Ms. Sanborn was authorized to enter this Agreement binding her mother to arbitration, and the Agreement directly applies to the instant dispute. The

⁴ See **Ex. 2** ("By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident...")

Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances nearly identical to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit 4**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit 5**). In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident's wife in each case executed an admissions agreement and an arbitration agreement *identical* to the ones in the case at bar, and as here represented to the facility that she had authority to enter these agreements on her husband's behalf. (See **Ex. 4**, p. 2-3; see **Ex. 5**, p. 1). As in the present case, the plaintiffs in *Price* and *Spears* later executed contradictory affidavits in opposition to the Defendants' motion to compel arbitration, disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs' attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. The Court should reach the same conclusion in the present case, and enforce the Arbitration Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[.]" because was it clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 4**, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident

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

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

1. Agency Relationship

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

Alternatively, "[a]n agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the

relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties.” *Peoples Fed. Sav. & Loan Ass’n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145-146, 425 S.E.2d 764, 773 (Ct. App. 1992.) The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

Clearly, in this matter, Ms. Sanborn held herself out as an agent for her mother without any indication to the contrary when she executed various admission documents on her behalf, including the Arbitration Agreement. Based on Ms. Sanborn and her mother’s conduct and explicit representations, facility representatives were justified in believing she possessed the authority to execute all admissions documents on her father’s behalf, including the Arbitration Agreement.

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

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

Even if Ms. Sanborn lacked the actual or apparent authority to enter into the terms of the Arbitration Agreement, she still possessed sufficient inherent agency powers to render the agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions "accompany or are incidental to transactions which the agent is authorized to conduct...." *See*, §§ 8A, 161 *Restatement (Second) of Agency* (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (*abrogated on unrelated grounds*) (examining whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000);

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

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

2. Agency by Estoppel

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

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

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

(See **Ex. 4**, p. 9). Accordingly, the court concluded that the arbitration agreement was valid and enforceable.

Similarly, in *McCutcheon* the United States District Court of South Carolina concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (See **Ex. 3**). As in the present case, the husband in *McCutcheon* executed a number of documents on his wife's behalf upon her admission to a nursing home facility, including an admissions agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife's legal representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

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

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

A. The Arbitration Agreement and the Admission Agreement Merged (i.e., Should be Construed Together as a Single Contract), and Plaintiff Should Be Estopped from Denying the Enforceability of the Arbitration Agreement.

The Admission Agreement and Arbitration Agreement should be construed together (i.e., merged) and, Ms. Mallory having effectively embraced and directly benefitted from the Admission Agreement, Plaintiff (who stands in Ms. Mallory's shoes in bringing this action) should be equitably estopped to deny the enforceability of the Arbitration Agreement merged therewith.

1. Merger

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

The Arbitration Agreement provides that “any controversy or dispute between the parties *arising out of or relating to Facility’s Admission Agreement . . . or relating in any way to Resident’s stay at Facility*” shall be resolved by arbitration pursuant to the terms of the Arbitration Agreement. (See **Ex. 2.**) (Emphasis added.) As previously described, the Arbitration Agreement and the Admissions Agreement were both signed by Ms. Sanborn behalf of Ms. Mallory on the same day, at the same time, for the same purpose, and in the course of the same transaction—Ms. Mallory’s admission to the Facility.

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

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

The Court in *McCutcheon* analyzed facts almost identical to the case at bar and determined that the arbitration agreement and admissions agreement had merged for purposes of equitable estoppel. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011WL6318575 (See **Ex. 3**). Indeed, this Court has cited *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admission agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC et al*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* attached hereto as **Exhibits 6 and 7, respectively**). More recently, this Court held that an admission agreement and arbitration agreement identical to the ones at the bar which had been signed by a resident’s daughter-in-law on admission to a skilled nursing facility, were merged and that the Plaintiff was estopped from denying the validity of the arbitration agreement. *William Haynes as Personal*

Representative of the Estate of Elizabeth Varner vs. THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab et al, Case Nos. 2021- CP-10- 01437 and 02477. S. C. Com. Pls. Feb. 24, 2022) (attached hereto as **Exhibit 8**).

The Admission Agreement and the Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.⁵ They should be considered merged, i.e., they should be considered and construed together as effectively one contract.

2. Equitable Estoppel of Merged Agreement

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

⁵ To be clear, *Coleman* unequivocally answers the question of whether the Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

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

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

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone*

Poulenc Fiber & Resin Intermediates. S.A.S., 269 F.3d 187, 200 (3d Cir. 2001)(citing *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

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

. . . .

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

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (citing in part *Int'l Paper Co.*, 206 F.3d at 416) (internal quotations omitted)).⁶

Of note, this Court applied this precise reasoning in *Spears*. (See **Ex. 5**). In that case, a woman admitted her husband to a skilled nursing facility and in connection with his admission, executed admission and arbitration agreements *identical* to the ones here. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from refusing to comply with the arbitration agreement where, like here, the resident received “direct

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

benefits from the Admission Agreement in the form of his admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein.” *Id.*, pg. 10 (footnote omitted).

The Court in *Haynes*, referenced above, also applied the same reasoning in holding that the Plaintiff was estopped from denying the validity of an arbitration agreement, where the resident received “direct benefits from the Admission Agreement throughout her residency at the facility, including, without limitation, the room, board, care/treatment she received therein.” (Ex. 8 at 18). The Court went on to explain that the resident “effectively embraced and directly benefited from the Admission Agreement” and therefore the Plaintiff could not deny the enforceability of the arbitration agreement, which had merged with the admission agreement. (*id.*).

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

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

As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with the Court of Appeals’ decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the non-signatory has exploited other parts of the contract by reaping its benefits. Indeed, to require more than this—or, in other words, to limit the applicability of direct benefits estoppel to only instances where the non-signatory’s claim relies solely on the contract terms to impose liability—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. Neither *Wilson* nor *Pearson* nor general notions of equity countenance,⁷ much less call for, such a result.

