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SC Court of Appeals

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

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-00671
Appellate Case No. 2025-002151

Javan Ennis
as Personal Representative of the Estate of Michael Ennis,

Respondent,

v.

Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center
and Kellie Hiers,

Appellants.

RECORD ON APPEAL

HUGHEY LAW FIRM, LLC
D. Nathan Hughey (SC Bar No. 68409)
A. Stuart Hudson (SC Bar No. 71691)
Bradley H. Banyas (SC Bar No. 101668)
P.O. Box 348
Mt. Pleasant, South Carolina 29465
(843) 771-7644

-and-

Jordan C. Calloway (SC Bar No. 78728)
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800

Attorneys for Respondent

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

Attorneys for Appellants

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2024-CP-18-00671
	)	
Javan Ennis as Personal Representative of the	)	
Estate of Michael Ennis,	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANTS'
	)	MOTION TO STAY ACTION AND COMPEL
Versus	)	ARBITRATION
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants.	)	

This matter was before the Court on July 21, 2025 in Dorchester County, South Carolina, upon Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Kellie Hiers' Motion to Dismiss and/or Stay Action and Compel Arbitration. Oral arguments were conducted via Webex. Attorney A. Stuart Hudson of Hughey Law Firm, LLC was present representing the interests of the Plaintiff. Attorney Matthew O. Riddle of Clement Rivers, LLP was present representing the interests of the Defendants. For the following reasons set forth herein, the Defendants' Motion to Stay Action and Compel Arbitration is hereby DENIED.

FACTS

Michael Ennis was admitted to the Defendants' facility on or about February 17, 2020. Mr. Ennis's ex-wife, Javan Ennis signed several documents upon admission, including an arbitration agreement which is the subject of Defendants' Motion. At this time, Javan Ennis did not have legal authority to contractually bind her husband to arbitration, and only had been appointed as Michael Ennis's Health Care Power of Attorney to make decisions has to his health care only.

While a resident in the Defendants' facility, Mr. Ennis was allowed to suffer falls, suffering a left femur fracture on or about July 14, 2022.

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). 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. Michael Ennis's Health Care Power of Attorney Did Not Authorize Javan Ennis to Execute the Arbitration Agreement.

It is undisputed that Michael Ennis never signed the arbitration agreement. Javan Ennis executed documents on behalf of Michael Ennis after his entry to the Defendants' facility, including an Arbitration Agreement and Admission Agreement. The Court notes the distinctions among the two documents. An admissions agreement sets forth the terms of the resident's admission and scope of healthcare to be provided while at the facility. An arbitration agreement is a legal document which sets forth the terms of resolving potential disputes and waives an individual's constitutional rights to a jury trial.

The mere fact that an arbitration agreement exists does not automatically refer any dispute to arbitration. Like any contract, the agreement must be valid to be enforceable, signed by the parties who had the express and legal authority to do so. Javan Ennis was Michael Ennis's designated Health Care Power of Attorney ("HCPOA") ONLY. While the HCPOA authorized Javan Ennis to act on behalf of Michael Ennis in several aspects as to his health care, the HCPOA did not grant Javan Ennis the authority to bind Michael Ennis to arbitration agreements or waive his constitutional rights to a jury trial.

Under South Carolina law, an action to interpret a power of attorney is similar to a contract interpretation action. Watson v. Underwood, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct.

App. 2014). Accordingly, contract interpretation principles apply to determine the GDPOA's scope. Stott v. White Oak Manor, Inc., 426 S.C. 568, 577, 828 S.E.2d 82, 87 (Ct. App. 2019) (citing In re Thames, 344 S.C. 564, 571, 544 S.E.2d 854, 857 (Ct. App. 2001)). Contracts, including powers of attorney, must be interpreted to carry out their parties' intent as determined primarily by the language they chose in the document itself. A court may not read terms into a contract or power of attorney or infer the parties intended a meaning inconsistent with the language they expressed. Radalytic Labs, Inc. v. Culver, 329 S.C. 380, 383, 495 S.E.2d 782, 784 (1997) (citing Blakeley v. Rabon, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976)).

The exact issue before the court regarding the authority Javan Ennis had via the HCPOA with respect to Michael Ennis and as a result his ability to bind him 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). {Ex. B - Arredondo v SNH SE Ashley River Tenant, LLC}. In Arredondo, SNH SE Ashley River Tenant, LLC ("Ashley River") was an assisted living facility for residents with health care needs. 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).

The South Carolina Supreme Court in Arredondo directly 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 Michael Ennis. Ennis' HCPOA applies only to healthcare decisions and did not grant Javan Ennis the authority to bind Michael Ennis to arbitration agreements or waive her constitutional rights to a jury trial. Paragraph 4, subpart D of Ennis' 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 provide r, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

As in Arredondo this provision only authorized Javan Ennis to take these actions if 'necessary' for Michael Ennis's healthcare. Just like Arredondo, Javan Ennis was only authorized to take necessary actions for Michael Ennis's healthcare, signing the Arbitration Agreement was not necessary for Michael Ennis's healthcare. Accordingly, Javan Ennis did not have the authority to sign the Arbitration Agreement and/or waive Michael Ennis'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.

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 argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

c. Plaintiff did not Possess Statutory Authority to Bind Mr. Ennis under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

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

(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
- (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
- (3) a person given priority to make health care decision by another statutory provision;

- (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;
 - b. formal signing of a written property or marital settlement agreement; or
 - c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (6) a parent of the patient;
- (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
- (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
- (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendant has put forth no evidence that Mr. Ennis was unable to consent to treatment after two licensed physicians have examined the patient and certified an inability to consent, as required by the statute. Additionally, the AHCCA only deals “health care” related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word “legal” or “arbitration” mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The 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.

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 above in Section I, there is no valid arbitration agreement because Javan Ennis did not have the legal authority to execute a valid arbitration agreement.

CONCLUSION

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

IT IS SO ORDERED.



Dorchester Common Pleas

Case Caption: Javan Ennis Prs , plaintiff, et al VS Hallmark Longterm Care Llc ,
defendant, et al

Case Number: 2024CP1800671

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No.
	)	
Javan Ennis as Personal Representative of the	)	
Estate of Michael Ennis,	)	
	)	
	)	SUMMONS
Plaintiff,	)	(Jury Trial Demanded)
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants.	)	

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

HUGHEY LAW FIRM, LLC

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

Attorneys for Plaintiff

April 17, 2024
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No.
	)	
Javan Ennis as Personal Representative of the	)	
Estate of Michael Ennis,	)	
	)	
	)	COMPLAINT
	)	(Jury Trial Demanded)
	)	
Plaintiff,	)	
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants.	)	

The Plaintiff, Javan Ennis as Personal Representative of the Estate of Michael Ennis, complaining of the Defendants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Kellie Hiers ("Defendants"), alleges as follows:

1. The Plaintiff is a citizen and resident of Berkeley County, South Carolina.
2. Upon information and belief, the Defendant, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, is a business corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in Dorchester County, South Carolina at 255 Midland Parkeay, Summerville, South Carolina.
3. Upon information and belief, the Defendant, Kellie Hiers, is a citizen and resident of Dorchester County, South Carolina and is the administrator of Hallmark Healthcare Center.
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 Michael Ennis.
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 Michael Ennis. 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 Michael Ennis.

9. On the application for the license in effect at the time of Michael Ennis' injury, Hallmark 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 Michael Ennis' injury.

10. The State of South Carolina required that Hallmark 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 Hallmark Healthcare Center was going to meet the specialized needs of the residents with Alzheimer's disease and/or related dementia such as Michael Ennis - and the State of South Carolina required that Hallmark Healthcare Center make the policies and procedures available be accessible to staff. Hallmark 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 Hallmark Healthcare Center have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Michael Ennis, based on assessment data, e.g., social services, which was to be implemented for the benefit of Michael Ennis as well as other residents. Hallmark 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 Hallmark 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. Hallmark 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. Michael Ennis' injuries constituted reportable incidents.

14. The State of South Carolina required that Hallmark Healthcare Center keep a legible and complete medical record, to include and any all incidents involving Michael Ennis as well as other residents. Hallmark 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 Hallmark Healthcare Center to describe in its care plan for Michael Ennis as well as other residents the services that Hallmark Healthcare Center was going to furnish to him, *i.e.*, what assistance Hallmark Healthcare Center was going to provide to him, how much assistance Hallmark Healthcare Center was going to provide to him, who at Hallmark Healthcare Center was going to provide the assistance, how often, and when. Hallmark 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 Hallmark Healthcare Center to administer treatment and services to Michael Ennis 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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 Hallmark 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. Hallmark 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 Hallmark 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. Hallmark 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. Michael Ennis was admitted to the Defendants' facility, Hallmark Healthcare Center.

29. On or about July 14, 2022, Mr. Ennis was allowed to suffer a fall which resulted in injuries, including but not limited to a left femur fracture.

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 appropriate nursing home care to Michael Ennis.

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 Michael Ennis 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 Michael Ennis.

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

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 Michael Ennis.

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 Michael Ennis 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 Michael Ennis was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and

treatment of Michael Ennis and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Michael Ennis, 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 Michael Ennis' care;
- d. In failing to properly revise and modify plans of care for Michael Ennis in response to Michael Ennis' 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 Michael Ennis, 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 Michael Ennis 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 nutritional and infection control issues and 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 nutritional and infection control procedures and pressure ulcer prevention procedures;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendants;
- 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 Michael Ennis had proper care;
- m. In failing to properly document significant clinical findings;

- n. In failing to properly document the medical records of Michael Ennis;
- 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 61-84;
- 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 Michael Ennis 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, Michael Ennis suffered from severe debilitating injuries which resulted in permanent decline, as a result of which Michael Ennis has suffered severe and extreme emotional distress, anxiety, physical injuries, medical bills, the likes of which no person should endure, for which Michael Ennis 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, Michael Ennis.

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 Michael Ennis.

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 Michael Ennis 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, Michael Ennis 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 he 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 him;

- 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, his 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, his 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 his family.

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

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

55. The Plaintiff and his 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 his 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 the skilled nursing facility and he 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 him; 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, his 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, his family, and others like them into placing himself or his 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 his family.
- e. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.

g. The Plaintiff and his 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, Michael Ennis suffered from severe debilitating injuries which resulted in his death, as a result of which Michael Ennis' 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. Michael Ennis' 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, Michael Ennis suffered fear, physical pain, and suffering, medical expense and mental and emotional distress and anguish in the time before his death, for which Michael Ennis' 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)

Post Office Box 348

Mount Pleasant, South Carolina 29465

T: (843) 881-8644

F: (888) 884-8311

nate@hugheyfirm.com

stuart@hugheyfirm.com

brad@hugheyfirm.com

Attorneys for Plaintiff

April 17, 2024

Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
	)	
Javan Ennis as Personal Representative of	)	C/A No
the Estate of Michael Ennis,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF ALYSSA GOLDSTEIN, RN
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants	)	

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

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

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

4 I am familiar with the standard of care applicable to the Defendants' during the time of Michael Ennis' 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 Michael Ennis.

5 I have reviewed records and / or documents relating to Michael Ennis from the facilities where Michael Ennis 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 his residency.

6 Without limitation, my review of records and/or documents relating to Michael Ennis show the following:

- Michael Ennis was admitted to Hallmark Healthcare Center
- On or about July 14, 2022, Mr. Ennis was allowed to suffer a fall which resulted in injuries, including but not limited to a left femur fracture.

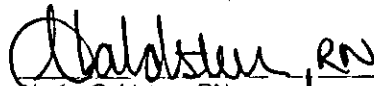
7 In my professional opinion, the Defendants deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding circumstances as those presented by Michael Ennis. In particular, in my opinion, without limitation, the Defendants deviated from the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

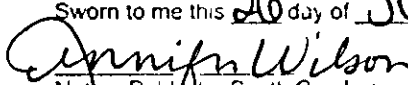
- Failing to properly monitor Michael Ennis,
- Failing to appropriately care plan for Michael Ennis,

- Failing to prevent falls.
- Failing to place interventions as necessary to prevent Michael Ennis from suffering falls
- Failing to timely address injuries by Michael Ennis,
- Failing to properly supervise the nurses, administrators, physicians, and other agents and employees,
- And other particulars

8. Additionally, it is my opinion that Michael Ennis' 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


Alyssa Goldstein, RN

Sworn to me this 20th day of July, 2023

Notary Public for South Carolina
My commission expires: 4/12/2032

Alyssa Goldstein, RN

REDACTED.com

REDACTED

Charleston, SC 29492

Cell REDACTED

East Cooper Medical Center, Mount Pleasant, SC

2014- Present

Day Surgery Nurse/Endoscopy Nurse/Preceptor

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

Windwood Farm, Mount Pleasant, SC

2013- 2014

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

Registered Nurse

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

Trident Medical Center, Charleston, SC

2013- April 2014

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

Registered Nurse: Full Time

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

Franke at Seaside, Mount Pleasant, SC

2012 - 2013

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

Registered Nurse

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

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

Franke at Seaside, Mount Pleasant, SC

2008 - 2010

Lead Certified Nurse's Aide

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

Education

Trident Technical College, North Charleston, SC

2012-2016

Associate in Applied Science - Nursing

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

Palm Beach Community College, Lake Worth, FL

2007

Associate in Arts – general business

Certifications and Licenses

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
JAVAN ENNIS AS PERSONAL	)	CASE NO. 2024-CP-18-00671
REPRESENTATIVE OF THE ESTATE	)	
OF MICHAEL ENNIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	ANSWER ON BEHALF OF HALLMARK
	)	LONGTERM, CARE, LLC D/B/A
HALLMARK LONGTERM CARE, LLC	)	HALLMARK HEALTHCARE CENTER
D/B/A HALLMARK HEALTHCARE	)	
CENTER, AND KELLIE HIERS,	)	
	)	
DEFENDANTS.	)	
	)	

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

The Defendant Hallmark Longterm Care, LLC d/b/a Hallmark 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 Dorchester 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 admitted, upon information and belief.

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 Mr. Michael Ennis was a resident of the Facility and a fee was paid on his 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 Mr. Ennis 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 Mr. Michael Ennis 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, this Defendant admits that as the licensed operator of a skilled nursing facility, the Facility is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant further affirmatively states that at all times care was provided to Mr. Ennis 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 this Defendant is denied.

11. This 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 Mr. Ennis 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 Mr. Ennis. 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 Mr. Ennis 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 Mr. Ennis' alleged injuries. Any allegations in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied.

14. This 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 Mr. Michael Ennis. 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 Mr. Ennis 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. This 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 Mr. Ennis. 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 Mr. Ennis 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 Mr. Ennis. 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 Mr. Ennis 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 Mr. Ennis was admitted to the Facility, but would crave reference to his 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 Mr. Ennis in accordance with the applicable standard of care. Defendant affirmatively states that at all times relevant, care was provided to Mr. Ennis 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, this 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 Mr. Ennis. 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 Mr. Ennis.

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 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/ Matthew O. Riddle

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

P.O. Box 993, Charleston, SC 29402

(843) 720-5422; MRiddle@ycrlaw.com

Attorneys for the Defendant Hallmark Longterm
Care, LLC d/b/a Hallmark Healthcare Center

Charleston, South Carolina

Dated: July 26, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
JAVAN ENNIS AS PERSONAL	)	CASE NO. 2024-CP-18-00671
REPRESENTATIVE OF THE ESTATE	)	
OF MICHAEL ENNIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	ANSWER ON BEHALF OF
	)	DEFENDANT KELLIE HIERS
HALLMARK LONGTERM CARE, LLC	)	
D/B/A HALLMARK HEALTHCARE	)	
CENTER, AND KELLIE HIERS,	)	
	)	
DEFENDANTS.	)	
	)	

TO: A. STUART HUDSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant Kellie Hiers (“Defendant” or “this Defendant”), by and through her 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. The allegations set forth in Paragraph 2 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 to the extent they assert or imply liability and/or damages as to this Defendant.

4. Responding to the allegations set forth in Paragraph 3 of Plaintiff's Complaint, this Defendant admits she was the administrator of Hallmark Healthcare Center at times relevant to this action. The remaining allegations inconsistent with this response are denied. Further responding, this Defendant is a resident of Colleton County.

5. This Defendant denies the allegations set forth in Paragraph 4 of Plaintiff's Complaint and demands strict proof thereof. To the extent the allegations set forth in the above Paragraph call for legal conclusions or are directed at other parties, 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 Mr. Michael Ennis was a resident of the Facility and a fee was paid on his behalf for services related thereto. To the extent the allegations set forth in the above Paragraph call for legal conclusions or are directed at other parties, 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 Faith Healthcare Center (the "Facility Defendant").

9. Answering the allegations in Paragraph 8 of Plaintiff's Complaint, Defendant admits that Mr. Ennis was a resident of the Facility at times relevant to this action. Defendant affirmatively states that at all times the Facility employees and staff provided care to Mr. Michael Ennis within the appropriate standard of care. To the extent the allegations in Paragraph 8 are directed at parties other than this Defendant, or 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. The allegations in Paragraphs 9, 10, 11, and 12 of the Complaint are directed at parties other than this Defendant and therefore no response is required. To the extent a response is required, this Defendant admits that as the licensed operator of a skilled nursing facility, the Facility Defendant is subject to certain applicable statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the standard of care. To the extent that the allegations in the above Paragraphs state and/or call for a legal conclusion, no response is required. Any allegation in the above Paragraphs inconsistent with this response or intended to allege liability or damage against Defendant is denied.

11. 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 Mr. Michael Ennis' alleged injuries. Any allegations in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied.

12. The allegations set forth in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 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, Defendant asserts that as the licensed operator of a skilled nursing facility, the Facility Defendant is subject to certain applicable statutes and regulations. Defendant affirmatively states that such statutes and regulations do not establish the 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. Further, to the extent the allegations in the above Paragraphs call for legal conclusions, no response is required.

13. Answering the allegations in Paragraph 28 of Plaintiff's Complaint, the Defendant admits that Mr. Michael Ennis was admitted to the facility but would crave reference to his records concerning the date of the admission. Any allegations inconsistent with this response are denied and strict proof is demanded thereof.