⁷ *See Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

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

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

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

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

In *Coleman*, Ann Coleman signed a number of documents, including arbitration agreements, when admitting her sister to a health care facility. 407 S.C. at 350, 755 S.E.2d at 452. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. In determining that the arbitration and admission agreements in the case had not merged, the Supreme Court found, “On its face, this clause recognizes the ‘separatedness’ of the [arbitration agreement] and the admission agreement, not a merger of the two contracts. Moreover, the [arbitration agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate.” *Id.* at 452. “By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply.” *Id.*

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

Unlike the arbitration agreements in *Coleman*, *Thompson*, and *Hodge*, the Arbitration Agreement and Admission Agreement in the case at bar should not be considered “separate” for purposes of denying merger. Unlike *Coleman*, *Thompson*, and *Hodge*, the Arbitration

Agreement in this case does not state that it can be revoked after it has been signed. Further, it did not have to be agreed to as a precondition to admission to the Facility.

Instead, in the present case, the agreements were effectively executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction and, therefore, the documents merged. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts*, *supra*, 268 S.C. at 88, 232 S.E.2d at 24).⁸ Specifically, the Admission and Arbitration Agreements were signed by Ms. Sanborn, on her mother's behalf and were both countersigned by the representative of the Facility on January 24, 2020. The documents were signed by the exact same people: Ms. Sanborn as representative for her father and by Christine Williams for the Facility. The documents were signed for the same purpose and transaction of establishing Ms. Mallory's residency at the skilled nursing facility.

While the Admission Agreement in this case does contain an "Entire Agreement" clause, unlike the admission agreements in those other cases, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn't refer to it at all). Indeed, directly contradicting the idea of "separatedness" (in the parlance of the *Coleman* Court⁹), the "Entire Agreement" clause in the instant Admission Agreement expressly states that "other Admissions materials" are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed "separatedness." And without question, the Arbitration Agreement

⁸ To be clear, even though the *Coleman* Court found evidence of an intent contrary to merger on the particular facts before it, it nonetheless recognized as *correct* the general proposition of law on which the *Coleman* Appellants' based their merger argument, i.e., the *Coleman* Court expressly observed that the admission agreements and arbitration agreements before it (which, in this respect, are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), "the documents were [indeed] executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction." 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

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

is among these other admissions materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission documentation—including the *Arbitration Agreement*.”) (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295 (“Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.”) (emphasis added)).¹⁰

Also, absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (providing “This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration Agreement (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action;” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules”).) Essentially,

¹⁰ To be clear, it is not that the holding of either *Stott* or *Hodge* established a legal standard for what counts as admission paperwork, but rather the very fact that the language that the Court of Appeals used in discussing the facts of the cases so readily made the natural and logical connection between arbitration agreements signed in conjunction with admission and “admission documentation” / “documents related to . . . admission” illustrates that, in its plain, ordinary, and popular sense, “Admissions materials” plainly includes the Arbitration Agreement. *See Beaufort Cnty. Sch. Dist. v. United Nat’l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) (“If the contract’s language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract’s force and effect.”). Moreover, this connection between the Admission Agreement and the Arbitration Agreement (with the Arbitration Agreement being understood in the plain, ordinary, and popular sense as included in the term “Admissions materials”) is underscored by the *Coleman* Court’s recognition that an admission agreement and arbitration agreement signed in conjunction with resident’s admission to a nursing facility are indeed “executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

both instruments provide that South Carolina law applies except where it is displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

Similarly, the termination provisions provide no evidence of “separatedness.” Again, the only reason for the Arbitration Agreement is the Admission Agreement—the only point of the Arbitration Agreement is to cover disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still *connected* to the Admission Agreement even after the termination of the Admission Agreement. This is simply how agreements to arbitrate work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”¹¹ there is evidence to upset the *default presumption* that the contracting parties intended the instruments to be construed together as effectively one contract. As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties’ possessed a contrary intention. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125,

¹¹ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here.

The mere fact that the admission and arbitration agreements have their own titles, are separately paginated, and/or are separately signed cannot suffice to show evidence of intent contrary to merger. To simply note that these documents are separate instruments does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. *Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved.* Obviously, it cannot be the case that the mere existence separate document shows an intention contrary to merger. The very nature of merger is to *merge* separate documents.

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

The *Coleman* Court clearly endorsed the rule of law that a presumption of merger arises where, as here, multiple instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction and that upsetting this presumption

requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter,¹² (a) it did so in dicta¹³ and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this case¹⁴—in recognizing a rule of law creating a presumption in favor of merger (i.e., in recognizing the occurrence of a set of circumstances (same time, parties, purpose, and transaction) as sufficiently probative to affirmatively tip the scales in favor of merger) while at the same time allowing that presumption to be completely overturned by evidence that is merely ambiguous, i.e., that does not even go so far as to clearly indicate a contrary intention and, indeed, is actually still susceptible to a reasonable conclusion in favor of merger. *See S.C. Dep’t of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.”). To allow the merger presumption to be upset based on evidence that is merely ambiguous is to allow the exception to devour the rule.

Even though, as noted above, the Arbitration Agreement was not a precondition to admission, this does not mean that the two instruments did not work hand-in-hand once the arbitration agreement came into existence (i.e., once it was in fact entered into). While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not

¹² *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455.

¹³ *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455 (“By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. *Even if* the ‘Entirety’ clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants.”) (emphasis added) (internal citation omitted); *see Nash v. Tindall Corp.*, 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007) (“Judicial dicta is not essential to the decision. Dicta . . . is a statement on a matter not necessarily involved in the case, and is not binding as authority.”) (internal citations and quotations marks omitted).

¹⁴ To be clear, none of *Coleman*’s progeny has addressed this either.

true; the Admission Agreement is indeed necessary to the Arbitration Agreement. In other words, yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with; *but that is not what happened*. The Arbitration Agreement was in fact executed, of course, and it was executed under circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction. Unlike the Admission Agreement, however, which is capable of making sense either standing alone or, alternatively, together with the Arbitration Agreement, the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement’s) sole reason for being.

It matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission; and, here, there can be no question that the Arbitration Agreement—once agreed upon—was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Ms. Mallory’s relationship with the Facility. Indeed, this conclusion finds direct support in the Admission Agreement’s “Entire Agreement” provision, which states, “[t]he undersigned further acknowledges that he/she has received and read the Admission Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.” (Ex. 1, p. 12 (emphasis added)). Had the Arbitration Agreement not been executed, it would not constitute admissions material, but, of course, it was executed, and it does constitute admissions material; most respectfully, to conclude otherwise simply does not make sense.

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

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

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

In affirming the denial of the motion to compel arbitration in *Solesbee*, the Court of Appeals likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no merger of the Admission Agreement and the Arbitration Agreement and, in turn, had properly denied the Facility’s equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 (“Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and [the Facility’s] equitable estoppel argument was properly denied.”).¹⁵ Most respectfully, the *Solesbee* Court’s merger analysis is itself erroneous—and *Solesbee* should not control the disposition of the instant motion.¹⁶

First, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.” 438 S.C. at 648, 885 S.E.2d at 149. It is

¹⁵ To be clear, the Court of Appeals’ decision in *Solesbee* turned on its affirmance of the circuit court’s ruling against *merger* of the Arbitration Agreement and the Admission Agreement. Consequently, the *Solesbee* Court did not address the substance of the *equitable estoppel* prong of the merger/estoppel argument.

¹⁶ In this regard, Defendant would also note that it is still possible that the Supreme Court might review *Solesbee* via a writ of certiorari.

simply not true that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.”

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

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

(Arbitration Agreement.)

As explained above, the FAA applies whenever an arbitration agreement involves interstate commerce—and this is so even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (The FAA “create[d] a body of federal substantive law,” which is “applicable in state and federal courts.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.”); *see also Allied-Bruce*, 513 U.S. 265, 270–77. Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but

not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted). Furthermore, the Arbitration Agreement expressly calls for the arbitration proceedings to be conducted pursuant to the South Carolina ADR Rules. (Arbitration Agreement.)

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

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

Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. Again, this is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. 2d at 612–13 (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

Third, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, ‘Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. The absence of a “revocation” provision is one way in which the Arbitration Agreement is materially different from those at issue in *Coleman* and *Hodge*, and, for that matter, *Thompson*. Moreover, the *Solesbee* Court drew a false equivalency between the concepts of “revocation” and “termination.” A “revocation” is an annulment (i.e., making something a nullity),¹⁷ whereas “termination” is putting or bringing something that properly exists to an end—which is materially different from making something a nullity, i.e., void and never having properly existed in the first place. *Id.* at p. 1482. And, again, that the Arbitration Agreement survives the termination of the Admission Agreement is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. at 612–13.

Fourth, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages.” 438 S.C. at 648, 885 S.E.2d at 149. This provides no reasonable inference of

¹⁷ *Black’s Law Dictionary* p. 1321 revocation (7th ed. 1999); *id.* at 89 annulment (“The act of nullifying or making void.”).

an intent contrary to merger. Again, the fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about whether they were intended to be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. Again, the very nature of *merger* is to *merge* multiple things together as one.

Finally, the *Solesbee* Court erroneously found against the Facility on merger on the basis that Arbitration Agreement was voluntary. 438 S.C. at 648, 885 S.E.2d at 149. While, again, it is certainly true that the Arbitration Agreement was voluntary (*see* No. 3 above), this fact provides no reasonable inference of an intent contrary to merger. Again, to be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for the resident to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. Again, the two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

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

Again, even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission, whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of the resident's relationship with the Facility: the Admission Agreement setting forth the terms of the admission, the Arbitration Agreement

providing for arbitration of disputes arising out of the admission. (*Compare* Admission Agreement (setting forth the terms of the admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of the admission).)

VI. THE CASE MUST BE STAYED WHILE ARBITRATION IS PENDING

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

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

(Emphasis added.)¹⁸ Citing this statutory provision, the South Carolina Court of Appeals held the "FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties." *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002). Accordingly, pursuant to this Court's inherent power to manage its own docket and the statutory mandates of the FAA, moving Defendants respectfully request that this matter must be stayed in its entirety until such time as the Court has made a final decision regarding the present motion, the arbitration process is complete, and the appellate process, if any, has been exhausted.

¹⁸ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. See S.C. Code ANN. § 15-48-20 (d) ("Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section.")

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

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

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

Likewise, the Honorable Alison Lee allowed the parties to conduct additional discovery on a wife's authority to execute an arbitration agreement on behalf of her husband. *See Priscilla Brown, as Personal Representative of the Estate of James Brown v. THI of South Carolina at Columbia at Magnolia Manor d/b/a Midlands Health and Rehabilitation Center*, 2017-CP-40-00516 (S.C. Com. Pls. Nov. 7, 2019) (attached hereto as **Exhibit 10**). Judge Matie Murphy also ordered arbitration related discovery in a more recent case. *See Beverly Vaughn as Personal Representative of the Estate of Loris Paris vs. Saint Matthews Healthcare, LLC; Melissa Kizer;*

Melissa Davis; and Angela Smith Teliha, 2022-CP-38-00525 (S.C. Com. Pls. Nov. 17, 2023) (attached hereto as **Exhibit 11**).

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

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

CONCLUSION

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

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

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Dated: June 10, 2025

ADMISSION AGREEMENT – SOUTH CAROLINA

RESIDENT NAME:

Shirley Mallory

RESIDENT NUMBER:

98727-01

DATE OF ADMISSION:

1-24-2020

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among Springdale Healthcare Center ("Facility"), Mallory Shirley ("Resident") and/or Lynn Sanborn ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

WHEREAS, the parties wish to admit Resident to Facility and hereto agree as follows:

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.
2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aides and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.
3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.
4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.
5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

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II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

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

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

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.

2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.

3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative has the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.

4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.

5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.

6. Provide and be responsible for personal items of clothing and property.

7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.

8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.

9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

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10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.

11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.

12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.

13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.

14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.

15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.

16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.

17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.

18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.

19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

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

III. FINANCIAL AGREEMENT

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

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☒-semi-private) accommodations, for a basic fee of \$ 225.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

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

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

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

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state and federal law. Any personal property belonging to Resident in Facility at the time of Resident's discharge or death will be released in accordance Section II-B-13 herein.