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

15. This Defendant admits the allegations set forth in Paragraph 30 of Plaintiff's Complaint, insofar as it is alleged that this Defendant was a licensed skilled nursing facility administrator and was required to provide care to Mr. Ennis in accordance with the applicable standard of care. Defendant affirmatively states that at all times relevant, care was provided to Mr. Ennis within the appropriate standard of care. To the extent the allegations in the above paragraph are directed at other parties or state and/or call for legal conclusions, no response is required. Any allegation inconsistent with the above response or intended to allege liability or damages as to Defendant is hereby denied

16. In responding to the allegations set forth in Paragraphs 31, 32, and 33 of the Plaintiff's Complaint, Defendant admits the Facility Defendant, as the licensed operator of a

skilled nursing facility, is subject to certain applicable statutes and regulations. This Defendant affirmatively states that such statutes and regulations do not establish the standard of care. This Defendant also admits that the facility had a duty to provide skilled nursing care and treatment to Mr. Michael Ennis in compliance with the governing the standard of care. To the extent that the allegations set forth in the above Paragraphs call for legal conclusions, no response is required. Any and all allegations contained in the above Paragraphs inconsistent with this response or intended to allege liability or damages against this Defendant are denied and strict proof is demanded thereof.

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

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

19. Answering the allegations in Paragraph 38 of Plaintiff's Complaint, Defendant admits the Facility Defendant owed a certain duty of care to Mr. Michael Ennis. Any allegations inconsistent with this response or which are intended to assert or imply liability as to this Defendant are denied. To the extent the allegations in the above Paragraph are directed at other parties, no response is required.

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

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

22. Answering the allegations in Paragraph 42 of Plaintiff's Complaint, Defendant admits that as the licensed operator of a skilled nursing facility, the Facility Defendant 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.

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

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

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

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

27. 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.

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

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

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

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

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

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

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

34. 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 the Facility Defendant and Plaintiff. Pursuant to the South Carolina Rules of Civil Procedure and the FAA, this matter should be stayed pending final resolution of all claims pursuant to the valid arbitration agreement.

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

35. 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**

36. 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**

37. 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**

38. 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**

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

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

40. 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**

41. This Defendant hereby asserts that the Plaintiff lacks legal standing to pursue the instant claims.

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

42. This Defendant asserts that she did not owe Plaintiff's Decedent a duty of care with respect to all or some of the causes of action asserted in Plaintiff's Complaint.

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

43. 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**

44. 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**

45. 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**

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

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

47. Defendant hereby gives notice that she intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his 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 she be awarded the costs and reasonable fees associated with this matter, and such other relief as this Court may deem just and proper.

CLEMENT RIVERS, LLP

By: /s/ Matthew O. Riddle

D. Jay Davis, Jr.

SC State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

P.O. Box 993, Charleston, SC 29402

(843) 720-5422; MRiddle@ycrlaw.com

Attorneys for the Defendant Kellie Hiers

Charleston, South Carolina

Dated: July 26, 2024

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
 2 COUNTY OF DORCHESTER CASE NO.:2024-CP-18-00671

3 **** TRANSCRIPTION OF WEBEX ****

4 -----

5 July 21, 2025

6 **BEFORE:** The Honorable Maite Murphy

7 -----

8 JAVAN ENNIS as Personal Representative of the
 Estate of Michael Ennis,

9 Plaintiff,

10 vs.

11 HALLMARK LONGTERM CARE, LLC, d/b/a HALLMARK
 12 HEALTHCARE CENTER, and KELLIE HIERS,

13 Defendants.

14 -----

15
 16 APPEARANCES:

17
 18 Arthur Stuart Hudson, Esq.
 Appearing for the Plaintiff.

19 Russell Grainger Hines, Esq.
 20 Appearing for the Defendants.

21

22

23 Recorded by: Webex Courtroom

24 Transcriber: Natalie Dahl, RPR
 SC Official Court Reporter

25

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

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Description	Page
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(NONE)

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but incorrect

P R O C E E D I N G S

THE CLERK: The next case is 2024-CP-18-00671, Javan Ennis, PRS, versus Hallmark Longterm Care, LLC, and this is a motion to stay filed by the defendant.

THE COURT: Good afternoon, Mr. Hines, out there.

MR. HINES: Good afternoon, Your Honor.

THE COURT: You're motion, Mr. Hines?

MR. HINES: Yes, Your Honor.

And if you are ready for me to proceed, I'm happy to do it, and I'll certainly just stick to the high points.

THE COURT: Yes, sir. You may proceed.

MR. HINES: Thank you, Your Honor, and may it please the Court. Again, my intention here -- I know Your Honor has a full docket, and I know Your Honor has heard from me on motions of this sort before, and we've certainly filed no shortage of briefing on it. So I will just hit the high points, and that is to say that it is our motion to compel arbitration. This is a motion that is filed in the context of a wrongful death and survival action, the basis of which is alleged deficient care and treatment in a skilled nursing facility.

1 The moving parties here are the facility,
2 Hallmark Longterm Care, d/b/a Hallmark Healthcare
3 Center, and also Kellie Hiers. The basis for
4 Ms. Hiers inclusion in that is that our arbitration
5 agreement -- which we contend the plaintiff should
6 be estopped to deny the validity of -- includes or
7 covers Ms. Hiers.

8 The agreement -- and it's part of the record,
9 of course -- is between Hallmark, its agents,
10 employees, and servants, and the now decedent
11 Mr. Ennis. Ms. Hiers is alleged to be the
12 administrator of the facility and, therefore, is
13 covered under that language as an employee.

14 Basically here, Your Honor, it's -- I think
15 I've used this terminology I'm sure before Your
16 Honor and in other courts -- a one-two punch, and I
17 have to land them both to win our argument in its
18 merger, and then equitable estoppel. We have here
19 an admission agreement and an arbitration agreement
20 that were signed, not by the decedent, I'll
21 acknowledge, not by Mr. Ennis, but by I think
22 his -- well, I think it is an ex-spouse, Javan
23 Ennis, on his behalf.

24 The way that we submit that those are
25 enforceable against the plaintiff now is through

1 merger of the admission of the agreement and
2 arbitration agreement, and we merge under the case
3 law that we cite in our brief, that when different
4 instruments -- or you have multiple instruments,
5 but they are signed at the same time, by the same
6 parties, for the same purpose, in the course of the
7 same transaction, they are deemed to merge unless
8 there is evidence of a contrary intention; that
9 being, an intention contrary to merger.

10 We go through this in our brief and explain
11 why we contend there is not such evidence. And, in
12 fact, the only reasonable conclusion is that the
13 merger -- the Court should find that the
14 document -- the admission agreement and arbitration
15 agreement merged.

16 In particular, I point out there is a case
17 that goes against me, a case called Solesbee v.
18 Fundamental -- Fundamental Consulting (*sic*)
19 Operational Services. We go through it in our
20 brief, and we explain why that case shouldn't
21 control. But if Your Honor would find these
22 documents signed at the same time, for the same
23 parties, for the same purpose, and of course the
24 same transaction, and that would be an admission
25 agreement and the arbitration agreement, that they

1 merge.

2 Then, the next part of the analysis is rather
3 simple. It is based upon what's called direct
4 benefits estoppel. With these instruments having
5 been merged, that means that the admission
6 agreement is indistinguishable from the arbitration
7 agreement, and certainly she has -- he, rather, the
8 decedent, receives benefits under the -- under the
9 admission agreement; to include, admission, room,
10 board, and the various services that go along with
11 it.

12 Your Honor, I can certainly -- and I think
13 I've done it in your court before -- make this
14 argument much, much longer, but that's the basic
15 roadmap here: Merger of the admission agreement
16 and arbitration agreement, and equitable estoppel.

17 We're happy to rely on Your Honor's view of
18 our written arguments in support of this oral
19 presentation. Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Hines.

21 Counselor, response?

22 MR. HUDSON: Yes. Stuart Hudson on behalf of
23 the plaintiff.

24 Their position on the enforceability of the
25 arbitration agreement requires the arbitration

1 agreement to be enforceable and to actually apply
2 to Michael Ennis. It was signed by his healthcare
3 power of attorney, Javan Ennis, who is his ex-wife.
4 Javan Ennis, in the healthcare power of attorney,
5 did not have the authority to do anything other
6 than make necessary health care decisions for
7 Michael Ennis. Signing an arbitration agreement
8 and waiving his constitutional rights to a jury
9 trial is not one of those things that was necessary
10 for his health care. He would have been allowed
11 admission to the facility whether or not she signed
12 that arbitration agreement or not. She never held
13 herself out as his agent to waive his
14 constitutional right to a jury trial or sign an
15 arbitration agreement. She submitted an affidavit,
16 which has been on file with the record, on that
17 issue.

18 The matter with respect to merger has already
19 been ruled against. In the Solesbee case -- and
20 you can't merge -- the matter of merger would only
21 really matter if the arbitration agreement was
22 enforceable. The Arredondo case against Ashley
23 River -- that the supreme court recently decided --
24 clearly states all of these things. This is a --
25 the supreme court has already ruled on this issue

1 and said if you cannot -- if you do not have the
2 specific authority under the healthcare power of
3 attorney, then you cannot bind someone to the
4 arbitration agreement.

5 They even went further to say even a general
6 durable power of attorney must list, basically,
7 that right to do so. And even a general durable
8 power of attorney doesn't allow someone to bind a
9 third party to an arbitration agreement where they
10 have not been given that authority.

11 This case only involves a healthcare power of
12 attorney. And all of the case law basically says
13 that this arbitration agreement is not enforceable.
14 So we ask that you deny the defendant's motion.
15 Thank you.

16 THE COURT: All right. Thank you, gentlemen.

17 Mr. Hines, anything further?

18 MR. HINES: Well, just very briefly, Your
19 Honor. I think that we go on what we have in our
20 brief, but I would make the point just maybe if it
21 makes it any clearer for Your Honor, we're not
22 arguing that there's enforceability based upon the
23 healthcare power of attorney. I think
24 Mr. Hudson -- and I understand that since there is
25 a healthcare power of attorney, I understand that

1 he goes ahead and dispenses with that, which I
2 understand. But we're not arguing in the face of
3 that Arredondo case. I understand that in that
4 Arredondo case that the supreme court did rule that
5 healthcare power of attorney -- the statutory
6 version, which I think is what we have here -- did
7 not include within it the power to agree to
8 arbitration on behalf of the -- well, in this case
9 on behalf of the resident. So that doesn't need to
10 be a part of your analysis, as far as I'm
11 concerned. We concede that that's not the horse
12 we're riding on.

13 We're going with merger and estoppel, and we
14 do respectfully contend that the Solesbee case
15 doesn't answer that question, and that is all set
16 forth in our brief.

17 THE COURT: All right. Thank you, gentlemen.

18 MR. HUDSON: Your Honor, may I just respond
19 to that? I apologize.

20 THE COURT: Yes, sir.

21 MR. HUDSON: I don't know -- there hasn't
22 been an argument made that what makes the
23 arbitration agreement enforceable, so I don't
24 really understand his position.

25 Obviously, with respect to the issue on

1 estoppel or unjust enrichment, you know, this whole
2 claim is about negligent care provided by the
3 facility. So there was no benefit to Michael
4 Ennis. So the position that there was a benefit
5 received of negligent care, I don't really think
6 that really applies here.

7 MR. HINES: I do have two quick responses to
8 that, Your Honor. Number one --

9 THE COURT: All right. Last responses.

10 MR. HINES: We're arguing estoppel;
11 therefore, we're not arguing validity per se.
12 We're arguing that the way that estoppel works is
13 that the plaintiff would not be allowed to argue to
14 challenge the validity of it. So, you know, that's
15 -- that's the way that estoppel works, it just
16 bridges -- it just does away with the question of
17 validity per se. It has to do with can the
18 plaintiff deny the enforceability? And our
19 argument, as we have written, is the plaintiff
20 cannot.

21 Another thing about it, obviously, is when it
22 comes to benefits, the benefits certainly were
23 received in terms of room, board, and so forth.
24 But you can't put the cart before the horse and say
25 there was no benefit because we're now suing on the

1 basis of an alleged deficient care and treatment,
2 because that is what the whole case is about. We
3 certainly don't concede that there was any
4 deficiency.

5 Thank you, Your Honor, for your indulgence.
6 I appreciate the chance to argue.

7 THE COURT: Okay. Thank you, gentlemen.
8 I'll notify you of an opinion.

9 (Whereupon, the Webex audio/video concluded
10 for this case.)
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CERTIFICATE OF TRANSCRIBER

Case Name: Javan Ennis (PR) v. Hallmark
Healthcare Center, Kellie Hiers

Case No.: 2024-CP-18-00671

Date of Hearing: July 21, 2025

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

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

Natalie Dahl, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
JAVAN ENNIS AS PERSONAL	)	CASE NO. 2024-CP-18-00671
REPRESENTATIVE OF THE ESTATE	)	
OF MICHAEL ENNIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANTS' MOTION TO STAY
	)	ACTION AND COMPEL ARBITRATION
	)	
HALLMARK LONGTERM CARE, LLC	)	
D/B/A HALLMARK HEALTHCARE	)	
CENTER, AND KELLIE HIERS,	)	
	)	
DEFENDANTS.	)	

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

PLEASE TAKE NOTICE that the Defendants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Kellie Hiers ("Defendants"), by and through their undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order 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 Michael Ennis'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 State Bar ID No.: 12084

Matthew O. Riddle

SC State Bar ID No.: 76650

P.O. Box 993, Charleston, SC 29402

(843) 720-5422; MRiddle@ycrlaw.com

Attorneys for the Defendants

Charleston, South Carolina

Dated: June 10, 2025

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Hallmark ("Facility"), its agents, employees and servants, and MICHAEL ENNIS ("Resident") or JAVAN ENNIS ("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.

Javan Ennis 2/17/2020
Resident/Representative Signature Date

JAVAN ENNIS
Printed Name of Resident/Representative

Janice M. Onusko 2/17/2020
Authorized Agent of Facility Date

Janice M. Onusko
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2024-CP-18-00671
	)	
Javan Ennis as Personal Representative of the	)	
Estate of Michael Ennis,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION OF DEFENDANTS'
Versus	)	MOTION TO DISMISS AND COMPEL
	)	ARBITRATION
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants.	)	

The Plaintiff, Javan Ennis as Personal Representative of the Estate of Michael Ennis, hereby serves her Memorandum in Opposition to the Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center, and Kellie Hiers' Motion to Dismiss, Compel Arbitration, and Stay State Court Proceedings.

FACTS

The Defendants operate a skilled nursing facility in Dorchester County, South Carolina. The facility is licensed by the South Carolina Department of Health and Environmental Control, pursuant to R. 61-17, *Standards for Licensing Nursing Homes*. Michael Ennis was admitted to the Defendants' facility on or about February 17, 2020. Mr. Ennis's ex-wife, Javan Ennis signed several documents upon

admission, including an arbitration agreement which is the subject of Defendants' Motion. At this time, Javan Ennis did not have legal authority to contractually bind her husband to arbitration, and only had been appointed as Michael Ennis's Health Care Power of Attorney to make decisions has to his health care ONLY. While a resident in the Defendants' facility, Mr. Ennis was allowed to suffer falls, suffering a left femur fracture on or about July 14, 2022.

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). 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. Michael Ennis’s Health Care Power of Attorney Did Not Authorize Javan Ennis to Execute the Arbitration Agreement.

It is undisputed that Michael Ennis never signed the arbitration agreement. Javan Ennis executed documents on behalf of Michael Ennis after his entry to the Defendants’ facility, including an Arbitration Agreement and Admissions Agreement. [Ex. A - Affidavit of Javan Ennis]. The Court notes the distinctions among the two documents. An admissions agreement sets forth the terms of the resident’s admission and scope of healthcare to be provided while at the facility. An arbitration agreement is a legal document which sets forth the terms of resolving potential disputes and waives an individual’s constitutional rights to a jury trial.

The mere fact that an arbitration agreement exists does not automatically refer any dispute to arbitration. Like any contract, the agreement must be valid to be enforceable, signed by the parties who had the express and legal authority to do so. Javan Ennis was Michael Ennis's designated Health Care Power of Attorney ("HCPOA") ONLY. While the HCPOA authorized Javan Ennis to act on behalf of Michael Ennis in several aspects as to his health care, the HCPOA did not grant Javan Ennis the authority to bind Michael Ennis to arbitration agreements or waive his constitutional rights to a jury trial. [Ex. A - Affidavit of Javan Ennis].

Under South Carolina law, an action to interpret a power of attorney is similar to a contract interpretation action. Watson v. Underwood, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014). Accordingly, contract interpretation principles apply to determine the GDPOA's scope. Stott v. White Oak Manor, Inc., 426 S.C. 568, 577, 828 S.E.2d 82, 87 (Ct. App. 2019) (citing In re Thames, 344 S.C. 564, 571, 544 S.E.2d 854, 857 (Ct. App. 2001)). Contracts (and powers of attorney) must be interpreted to carry out their parties' intent as determined primarily by the language they chose in the document itself. A court may not read terms into a contract or power of attorney or infer the parties intended a meaning inconsistent with the language they expressed. Radalytic Labs, Inc. v. Culver, 329 S.C. 380, 383, 495 S.E.2d 782, 784 (1997) (citing Blakeley v. Rabon, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976)).

The exact issue before the court regarding the authority Javan Ennis had via the HCPOA with respect to Michael Ennis and as a result his ability to bind him 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). {Ex. B - Arredondo v SNH SE Ashley River Tenant, LLC}. In Arredondo, SNH SE Ashley River Tenant, LLC (“Ashley River”) was an assisted living facility for residents with health care needs. 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).