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

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

IV. TERMINATION

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

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

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

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

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

V. MEDICAID BENEFICIARIES

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

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

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

3. **Non-Covered Services.**

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

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

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

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

VI. MEDICARE BENEFICIARIES

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

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

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

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

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

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

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

VII. PRIVATE PAY/INSURANCE

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

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

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

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

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

VIII. NOTICES

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

All notices, consents, approvals and the like required to be given to Resident and/or Representative shall be given in writing to Resident and/or Representative to the address below or at such other address as he/she may designate:

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

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IX. GOVERNING LAW

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

X. SEVERABILITY

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

XI. CAPTIONS

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

XII. MODIFICATIONS

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

XIII. WAIVER

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

XIV. RESIDENT

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

XV. ASSIGNABILITY

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

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XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required or permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.

2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.

3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.

4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.

2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.

3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.

4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

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5. In the event that an individual voluntarily agrees to become legally responsible for payment for the care and treatment of Resident, said Representative will be fully bound to the terms of this Agreement. Please note, Facility does not require a third-party guarantor.

6. Facility reserves the right to apply its indigent care policy, as appropriate, in its sole discretion.

XVIII. ENTIRE AGREEMENT

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

By signing below, I/we further acknowledge that I/we have made the above promises and representations in order to induce Facility to enter into this Agreement. The parties further understand that, by signing this Agreement, Facility is relying upon the truthfulness of the promises and representations I/we have made. The parties further agree that if any term or provision of the Agreement is found by a court or agency of competent jurisdiction to be legally unenforceable, the term and provision will be deemed severed from this Agreement and the remaining terms or provisions will be fully enforceable.

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

Signature of Resident

Date

Printed Name of Resident

Resident Social Security Number

Witness Signature

Date

Printed Name of Witness

* ^{QR} Rymn Sanba 1/24/20
Signature of Representative, if any Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

C Williams upn AD
Signature of Facility Official

Printed Name of Facility Official & Title

1-24-2020
Date

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
LYNN MARIE SANBORN AS	)	CASE NO. 2023-CP-28-00524
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF SHIRLEY MALLORY,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANTS' MOTION TO STAY
	)	ACTION AND COMPEL ARBITRATION
PALMETTO SPRINGDALE	)	
OPERATING, LLC d/b/a SPRINGDALE	)	
HEALTHCARE CENTER AND ASHLEY	)	
LLOYD,	)	
	)	
DEFENDANTS.	)	
	)	

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

PLEASE TAKE NOTICE that Defendants, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd ("Defendants"), by and through their undersigned counsel, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying or dismissing this action and compelling arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Shirley Mallory's admission to the Facility. (See Arbitration Agreement attached as Exhibit A). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff's claims be submitted to arbitration.

Defendants further request that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions

or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

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By: /s/ Matthew O. Riddle

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Springdale Operating, LLC d/b/a Springdale

Healthcare Center and Ashley Lloyd

Dated: June 13, 2025

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CASE NO. 2023-CP-28-00524
LYNN MARIE SANBORN	)	
as Personal Representative of the	)	
Estate of Shirley Mallory,	)	MOTION TO ALTER, AMEND, AND/OR
	)	RECONSIDER ORDER DENYING
Plaintiff,	)	MOTION TO COMPEL ARBITRATION
	)	
vs.	)	
	)	
PALMETTO SPRINGDALE OPERATING,	)	
LLC, d/b/a Springdale Healthcare Center and	)	
ASHLEY LLOYD,	)	
	)	
Defendants.	)	

TO: THE HONORABLE DANIEL COBLE, Presiding Judge, and PLAINTIFF’S COUNSEL OF RECORD

NOW COME Defendants, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center (the “Facility”) and Ashley Lloyd (“Ms. Lloyd”), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCF, and, on the grounds set forth below, hereby most respectfully move this Honorable Court to alter, amend, and/or reconsider its order filed August 7, 2025 (the “Subject Order”), denying Defendants’ motion, filed May 9, 2025, to compel Plaintiffs’¹ claims to arbitration (the “Underlying Motion”).

¹ “Plaintiff” refers to Lynn Marie Sanborn, as Personal Representative of the Estate of Shirley Mallory (“Ms. Mallory”). “Ms. Sanborn” refers to Lynn Marie Sanborn in the capacity in which she signed the Admission Agreement and the Arbitration Agreement on Ms. Mallory’s behalf.

- I. Contending, most respectfully, that the Underlying Motion should have been (and should now be) granted, Defendants ask the Court to (re)consider and expressly rule on each and every distinct issue/argument raised in support of the Underlying Motion, i.e., each and every distinct issue/argument set forth in the Underlying Motion itself; in Defendants' memo in support of the Underlying Motion, filed June 10, 2025; and via oral argument at the hearing on the Underlying Motion on July 17, 2025, all of which is/are hereby incorporated herein by reference.**

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

- II. Without waiving or otherwise lessening the all-encompassing scope of the foregoing (i.e., I. above), Defendants most respectfully ask the Court to (re)consider and expressly rule on/address the following particular points.**

- A. The Subject Order misstates the burden on Defendants when it states, “[t]he party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement.”²**

This statement is erroneous to the extent that it suggests the only way the proponent of arbitration can prevail is via an arbitration agreement that “enforceable” per se. This is not so. Coupled with the merger of the Admission Agreement and the Arbitration Agreement, equitable estoppel provides a workable theory for enforcement of an arbitration agreement against a

² (Subject Order p. 2; *see also id.* (“Arbitration is available only when the parties involved contractually agree to arbitrate. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Arbitration will be denied if a court determines no agreement to arbitrate existed.”) (internal citations omitted).)

nonsignatory. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (observing that South Carolina has recognized a number of theories that could bind nonsignatories to arbitration agreements, including estoppel).

Conceptually, Defendants' merger/equitable estoppel argument is not an argument for the *enforceability* of the Arbitration Agreement per se but rather for Plaintiff to be *estopped to deny the enforceability* of the Arbitration Agreement. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d 450, 455 (2014) ("Appellants contend that *even if* Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is *nevertheless equitably estopped to deny* the [arbitration agreement's] enforceability.") (emphasis added). In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and because Ms. Mallory effectively embraced and directly benefitted from the Admission Agreement, Plaintiff, as personal representative of Ms. Mallory's estate, is estopped to deny the enforceability of the Arbitration Agreement merged therewith. Accordingly, any contention about the Arbitration Agreement's supposed lack of enforceability (whether because of Ms. Sanborn's lack of authority, actual or apparent, or because of another alleged defect in contract formation, or because of the inapplicability of the South Carolina Adult Health Care Consent Act or of Ms. Sanborn's lack of authority thereunder) is beside the point and unavailing to refute Defendants' merger/equitable estoppel argument, which, again, turns not on the question of whether they showed that the Arbitration Agreement is enforceable but whether they showed that Ms. Mallory and, in turn, Plaintiff, as personal representative of Ms. Mallory's estate, should be estopped to deny that the Arbitration Agreement is enforceable—and, most respectfully, they did so.

B. The FAA³ requires arbitration agreements to be placed on equal footing with all other contracts under South Carolina law, and the purported presumption, cited in the Subject Order,⁴ against arbitration where the party resisting arbitration is a nonsignatory violates the FAA.

“[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate”⁵ and “ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “By its terms, the [FAA] leaves no place for the exercise of discretion by a . . . court, but instead *mandates* that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis added); *see also* 9 U.S.C. § 4 (“The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*”) (emphasis added).

While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not do so based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Under the FAA, “courts *must* place arbitration

³ The “FAA” refers to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

⁴ (Subject Order p. 2 (“In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory.”) (citing *Wilson*, 426 S.C. 326, 827 S.E.2d 167).)

⁵ *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 270 (1995).

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

The Subject Order cites *Wilson*, 426 S.C. 326, 827 S.E.2d 167, for the proposition that, under South Carolina law, there is a presumption against arbitration when enforcement is sought against a non-signatory. (Subject Order p. 2.) But the FAA requires arbitration agreements to be placed on equal footing with all other contracts under state law and prohibits courts from setting aside arbitration agreements based on state-law defenses “that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue.” *Concepcion*, 563 U.S. at 339. Thus, under the FAA, there cannot be a presumption against enforcement of arbitration agreements against nonsignatories unless the same presumption also applies to enforcement of all other contracts against nonsignatories. Defendants are aware of no such general presumption under South Carolina law, and the Subject Order cites none. Indeed, where the *Wilson* Court itself referenced “a presumption *against* arbitration . . . where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate,”⁶ it cited no South Carolina authority and the authority it did cite addressed arbitration in particular, not contracts generally. *Id.* (“*Global Pac.*,

⁶ 426 S.C. at 337–38, 827 S.E.2d at 173 (emphasis in original).

LLC v. Kirkpatrick, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017) (‘Because no party can be required to submit to arbitration when it has not first agreed to do so, in a case where the party resisting arbitration is not a signatory to any written agreement to arbitrate, a presumption against arbitration arises.’); *cf. Comer v. Micor, Inc.*, 436 F.3d 1098, 1103–04 (9th Cir. 2006) (noting ‘the general rule that a nonsignatory is not bound by an arbitration clause’).”). The supposed presumption against arbitration violates the FAA’s equal footing rule and cannot be applied in this case.

C. The Court should have found (and should now find) that the Admission Agreement and the Arbitration Agreement merged and that, because Ms. Mallory effectively embraced and directly benefitted from the Admission Agreement, her estate is estopped to deny the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith.

1. The Court should have found (and should now find) that the Admission Agreement and the Arbitration Agreement merged.

In *Coleman*, even though our Supreme Court found against merger on the particular *facts* of the case, it nonetheless confirmed the validity of the general proposition of *law* on which the *Coleman* appellants based their merger/equitable estoppel argument:

Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is nevertheless equitably estopped to deny the [arbitration agreement’s] enforceability. The circuit court held there was no estoppel here, and we agree.

Appellants’ equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. In South Carolina,

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

instruments are effectively one instrument or contract.

Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

Here, *the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.*

407 S.C. at 354–55, 755 S.E.2d at 455 (emphasis added).

Here, the Court erred in rejecting Defendants' merger argument, failing to recognize material differences between the facts and arguments involved in the instant case and those that controlled (or were simply not addressed in) *Coleman* and its progeny *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), and, as addressed separately below, in *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

The Court wrongfully concluded that the Admission Agreement and the Arbitration Agreement are separate contracts that do not merge. (Subject Order pp. 5–6.) The merger question examines whether, “where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,”⁷ as undoubtedly the Admission Agreement and the Arbitration Agreement were here,⁸ there is evidence to upset the

⁷ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

⁸ To be clear, *Coleman* unequivocally answers the question of whether the instant Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction: they were. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), “the

presumption in favor of merger, i.e., the presumption that the instruments were intended to be construed together as effectively one contract. This is a question of intention. *Id.* at 355, 755 S.E.2d at 455 (“in the absence of anything indicating a contrary *intention* . . .”) (emphasis added). And “in attempting to ascertain th[e] [parties’] intention,” our courts “endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into.” *Klutts*, 268 S.C. at 89, 232 S.E.2d at 25.

It must be remembered that, where, as here, the instruments in question were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, merger is *presumed*. For the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only by actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines Co., LLC v. Lockhart*, 365 S.C. at 188, 617 S.E.2d at 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here. Indeed, under the circumstances, the idea that there would have been an intention contrary to merger does not make sense.