The South Carolina Supreme Court in Arredondo directly 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 Michael Ennis. Ennis’ HCPOA applies only to healthcare decisions and did not grant Javan Ennis the authority to bind Michael Ennis to arbitration agreements or waive her constitutional rights to a jury trial. Paragraph 4, subpart D of Ennis’ 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 provide r, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

As in Arredondo this provision only authorized Javan Ennis to take these actions if 'necessary' for Michael Ennis's healthcare. Just like Arredondo, Javan Ennis was only authorized to take necessary actions for Michael Ennis's healthcare, signing the Arbitration Agreement was not necessary for Michael Ennis's healthcare. Accordingly, Javan Ennis DID NOT have the authority to sign the Arbitration Agreement and/or waive Michael Ennis'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.**

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 argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. *see also* Thompson v. Pruitt Corp., 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The Act confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial decisions obligating the patient to pay for the medical care provided." (quoting Coleman, 407 S.C. at 351-52, 755 S.E.2d at 453)).

c. Plaintiff did not Possess Statutory Authority to Bind Mr. Ennis under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care." Id. A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed

physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8).

S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

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

Defendant has put forth no evidence that Mr. Ennis was unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent, as required by the statute.

Additionally, the AHCCA only deals “health care” related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word “legal” or “arbitration” mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The 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.

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 above in Section I, there is no valid arbitration agreement because Javan Ennis did not have the legal authority to execute a valid arbitration agreement.

CONCLUSION

Based on the reasons set forth above, the Plaintiff respectfully requests the Defendant's Motion to Dismiss and Compel Arbitration be denied, Defendant be Ordered to respond fully and completely to Plaintiff's discovery requests, and any other such relief the Court so sees fit.

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)
Post Office Box 348
Mount Pleasant, South Carolina 29465
T: (843) 881-8644
F: (888) 884-8311
nate@hugheyfirm.com
stuart@hugheyfirm.com
brad@hugheyfirm.com

Attorneys for Plaintiff

July 15, 2025
Mt. Pleasant, SC

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ electronic filing, ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 15th day of July, 2025.

s/ A. Stuart Hudson

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	C/A No. 2024-CP-18-00671
	)	
Javan Ennis as Personal Representative of the	)	
Estate of Michael Ennis,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF JAVAN ENNIS
	)	
Versus	)	
	)	
Hallmark Longterm Care, LLC d/b/a Hallmark	)	
Healthcare Center, and Kellie Hiers,	)	
	)	
Defendants.	)	

1. My name is Javan Ennis 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 live in Summerville, South Carolina.

3. I was married to Michael Ennis.

4. Michael Ennis, was admitted to Hallmark Healthcare Center on or about February 17, 2020.

5. On February 17, 2020 I was presented with admission paperwork by the staff at Hallmark Healthcare Center and told to sign them on behalf of Michael Ennis by employees of Hallmark Healthcare Center so he could be admitted for care.

6. I was not told the paperwork included an Arbitration Agreement which would waive his constitutional right to a jury trial.

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

8. Michael Ennis nor myself were ever asked by any Hallmark Healthcare Center employee if I had the authority to bind Michael Ennis to a waiver of his constitutional rights to a jury trial and/or bind Michael Ennis to an Arbitration Agreement, which I did not.

9. While I was appointed Michael Ennis's Health Care Power of Attorney as of April 18, 2016, the terms of the Health Care Power of Attorney did not give me the authority to bind Michael Ennis to an arbitration agreement or waive his constitutional rights to a jury trial.

10. Michael Ennis has never given me permission or authority to sign any Arbitration agreement or waive his constitutional rights to a jury trial on his behalf.

11. I did not have any actual or apparent legal authority to bind Michael Ennis to arbitration at any point in time.

12. I also would never knowingly sign an arbitration agreement or any document waiving Michael Ennis's constitutional rights to a jury trial and I was not told the paperwork presented to me contained such a document. I was simply told I needed to sign the papers put in front of me to allow him admission to the facility.

13. Michael Ennis suffered greatly as a result of the Defendants' failures, and I want his claims to be heard by a jury, as is his constitutional right.

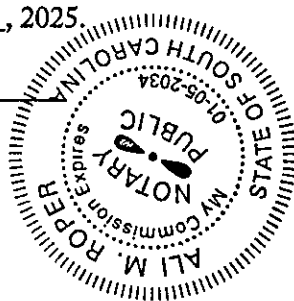
Javan Ennis
Javan Ennis

Sworn to me this 9th day of July, 2025.

Ali M. Roper

Notary Public for South Carolina

My commission expires:



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
JAVAN ENNIS AS PERSONAL	)	CASE NO. 2024-CP-18-00671
REPRESENTATIVE OF THE ESTATE	)	
OF MICHAEL ENNIS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
HALLMARK LONGTERM CARE, LLC	)	MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY AND COMPEL ARBITRATION
D/B/A HALLMARK HEALTHCARE	)	
CENTER, AND KELLIE HIERS,	)	
	)	
DEFENDANTS,	)	
	)	

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

Defendants Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center (hereinafter “Facility”), and Kellie Hiers (“Ms. Heirs”) (collectively, “Defendants”), submit this memorandum in support of their motion, filed June 10, 2025, to stay this action and compel the claims asserted against it to arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has sued Defendants alleging deficiencies relating to care/treatment Mr. Michael Ennis (“Mr. Ennis”) received while he was a resident of the Facility. In conjunction with Mr. Ennis’s admission to the Facility, his spouse Javan Ennis (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, the Defendants respectfully request that this Honorable Court stay the pending action and compel Plaintiff's claims to arbitration.

BACKGROUND

With the help of Ms. Ennis, Mr. Ennis was admitted to the Facility on or around February 15, 2020, for skilled nursing care. Ms. Ennis handled the paperwork in conjunction with her spouse's admission, and in so doing, Ms. Ennis executed an Admission Agreement and an Arbitration Agreement on her spouse's behalf. (See **Exhibits 1** and **2**, respectively, attached hereto).

Based on the Admission Agreement and pursuant to the terms thereof, Mr. Ennis was admitted to the Facility and received skilled nursing care and treatment. During his stay at the Facility, Mr. Ennis received and accepted the benefits of the Admission Agreement, which included the Facility furnishing him 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 Defendants' knowledge, even now, Plaintiff has not asserted that the Admission Agreement is invalid or that Mr. Ennis entered the Facility unwillingly or without consent.

Ms. Ennis explicitly represented that she was authorized to admit her spouse to the Facility and execute documents on his behalf, including the Arbitration Agreement. Indeed, the very first provision of the Admission Agreement states that *all information submitted to Facility* is truthful and correct, which would, of course, include Ms. Ennis's authority to bind her spouse. (See **Ex. 1**). Ms. Ennis signed the Admission Agreement on behalf of her spouse as his 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. Ennis's authority to sign on behalf of her spouse, 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. (*See Ex. 2*) (expressly acknowledging the FAA's applicability). The FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of

whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress’s power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that 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*

¹ *Allied-Bruce*, 513 U.S. at 270.

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 Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 247 (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*, 563 U.S. at 339 (emphasis added); *see also Allied-Bruce*, 513 U.S. at 281 (“States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes *any* such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal ‘footing,’ directly contrary to the Act’s language and Congress’ intent.”) (emphasis added) (internal citations omitted).

III. THE ARBITRATION AGREEMENT IS VALID ON ITS FACE.

The Arbitration Agreement is valid on its face. In other words, there is nothing within the four corners of the document itself that calls its validity into question. It bears Ms. Ennis’s signature on behalf of Mr. Ennis, along with her express representation that she is authorized to sign for Mr. Ennis.² It is countersigned by the Facility’s representative. It is duly supported by

² By virtue of her signature, Ms. Ennis 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 Mr. Ennis’s behalf. Moreover, there is an implied covenant of good

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 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.

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. Ennis is no less bound by this covenant than the Facility. To the extent there is any question raised as to the authenticity of the Arbitration Agreement, the burden to authenticate is not high, and it is comfortably met here. All that is required is a satisfactory foundation from which it can reasonably be found that the evidence is authentic, i.e., that it is it was it purports to be. *Berry v. Span*, 433 S.C. 1, 10, 855 S.E. 309, 315 (Ct. App. 2021). Still, out of an abundance of caution, to the extent there remains any concern about authentication, the Facility should at least be allowed to supplement the record with an appropriate affidavit(s), as allowing it to do so causes no undue prejudice to Plaintiff and furthers the interests of justice. *Cf.* Rule 1, SCRCP ("These rules . . . shall be construed to secure the just, speedy, and inexpensive determination of every action.").

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.").

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. Ennis, acting on behalf of Mr. Ennis, 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. Ennis did not have to agree to it on behalf of Mr. Ennis for him to be admitted to the Facility. Ms. Ennis had the option not to enter into the Arbitration Agreement on behalf of her spouse, yet she voluntarily

did so, voluntarily did not retract her agreement thereto, and her spouse stayed at the Facility and received skilled nursing care after admission.

Defendants offered the option of entering into the Arbitration Agreement. Ms. Ennis 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, “[t]hese 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.). 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. Ennis represented herself to admissions personnel at the Facility as her spouse's representative with the authority to sign documents and enter agreements on his behalf.⁴ It was clearly Ms. Ennis's intention to bind her spouse according to the terms of the Admission Agreement and Arbitration Agreement. Moreover, Ms. Ennis evinced no intentions or directions to the contrary. Accordingly, the plain language of the Arbitration Agreement confirms that Ms. Ennis was authorized to enter this Agreement binding her spouse to arbitration, and the Agreement directly applies to the instant dispute. The Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has recently found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances nearly identical to the case at bar. *See, e.g., Macie Price v. THI of S.C. at Magnolia Manor Inman, LLC*, 2018-CP-42-01054 (S.C.