Unlike the arbitration agreement at issue in *Coleman*—and, for that matter, the arbitration agreements at issue in *Coleman*’s progeny *Thompson* and *Hodge*, all of which cases involved arbitration agreements that contained a provision allowing them to be disclaimed or revoked within 30 days of signing while the corresponding admission agreements did not—the instant Arbitration Agreement has no disclaimer/revocation provision. (Arbitration Agreement.)

documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

Moreover, while the instant Admission Agreement does contain an “Entire Agreement” clause, it does not reference the Arbitration Agreement as a separate contract. (Admission Agreement p. 12.) Indeed, directly contradicting the idea of “separatedness” (in the parlance of the *Coleman* Court⁹), the “Entire Agreement” clause in the instant Admission Agreement expressly states that “other Admissions materials” are part of the Admission Agreement, thereby expressly contemplating the lack of its own supposed “separatedness.” (Admission Agreement p. 12.) Without question, the Arbitration Agreement is among these other materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) (“The same day as Decedent’s admission to White Oak, Stott, acting as Decedent’s authorized representative, signed White Oak’s admission documentation—including the Arbitration Agreement.”) (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295 (“Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.”) (emphasis added)).¹⁰

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

¹⁰ To be clear, the point here is not that the holding of either *Stott* or *Hodge* established a legal standard for what counts as admission paperwork, but rather that the very fact that the language that the *Stott* and *Hodge* Courts used in discussing the facts of the cases so readily made the natural and logical connection between arbitration agreements signed in conjunction with admission and “admission documentation” / “documents related to . . . admission” that it illustrates that, in its plain, ordinary, and popular sense, “Admissions materials” plainly includes the Arbitration Agreement. *See Beaufort Cnty. Sch. Dist. v. United Nat’l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) (“If the contract’s language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract’s force and effect.”). Moreover, this connection between the Admission Agreement and the Arbitration Agreement (with the Arbitration Agreement being understood in the plain, ordinary, and popular sense as included in the term “Admissions materials”) is underscored by the *Coleman* Court’s recognition that an admission agreement and arbitration agreement signed in conjunction with resident’s admission to a nursing facility are

To be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required as a precondition of Ms. Mallory's residency at the Facility. But all this means is that the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become part of the admissions materials once it was in fact executed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

Moreover, while it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: The Admission Agreement *is* necessary to the Arbitration Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement's) sole reason for being. (Arbitration Agreement (providing for arbitration of “any controversy or dispute between the parties arising out of or relating to [the] Facility's Admission Agreement, or breach thereof, or relating in any way to [Ms. Mallory's] stay at [the] Facility, or to the provisions of care or

indeed “executed at the same time, by the same parties, *for the same purposes, and in the course of the same transaction.*” 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

services to [Ms. Mallory]”); *id.* (“This [Arbitration] Agreement shall remain in effect for all care rendered at [the] Facility”).¹¹

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission; whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of Ms. Mallory’s relationship with the Facility, the Admission Agreement setting forth the terms of her admission, the Arbitration Agreement providing for arbitration of disputes arising out of her admission. (*Compare* Admission Agreement (setting forth the terms of Ms. Mallory’s admission to the Facility) *with* Arbitration Agreement (providing for arbitration of disputes arising out of Ms. Mallory’s admission in the Facility).)

Also absent here is the type of discrepancy the *Hodge* Court pointed out with respect to the respective provisions of the admission and arbitration agreements before it as to the governing law. 422 S.C. at 562, 813 S.E.2d at 302. (*Compare* Admission Agreement p. 10 (“This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration

¹¹ Without question, Plaintiff’s claims against Defendants are within the scope of the Arbitration Agreement, the plain language of which calls for arbitration of “any controversy or dispute between the parties arising out of or relating to [the] Facility’s Admission Agreement, or breach thereof, or relating in any way to [Ms. Mallory’s] stay at [the] Facility, or to the provisions of care or services to [Ms. Mallory]” (Arbitration Agreement.) And to be clear, the Arbitration Agreement plainly covers Plaintiff’s claims against not only the Facility but also Ms. Lloyd. The Arbitration Agreement expressly states that that it not only covers the Facility itself but also the Facility’s “agents, employees, and servants,” and Plaintiff’s complaint alleges that Ms. Lloyd is the Administrator of the Facility. But even if there were “any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

Agreements (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action,” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules”).) Essentially, both instruments provide that South Carolina law applies except where displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

Similarly, the survival of the Arbitration Agreement is no evidence of “separatedness.” Again, the only reason for the Arbitration Agreement is the Admission Agreement, as the point of the Arbitration Agreement is to cover disputes relating to/arising out of the Admission Agreement. So yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. This is simply how arbitration agreements work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) (“Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.”).

The fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intention contrary to merger. To point to such things, is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about whether they are intended to be construed together. Indeed, the question of merger will not arise in the first place unless there

are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of *merger* is to *merge* separate documents.

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

The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” 407 S.C. at 355, 755 S.E.2d at 455. While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter, (a) it did so in dicta¹² and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this

¹² *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455 (“By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. *Even if* the ‘Entirety’ clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants.”) (emphasis added) (internal citation omitted); *see Nash v. Tindall Corp.*, 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007) (“Judicial dicta is not essential to the decision. Dicta . . . is a statement on a matter not necessarily involved in the case, and is not binding as authority.”) (internal citations and quotations marks omitted).

case¹³—in recognizing a rule of law creating a presumption in favor of merger (i.e., in recognizing the occurrence of a set of circumstances (same time, parties, purpose, and transaction) as sufficiently probative to affirmatively tip the scales in favor of merger) while at the same time allowing that presumption to be completely overturned by evidence that is merely ambiguous, i.e., evidence that does not even go so far as to clearly indicate a contrary intention and, indeed, is actually still susceptible to a reasonable conclusion in favor of merger. *See S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are *reasonably* susceptible of more than one interpretation.”) (emphasis added).

Respectfully, the Court’s finding against merger relies on improper speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent. The presumption of merger arises from the concurrence of the four elements of time, parties, purpose, and transaction. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. This is why for the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties’ intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). The merger presumption is “earned,” so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the

¹³ To be clear, none of *Coleman*’s progeny has addressed this either.

overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

The Court should have found that the Arbitration Agreement merged with the Admission Agreement. The instruments were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, the whole of which related to Ms. Mallory's admission to the Facility and would not have been done at all but for her admission to the Facility. Any finding against merger improperly relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding the contracting parties' intent.

(a) Most respectfully, the merger analysis in *Solesbee*, which the Court relied on here,¹⁴ is erroneous and incomplete, and it should not control the disposition of this case.

In *Solesbee*, the Court of Appeals affirmed the denial of a motion to compel arbitration in the face of a merger/equitable estoppel argument substantially the same as here¹⁵—although, most respectfully, the *Solesbee* Court (a) erred as to those aspects of the argument that it addressed¹⁶ and (b), in any event, did not actually address all material aspects of the argument, leaving gaps in the *Solesbee* decision through which Defendants' position still fits. In affirming the denial of the motion to compel arbitration in *Solesbee*, the *Solesbee* Court likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no

¹⁴ (Subject Order p. 6.)

¹⁵ Indeed, the Arbitration Agreement and Admission Agreement in issue in the instant case are the same form documents as in *Solesbee*.

¹⁶ While Defendants acknowledge that our Supreme Court denied certiorari in *Solesbee*, it would note that a writ of certiorari is not a matter of right but solely a matter of the Supreme Court's discretion. Rule 242(b), SCACR ("A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons."). In other words, by denying certiorari, the Supreme Court has only expressed its decision to exercise its discretion to not review the case. It has not implicitly blessed the *Solesbee* Court's analysis as correct.

merger of the Admission Agreement and the Arbitration Agreement and, in turn, had properly denied the Facility's equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 (“Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and [the Facility's] equitable estoppel argument was properly denied.”).¹⁷ Most respectfully, *Solesbee* should not control the disposition of the Underlying Motion.

First, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.” But it is not true that “the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.”

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

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

(Arbitration Agreement.)

¹⁷ To be clear, Court of Appeals' decision in *Solesbee* turned on its affirmance of the circuit court's ruling against *merger* of the Arbitration Agreement and the Admission Agreement. Consequently, the *Solesbee* Court did not address the substance of the *equitable estoppel* prong of the merger/equitable estoppel argument.

Without question, the FAA applies to the Arbitration Agreement,¹⁸ as it does “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction”¹⁹—and this is so even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (The FAA “create[d] a body of federal substantive law,” which is “applicable in state and federal courts.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.”). Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted). Further

¹⁸ The FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce*, 513 U.S. at 268 (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

¹⁹ *Munoz*, 343 S.C. at 538, 542 S.E.2d at 363.

still, the Arbitration Agreement expressly calls for the arbitration proceedings to be conducted pursuant to the South Carolina ADR Rules. (Arbitration Agreement.)

Essentially, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are to the effect that South Carolina law applies except where displaced by federal law, and indeed, even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself, the FAA would still apply separately to the Arbitration Agreement. In other words, any difference between the governing law as to the Arbitration Agreement and the governing law as to the Admission Agreement would still exist even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself. Accordingly, the supposed difference in the governing law cannot support any reasonable inference of intent contrary to merger.

Second, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement ‘shall survive any termination or breach of this Agreement or the Admission Agreement.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger here. Unlike in *Coleman* and *Hodge*, the supposed textual recognition of the Admission Agreement as being separate from the Arbitration Agreement is not included in any “Entire Agreement” provision. Rather, the “Entire Agreement” provision of the Admission Agreement expressly states, “other Admissions materials . . . are made a part of this Agreement by reference.” (Admission Agreement p. 12.) And as in the instant case, the Arbitration Agreement that was signed in conjunction with the admission is clearly among these “other Admissions materials.” Moreover, that the Arbitration Agreement “shall survive any termination or breach of this Agreement or the Admission Agreement” just means that any claims relating

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

Third, the *Solesbee* Court erroneously found against merger on the basis that “[t]he Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, ‘Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.’” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. The absence of a “revocation” provision is one way in which the Arbitration Agreement is materially different from those at issue in *Coleman* and *Hodge*, and, for that matter, *Thompson*. Moreover, the *Solesbee* Court drew a false equivalency between the concept of “revocation” and that of “termination.” A “revocation” is an annulment (i.e., to make something a nullity),²⁰ whereas “termination” is to put or bring something to an end—which is materially different from making something a nullity, i.e., void and never having properly existed in the first place. *Id.* at p. 1482. And, again, that the Arbitration Agreement survives the termination of the Admission Agreement is simply how arbitration agreements work—and would be so even were the agreement to arbitrate in the form of a clause included within a single instrument. *See Phillips*, 39 F. Supp. at 612–13.

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

Fourth, the *Solesbee* Court erroneously found against merger on the basis that “the Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages.” 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, the fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. Again, the very nature of *merger* is to *merge* separate documents.

Finally, the *Solesbee* Court erroneously found against the Facility on merger on the basis that Arbitration Agreement was voluntary. 438 S.C. at 649, 885 S.E.2d at 149. This provides no reasonable inference of an intent contrary to merger. Again, to be sure, the Arbitration Agreement was optional, i.e., agreeing to arbitration was not required to gain admission to the Facility. But all this means is that it did not have to be agreed to for the resident to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

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

Again, even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission, whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of the resident's relationship with the Facility: the Admission Agreement setting forth the terms of her admission, the Arbitration Agreement

providing for arbitration of disputes arising out of her admission. (*Compare* Admission Agreement (setting forth the terms of the admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of the admission).)

Accordingly, the merger analysis in *Solesbee* is erroneous and incomplete, and it should not control the disposition of this case.

2. Had the Court found the Admission Agreement and the Arbitration Agreement merged, as respectfully it should have, the Court should have found (and should now find) that equitable estoppel applies to prohibit Plaintiff from denying the enforceability of the Arbitration Agreement.

Defendants’ merger/equitable estoppel argument is a standalone argument that does not depend on any showing of authority (actual or apparent or otherwise) on the part of Ms. Sanborn or otherwise on the existence of any per se valid and enforceable agreement between the parties. *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174 (“South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel.”); *see also Coleman*, 407 S.C. at 354–55, 755 S.E.2d at 455 (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel); *id.* (explaining that “Appellants’ equitable estoppel argument,” which “[wa]s premised on [Appellants’] contention that, under state law, the admission agreements and the [arbitration agreements] merged,” as follows: “Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] . . . , she is nevertheless *equitably estopped to deny the [arbitration agreement’s] enforceability.*”) (emphasis added).