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 . . .").

Com. Pls. Aug. 7, 2018) (attached hereto as **Exhibit 4**); *Josephine Spears v. Rehab Ctr. of Cheraw, LLC*, 2019-CP-13-00308 (Jan. 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). Unlike 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, particularly in the apparent absence of any affidavits or other evidence to contradict the plain language of the Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[,] because was it clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 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. Ennis'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. Ennis expressly attested to her own authority to enter into the Arbitration Agreement on behalf of her spouse. 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. Ennis Possessed the Apparent and Inherent Authority to Execute and Bind Mr. Ennis 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 spouse's behalf by the plain language of the Arbitration Agreement, Ms. Ennis possessed the *apparent and inherent authority* to bind her spouse under this Agreement. A true agency relationship may be established by evidence of actual or apparent authority. *R & G Constr., 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. Ennis held herself out as an agent for her spouse without any indication to the contrary when she executed various admission documents on his behalf, including the Arbitration Agreement. Based on Ms. Ennis's and her spouse's conduct and explicit representations, facility representatives were justified in believing she possessed the authority to execute all admissions documents on her spouse's behalf, including the Arbitration Agreement.

Moreover, by allowing Ms. Ennis to procure his admission to the Facility and, thereafter, by accepting the benefits of the contracts entered into in connection with that admission, Mr. Ennis represented that Ms. Ennis was his authorized representative to act on his behalf in connection with admission. *See R & G Constr.*, 343 S.C. at 433, 540 S.E.2d at 118 (providing that when 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. Ennis to sign the admissions paperwork, including the documents providing for her father's stay and the skilled nursing care provided at the Facility, Mr. Ennis

cloaked his spouse with the authority to execute those documents. Further, neither of them nor any other family member repudiated or invalidated Ms. Ennis's actions. Instead, Mr. Ennis accepted the benefits of the contracts with the Facility by remaining at the Facility and receiving skilled nursing care and services, thereby ratifying his spouse's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, the Facility was further justified in believing Ms. Ennis 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. Ennis 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*, Restatement (Second) of Agency §§ 8A, 161 (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975), (examining whether party had properly demonstrated the existence of inherent agency powers), *abrogated on unrelated grounds by Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004); *Chi. Title Ins. Co. v. Wash. State Office of Ins. Comm'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987) ("[t]he powers of an agent are, prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.") (citing *Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established legal principle follows from one of the cardinal principles of agency law: that third parties, such as the 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. Ennis was authorized to admit her spouse to the Facility. To the extent Plaintiff takes issue with her own inherent authority, such actions merely accompanied and were incidental to her authority to admit her father 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 Constr.*, 343 S.C. at 433, 540 S.E.2d at 118. To properly show estoppel in South Carolina, a party must show: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” *Boyd v. Bellsouth Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

In *Price*, 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 for the District 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. Ennis was not her spouse'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, Mr. Ennis having effectively embraced and directly benefitted from the Admission Agreement, Plaintiff (who stands in Mr. Ennis'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. Ennis on behalf of Mr. Ennis. 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. Ennis on behalf of Mr.

Ennis on the same day, at the same time, for the same purpose, and in the course of the same transaction—Mr. Ennis’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 Dev. 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 Invs. v. Ocean Holiday P'ship*, 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 Dev. Servs. v. Joe Hardin Builder, Inc.*, 294 S.C. 430, 365 S.E.2d 231 (Ct. App. 1988); *accord Cafe Assocs., 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. (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*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012) (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 Pers. Representative of the Estate of Elizabeth Varner vs. THI of S.C. at Charleston, LLC d/b/a Riverside Health and Rehab*, 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

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

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 *Int’l Paper Co.* to reverse the circuit court’s denial of a motion to compel arbitration); *Wilson*, 426 S.C. 326, 339–345, 827 S.E.2d 167, 174–177 (favorably discussing the framework of the direct benefits test—which was 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 Mr. Ennis 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 Wilson*, at 340, 827 S.E.2d

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).

at 175 n.9 (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.*, No. 07-CV-391-DRH, 2007 WL 3046273, at *11 (S.D. Ill. Oct. 15, 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001) (citing *Am. Bureau of Shipping 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. Bldg. 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 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.” (See **Ex. 5**, p. 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

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).

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.” (*See Ex. 8*, p. 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’” (quoting *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601)); *Wilson*, 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 Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

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

Here, Mr. Ennis effectively embraced all aspects of the Admission Agreement with the Facility. Indeed, his receipt of direct benefits under the Admission Agreement (with which the Arbitration Agreement merged) cannot reasonably be denied. Undoubtedly, Mr. Ennis received direct benefits (in the form of room, board, various amenities/services, and the care/treatment she received at the Facility). To deny him receipt of such benefits is illogical and objectively

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.”).

unreasonable, as it would require wholly discrediting the entirety of his 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, Mr. Ennis 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, Mr. Ennis 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, “[o]n 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 upon 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*,

268 S.C. at 88, 232 S.E.2d at 24).⁸ Specifically, the Admission and Arbitration Agreements were signed by Ms. Ennis, on her spouse’s behalf and were both countersigned by the representative of the Facility on January 9, 2012. The documents were signed by the exact same people: Ms. Ennis, as representative for her spouse, and by Janice Onusko for the Facility. The documents were signed for the same purpose and transaction of establishing Mr. Ennis’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 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

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).

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 “[t]his Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.”) *with* Arbitration Agreement (providing that, “because the services and reimbursement thereof effect a transaction involving interstate commerce, the enforcement of this Arbitration Agreement . . . shall be governed by the Federal Arbitration Action;” but also providing that arbitration shall be “as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.”)). Essentially, both instruments provide that South Carolina law applies except where it is displaced by federal law. This provides no reasonable inference of an intent contrary to merger.

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).

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. Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). No such inference can be drawn here.

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

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 of a 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 Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.”). To allow the merger presumption to be upset based on evidence that is merely ambiguous is to allow the exception to devour the rule.

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

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.

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 Mr. Ennis'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’ decision in *Solesbee v. Fundamental Clinical and Operational Servs., 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.**

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 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.

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

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.

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.” (Ex. 1, 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.

(Ex. 2).

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 that is applicable in both 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. (**Ex. 2**).

The provisions of the Admission Agreement and the Arbitration Agreement regarding governing law do not support a reasonable inference of an intent contrary to merger. Essentially, these provisions 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 an 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." (**Ex. 1**, 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),¹⁶ 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

¹⁶ *Black’s Law Dictionary* p. 1321 revocation (7th ed. 1999); *id.* at 89 annulment (“The act of nullifying or making void.”).

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 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 supra* Section V(A)(3)), 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. Ennis on Mr. Ennis'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 **Ex. 2**) (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 Ex. 1* (setting forth the terms of the admission), *with Ex. 2* (providing for arbitration of disputes arising out of the admission).

VI. THIS CASE MUST BE STAYED WHILE ARBITRATION IS PENDING.

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

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

(emphasis added.)¹⁷

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.

¹⁷ 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 therefor has been made under this section . . .").

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.

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, the Defendants requests that the parties be permitted to conduct additional discovery on the issues raised herein, and in particular, the nature of Ms. Ennis's agency relationship with her spouse 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 S.C., LLC, d/b/a at Magnolia Place-Greenville*, 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 regarding a wife's authority to execute an arbitration agreement on behalf of her husband. *See*

Priscilla Brown, as Pers. Representative of the Estate of James Brown v. THI of S.C. at Columbia at Magnolia Manor d/b/a Midlands Health and Rehab. Ctr., 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 Pers. Representative of the Estate of Loris Paris vs. Saint Matthews Healthcare, LLC*, 2022-CP-38-00525 (S.C. Com. Pls. Nov. 17, 2023) (attached hereto as **Exhibit 11**).

The case at the bar involves Ms. Ennis'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 the Defendants to engage in some appropriately limited discovery to attempt to protect its arbitration rights. It must be remembered that the Defendants moved to compel arbitration under a facially valid arbitration agreement. The Defendants firmly believe Ms. Ennis had the authority to execute the Arbitration Agreement on behalf of her spouse. Nevertheless no one ever called her authority to enter into the Arbitration Agreement into question until now. The Defendants 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 the Defendants 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, the Defendants respectfully request that this Court enter an order staying the pending action and compelling arbitration. Alternatively, and if the Court is not inclined to grant the instant motions on the grounds asserted above, Defendants request that the parties be permitted to conduct limited discovery into the issue of Ms. Ennis's authority without Defendants waiving their arbitration rights. Defendants also request permission to be heard after such discovery is conducted and request that they be permitted to submit supplemental memoranda along with any additional evidence obtained.