In *Wilson*, our Supreme Court favorably discussed the framework of the direct benefits test—which test the Court of Appeals had applied in the decision then before the *Wilson* Court on writ of certiorari, which followed the Court of Appeals’ earlier decision in *Pearson v. Hilton*

Head Hospital, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and under which Defendants contend Plaintiff is estopped from refusing to comply with the Arbitration Agreement here, where Ms. Mallory received direct benefits (in the form of her admission and care/treatment at the Facility) from the Admission Agreement with which the Arbitration Agreement was merged. *Wilson*, 426 S.C. at 340–345, 827 S.E.2d at 175–177; *see also id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner’s alternative argument based on the application of the state’s “traditional” six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., “[t]he traditional test referenced by [the] [p]etitioners,” “has been analyzed most-often in *non*-arbitration cases”) (emphasis added).

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

indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.”) (internal citations omitted).

Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted). As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with this Court’s decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the nonsignatory has exploited other parts of the contract by reaping its benefits. Indeed, to require more than this—or, in other words, to limit the applicability of direct benefits estoppel to only instances where the nonsignatory’s claim relies solely on the contract terms to impose liability—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. Neither *Wilson* nor this Court’s decision in *Pearson* nor general notions of equity countenance,²¹ much less call for, such a result.

²¹ *See Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

Here, Ms. Mallory was a direct beneficiary. To deny her receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of her residency: every night's stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility—even her complaint does not go nearly so far as that. (*See Compl.*)

Properly viewing the Admission Agreement and the Arbitration Agreement as merged, Ms. Mallory received the benefit of her admission to the Facility, including, without limitation, the room, board, care, and treatment he received therein. Respectfully, the Court should have found that the Arbitration Agreement merged with the Admission Agreement and that Ms. Mallory, and in turn her estate, Plaintiff, is estopped to deny the Admission Agreement/Arbitration Agreement's enforceability, Ms. Mallory having effectively embraced the contract with the Facility for the purpose of her admission and receipt of the benefits thereof.²²

WHEREFORE, for the foregoing reasons (and, again, for that matter, for all of the reasons previously advanced to the Court in and in support of the Underlying Motion (both those advanced in writing and those advanced via oral argument), all of which Defendants incorporate by reference herein and ask the Court to (re)consider and expressly rule upon in full), Defendants ask that the Court alter, amend, and/or reconsider the Subject Order in favor of an order granting the Underlying Motion.

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

²² To be clear, although the dispute here is about the Arbitration Agreement, as opposed to the Admission Agreement, to the extent there were any question about the enforceability of the Admission Agreement, Defendants' equitable estoppel argument applies with equal force to the Admission Agreement.

Respectfully submitted,
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August 18, 2025

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

Appeal from Kershaw County
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2023-CP-28-00524

Lynn Marie Sanborn
as Personal Representative of the Estate of Shirley Mallory,

Respondent,

v.

Palmetto Springdale Operating, LLC, d/b/a Springdale Healthcare Center
and Ashley Lloyd,

Appellants.

NOTICE OF APPEAL

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Attorneys for Respondent

Defendants/Appellants, Palmetto Springdale Operating, LLC d/b/a Springdale Healthcare Center and Ashley Lloyd (collectively, “Appellants”), hereby appeal the following orders of the Honorable Daniel Coble, Circuit Court Judge:

- **Order Denying Defendants’ Motion to Stay and Compel Arbitration, filed August 7, 2025;** and
- **Order filed August 21, 2025, Denying Defendants’ Motion to Alter, Amend, and/or Reconsider.**

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on August 21, 2025.

Respectfully submitted,
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September 22, 2025

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

Appeal from Kershaw County
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2023-CP-28-00524

Lynn Marie Sanborn
as Personal Representative of the Estate of Shirley Mallory,

Respondent,

v.

Palmetto Springdale Operating, LLC, d/b/a Springdale Healthcare Center
and Ashley Lloyd,

Appellants.

PROOF OF SERVICE

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Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on Respondent on September 22, 2025, by emailing (see attached email) a copy of the same to her counsel of record:

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Attorneys for Respondent

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, September 22, 2025, E-Filed with the lower court (see attached NEF), which also, i.e., in addition to service by email, effected service of the notice today on all counsel of record via the E-Filing System.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)

Attorneys for Appellants

Charleston, South Carolina

September 22, 2025

Hines, Russell

From: Hines, Russell
Sent: Monday, September 22, 2025 12:59 PM
To: Nate Hughey; Stuart Hudson; Brad Banyas
Cc: Brown, Stephen L.; Davis, Jay; Riddle, Matthew; Phillips, Ashton; Peterson, Susan; Bohannon, Kiara; Bell, Pollyana (Polly); Justman, Aimee
Subject: Sanborn v. Palmetto (2023-CP-28-00524) -- Notice of Appeal
Attachments: Sanborn v. Palmetto (2023-CP-28-00524) -- Notice of Appeal.pdf; Appealed Order 1 -- 2025 08-07 -- Order Denying MTCA.pdf; Appealed Order 2 -- 2025 08-21 -- Order Denying MTR.pdf

Attached for service in the above-referenced matter please find Defendants' **Notice of Appeal** and copies of the **Appealed Orders** attached thereto.

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

A filing has been submitted to the court RE: 2023CP2800524

Official File Stamp: 09-22-2025 12:52:46 PM
Court: CIRCUIT COURT
Common Pleas
Kershaw
Case Caption: Lynn Marie Sanborn Pr , plaintiff, et al VS Palmetto Springdale Operating, Llc , defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

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

The following people were served electronically:

Matthew Oliver Riddle for Palmetto Springdale Operating, Llc, Springdale Healthcare Center
Ted Ashton Phillips, III for Palmetto Springdale Operating, Llc, Springdale Healthcare Center
Russell Grainger Hines for Palmetto Springdale Operating, Llc et al
Arthur Stuart Hudson for Lynn Marie Sanborn Pr et al
Donald Jay Davis, Jr. for Palmetto Springdale Operating, Llc, Springdale Healthcare Center

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

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

RECEIVED
May 18 2026
SC Court of Appeals

Respectfully submitted,
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May 18, 2026