CLEMENT RIVERS, LLP

By: s/ Matthew O. Riddle
D. Jay Davis, Jr.
SC State Bar ID No.: 12084
Matthew O. Riddle
SC State Bar ID No.: 76650
P.O. Box 993, Charleston, SC 29402
(843) 720-5422; mriddle@ycrlaw.com
Attorneys for the Defendants

Charleston, South Carolina

Dated: July 18, 2025

ADMISSION AGREEMENT – SOUTH CAROLINA

RESIDENT NAME: MICHAEL ENNIS
RESIDENT NUMBER: 300276-01
DATE OF ADMISSION: 2-15-2020

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among HALLMARK HEALTH AND REHABILITATION ("Facility"), MICHAEL ENNIS ("Resident") and/or JAVAN ENNIS ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

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

I. GENERAL CONDITIONS

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

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

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

Original: Business File • Photocopy: Resident/Representative

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

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

Original: Business File • Photocopy: Resident/Representative

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

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

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

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

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

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

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

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

III. FINANCIAL AGREEMENT

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

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☒-semi-private) accommodations, for a basic fee of \$ 262 . 00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

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

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

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

Original: Business File • Photocopy: Resident/Representative

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,

Original: Business File • Photocopy: Resident/Representative

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.

Original: Business File • Photocopy: Resident/Representative

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

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

Original: Business File • Photocopy: Resident/Representative

IX. GOVERNING LAW

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

X. SEVERABILITY

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

XI. CAPTIONS

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

XII. MODIFICATIONS

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

XIII. WAIVER

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

XIV. RESIDENT

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

XV. ASSIGNABILITY

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

Original: Business File • Photocopy: Resident/Representative

XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

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

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

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

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

XVII. MISCELLANEOUS

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

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

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

XVIII. ENTIRE AGREEMENT

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

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

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

Signature of Resident Date

Printed Name of Resident

Resident Social Security Number

Witness Signature Date

Printed Name of Witness

OR

Javan Ennis 2/17/2020
Signature of Representative, if any Date

JAVAN ENNIS
Printed Name of Representative

Witness Signature Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

Jamie M. Owsen 2/17/2020
Signature of Facility Official

Jamie M. Owsen, AD
Printed Name of Facility Official & Title

2/17/2020
Date

Original: Business File • Photocopy: Resident/Representative

Acknowledgement

I acknowledge I have received the following information and/or documentation, which fully explains my rights under Federal and applicable state laws as a nursing home resident, and the rules and regulations governing my conduct as a resident. *(Resident/Representative should check and initial each item listed as it is furnished and explained.)*

- ☒ JE A written copy of Facility's Admission Agreement
- ☒ JE A written copy of Facility's Handbook, which includes the facility's rules/regulations governing resident conduct, as well as written explanations of the following: (Admission, Discharge and Readmission policies; Bed assignment, reservation, and refund policies; Protection of Resident Funds; Resident's Rights under Federal law; Bed Hold policies; Policies/procedures for bringing personal items into the facility and securing personal belongings, valuables and money; Special Services, such as laundry, barbers and activities; Policies/procedures for filing grievances; Medicare/Medicaid Funding; Smoking Policies)
- ☒ JE A written copy of resident's rights under applicable state laws.
- ☒ JE A written copy of facility's policy on Advance Directives.
- ☒ JE A written explanation of the charges for services provided by facility and outlined in the Handbook and those services offered on an as-needed basis.
- ☒ JE A separate listing of local and government resources as furnished by the state Ombudsman and any other advocacy groups as required by state/federal law.
- ☒ JE A separate listing of all medical professionals available to provide on-site services.
- ☒ JE A written copy of facility's policy on the use of physical or chemical restraints, including bed rails.
- ☒ JE A written copy of facility's Notice of Privacy Practices.

By my signature below, I agree to abide by all facility's rules, policies, terms and conditions as explained to me and provided above, as well as all federal and applicable state laws.

Resident Signature

Date

Printed Name of Resident

X JAVAN ENNIS

2-19-2020

JAVAN ENNIS

Legal Representative Signature, if any

Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Janice H. Onusko AD

2-17-2020

Janice H. Onusko AD

Facility Representative Signature

Date

Printed Name and Title

AUTHORIZATIONS, CONSENTS & ACKNOWLEDGMENTS

Please read, review and acknowledge each the following:

Treatment/Health Care Professionals:

Authorization for Treatment

☒ JE

I hereby authorize Facility's professional staff to administer nursing procedures, podiatric procedures, therapies, skin scrapings, nonsurgical dental procedures and laboratory and x-ray procedures on me/Resident. I understand that I may withdraw this consent at any time by notifying Facility in writing. I further understand that an additional consent will be required for any surgical treatment or for any treatment requiring the use of general anesthesia.

Medical Treatment

☒ JE

It is understood and agreed that Resident is under the control of his/her elected physician and/or his/her designee and that Facility is not liable for any act or omission as a result of following instructions of said physician(s)/designee(s). Resident consents to diagnostic imaging procedures, laboratory procedures, or medical treatment rendered to Resident under the general and special instructions of Resident's physician or physician's designee.

General Duty Nursing

☒ JE

Facility provides general duty nursing care. Under this system, nurses are called to the resident's bedside by a signal system. If Resident is in such condition as to need continuous or special duty nursing care, it is agreed that Resident, Resident's legal representative or Resident's physician(s) will make the necessary arrangements for such care. It is understood and agreed that Facility shall not, in any way, be responsible for the failure to provide such care and is hereby released from any and all liability arising from the fact Resident is not provided with such care.

Independent Status of Health Care Providers and their Agents/Designees

☒ JE

Resident and/or Resident's legal representative acknowledges that any and all health care providers and their agents/designees are not agents or employees of Facility. Resident and/or Resident's legal representative understands and agrees that each health care provider or their agent/designee who renders services to Resident will independently bill and collect fees for these services. Resident and/or Resident's legal representative agrees and understands that the health care provider's bills will be separate and apart from Facility's.

Selection of Medical Professionals:

You have the right to use your personal health care providers during your stay. In the event you do not have a current provider, the facility has a list of independent providers who are available to provide on-site care. If you have difficulty contacting any of these professionals, please notify our staff. Please indicate your choice of health care providers below, including the provider's phone number and address.

PHYSICIAN:

Name: Shantae Jenkins, M.D.
Address: 502 West Fifth Ave Summerville, SC
Phone: 737-226-6777

DENTAL ☐ Yes ☒ No Examination Charge \$ _____

I would like to receive dental services at the above charge and have selected the following provider:

Name: _____
Address: _____
Phone: _____

VISION ☐ Yes ☒ No Examination Charge \$ _____

I would like to receive vision services at the above charge and have selected the following provider:

Name: _____
Address: _____
Phone: _____

PODIATRY ☐ Yes ☒ No Examination Charge \$ _____

I would like to receive podiatry services at the above charge and have selected the following provider:

Name: _____
Address: _____
Phone: _____

FFUS003 (Authorizations, Consents & Acknowledgments)

Self-Administration of Medications

Please indicate whether or not you wish to invoke your right to self-administer medications prescribed by your physician as outlined in the Admission Handbook.

☐ _____ I wish to invoke my right to self-administer medications prescribed by my physician. I authorize and consent to an evaluation by the Interdisciplinary Team in order to determine my ability to carry out this responsibility.

☒ JE I wish to waive my right to self-administer medications. I request and authorize Facility's nursing staff to administer medications prescribed by my physician. **I understand that I am entitled to this right and that I may invoke this right any time in the future by written notification to the facility.**

Personal Property/Valuables/Money:

☒ JE I acknowledge that I have received, read or had read to me, and understand Facility's policy on personal property, valuables and money. I understand that all personal belongings should be labeled properly and entered on a personal inventory list. I understand that all items removed from or brought into the facility after admission should be documented on the inventory list and that missing items must be reported to appropriate staff as soon as possible.

☒ JE I acknowledge and understand that Facility is not responsible for damage to or theft/loss of any personal property/valuables/money not kept in compliance with Facility policies.

Deposit of Personal Funds:

Please indicate below whether or not you wish to deposit personal funds with Facility in accordance with the *Protection of Resident's Funds* policy outlined in the Admission Handbook. **Please note that you are not required to deposit any funds with the facility.**

☒ JE I do not wish to deposit personal funds with the facility at this time.

☐ _____ I authorize Facility to accept, hold and account for my personal funds in accordance with the policies outlined herein. I acknowledge that I have the right to revoke this authorization at any time upon written notice to Facility. I acknowledge that authorized State agencies may audit this account, regardless of my payer source.

Beneficiary Designation: (THIS PORTION TO BE FILLED IN BY RESIDENT ONLY)

In the event of my death, I authorize Facility to transfer all personal funds and property held by Facility to the following person(s): _____. If I have not named a beneficiary or the beneficiary cannot be located, I understand that Facility will hold and pay the funds in line with the State's regulations.

Advance Directive Acknowledgment:

☒ JE

I acknowledge that I have received, read or have had read to me, and understand *Facility's Policy and State Requirements for Advance Directives* and have executed the following advance directive measures and a photocopy has been provided to the facility for inclusion with my Medical Records:

- ☒ Living Will
- ☒ Durable Power of Attorney for Health Care or similar agent designation
- ☐ "Do-Not-Resuscitate" Identification (CPR)
- ☐ Other: _____

☒ JE

I acknowledge that I have received, read or have had read to me, and understand *Facility's Policy and State Requirements for Advance Directives* and have elected **NOT** to execute any advance directive at this time, including DNR Identification. I understand that facility staff will respond to medical emergencies with CPR measures and a full code will be instituted.

Special Services:

Please indicate whether or not you authorize the following services to be provided. All associated fees with be charged to your account:

Telephone	☒ Yes	☐ No	☐ N/A	Charge \$ _____
Television	☒ Yes	☐ No	☐ N/A	Charge \$ _____
Newspaper	☐ Yes	☒ No	☐ N/A	Charge \$ _____
Laundry	☒ Yes	☐ No	☐ N/A	Charge \$ _____
Beauty Shop	☒ Yes	☐ No	☐ N/A	See charge list
Other(s) (Please Specify Below)				
_____	☐ Yes	☐ No		Charge \$ _____
_____	☐ Yes	☐ No		Charge \$ _____

Photographs by State/Federal Survey Agencies

I acknowledge and understand that, during my/Resident's stay, Federal and/or State surveyors (investigators) may take my/Resident's photograph as part of their independent survey/investigation process and in line with conditions of my/Resident's participation in the Medicare and/or Medicaid program. I understand that, in line with CMS guidelines, the surveyors must obtain written consent from Resident or his/her surrogate **before** any photographs are taken. I understand that the Federal/State Survey Agency is wholly responsible for acquiring and securing any photographs they may take.

☒ JE I acknowledge and understand that neither Facility nor its parent, affiliates, officers, directors, employees, attorneys, assigns or any other person acting on its behalf, has any oversight or responsibility for the surveyors actions or inactions as it relates to taking photographs for their independent investigations.

Photograph/Audiotape/Videotape

☐ Yes JE ☐ No _____

I hereby authorize Facility to photograph/audiotape/videotape me/Resident for its use in resident identification, infection control, surveillance and/or other medical purposes. I understand that, if the facility wishes to photograph/audiotape/video tape me for any other reason, (activities, marketing, media coverage, etc.), the facility will secure permission from me through a separate written authorization.

Posted Information ☐ Yes JE ☐ No _____

To better serve you and meet your health care needs, permission is needed to post information regarding your/Resident's health care needs within your room and the facility as needed. The information to be disclosed will be the minimum amount necessary and shall serve as a means of communication, enabling staff to provide service while, at the same time, ensuring your/Resident's rights to privacy. Information to be disclosed may include, but not be limited to, therapy schedules, activities of daily living, ambulation/mobility parameters, swallowing and aspiration precautions, do-not-resuscitate orders.

Authorization to Release and Obtain Information

☐ Yes JE ☐ No _____

I hereby authorize the facility to release and/or obtain medical information or other necessary data which may be necessary for my/Resident's continued treatment and care at the facility, including but not limited to the filing of insurance claims in my/Resident's/Facility's interest. I further authorize the release of information, medical or otherwise, to any government agency without my prior approval or that of my representative, if any.

Authorization to Receive/Open Mail

☐ Yes _____ ☐ No JE

I hereby authorize Facility to open all mail received by me/Resident. Further, I would like this mail to be read to me/Resident upon receipt. You have the right to revoke this authorization at any time upon written notice to the facility.

*** SIGNATURE PAGE FOLLOWS***

Resident Signature

Date

Printed Name of Resident

Janva Ennis

2/11/2020

Janva Ennis

Legal Representative Signature, if any

Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Janice M. Onusko

2/17/2020

JANICE M. ONUSKO

Facility Representative Signature

Date

Printed Name and Title

Acknowledgement of Receipt of the Notice of Privacy Practices

By my signature below, I acknowledge that I received a copy of the Notice of Privacy Practices.

Signature of Patient/Resident

Date

Print Name

OR

X Javan Ennis
Legal Representative

2/17/2020
Date

Javan Ennis
Print Name

If the patient/resident or the legal representative is unable to sign this acknowledgement, state why below:

Jarvis M. Oleson
Signature of Facility Representative

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Agreement"), made and entered into as of this 15th day of February 2020, by and between Hallmark ("Facility") AND Michael Ennis ("Resident") AND/OR Jaran Ennis ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party," hereinafter collectively "Representative"), who together shall be referred to as "Resident" within this agreement;

NOW, THEREFORE, intending to be bound and as consideration for admission to the Facility, the Parties hereto agree as follows:

1. **Obligations of Resident.** Resident agrees to make full and complete disclosure to the local Medicaid Program Office regarding all financial resources and income during the application process, including all transfers of assets and/or financial resources having taken place within the preceding five years of the date of application for admission to Facility. Failure to identify all resources, income, and transfers or the submission of false information may result in the termination of this Agreement and financial liability. Resident is obligated to notify Facility when only \$ 2000, or the value thereof, exists to satisfy financial obligations under this Agreement and/or the *Admissions Agreement*. Resident agrees to apply for Medicaid benefits at such time as his/her resources will no longer be sufficient to pay all Facility charges for Resident's care and stay.
2. **Patient Pay Amount.** For residents approved for Medicaid benefits, Facility will accept payment from Medicaid and, if applicable, the Resident's Patient Liability Amount as determined by Medicaid as payment in full only for those services covered by the Medicaid Program. During the period of time that the application for Medicaid benefits is pending, Resident shall pay such monthly Patient Liability Amount (less any qualified medical expense deductions) as estimated by the Facility and the Medicaid Program at the time of application for Medicaid benefits.
3. **Determination of Medicaid Eligibility.** Resident is obligated to cooperate fully in any Medicaid eligibility determination or redetermination process. In the event that Resident's eligibility for Medicaid benefits is denied, interrupted or terminated due to his/her failure to cooperate in the Medicaid application process, redetermination or appeal process, Resident shall be liable for the applicable daily room rate plus charges for ancillary services and supplies, during any period of nonpayment.
4. **Eligibility for Third-Party Payments.** Resident may be or may become eligible to receive financial assistance, reimbursement, or other benefits from third parties, such as private insurance, employee benefit plans, benefits under the Medicaid Program, Medicare benefits, managed care coverage, supplementary medical or other health insurance, supplemental security income insurance, or old-age survivors' or disability insurance. It is Resident's responsibility to apply for these benefits. If Resident is or becomes eligible to receive payments from any third parties for Resident's stay and care, the Facility reserves the right to collect such payments directly from the third-party source. Resident shall at all times cooperate fully with Facility and each third-party payor to secure payment. Cooperation includes providing information, signing and delivering documents, and assigning to Facility (to the extent permitted by law) any payments from Federal Social Security benefits, from any other federal or state governmental assistance programs, reimbursement or benefits of any third party payor to the extent of all amounts due the Facility. Resident agrees to reimburse Facility for any and all costs incurred by Facility to collect such payments directly from the third-party source.

Original: Business File • Photocopy: Resident/Representative

5. Assignment of Payments. Although it is Resident's responsibility to secure payment from third-party resources, including but not limited to Medicaid benefits, Resident authorizes Facility to make such claims and to take such actions as it deems necessary to secure for the Facility receipt of third-party payments to reimburse Facility for its charges associated with Resident's stay and care. This assignment includes, but is not limited to, filing an application for Medicaid benefits and pursuing any and all appeals in the event the application is denied. To the fullest extent permitted by law, as security for payment of charges, Resident hereby assigns to Facility all of his/her rights to any third-party payments now or subsequently payable to the extent of all charges due under this Agreement and/or the Admission Agreement. To the extent permitted by law, Resident shall promptly endorse and turn over to Facility any payments received from third parties to the extent necessary to satisfy the charges under this Agreement and/or the Admission Agreement.

By way of this assignment, Resident hereby authorizes and directs any financial institution, governmental agency, entity or person having or possessing information in whatever form that is requested or needed to determine Resident's eligibility for third-party payments, including, but not limited to Medicaid, to turn over or produce the information to the Facility upon written demand.

Signature of Resident Date

Printed Name of Resident

Resident Social Security Number

Witness Signature Date

Printed Name of Witness

OR

Javan Ennis 2/17/2020
Signature of Representative, if any Date

Javan Ennis
Printed Name of Representative

Witness Signature Date

Printed Name of Witness

Janice M. Onusko
Signature of Facility Official

Janice M. Onusko
Printed Name of Facility Official & Title

2/17/2020
Date

Original: Business File • Photocopy: Resident/Representative

Resident Fund Management Service
AUTHORIZATION AND AGREEMENT TO HANDLE RESIDENT FUNDS
** PLEASE TYPE OR PRINT **

ACCOUNT NO
REDACTED

Resident Name _____

Taxpayer ID NO. _____

Facility Name _____

PALMETTO HALLMARK OPTNG LLC

Facility Resident ID _____

Resident's own Social Security No. _____

Optional Data - Max 12 Characters _____

Statement Address _____

Only if different than Facility address

CHECK ACCOUNT TYPE

1. RESIDENT FUND ACCOUNT

- ☐ NON-TRANSFERRING ACCOUNT (No automatic transfer of deposits to pay for care cost.)
☐ TRANSFERRING ACCOUNT (Automatic transfer of care cost payments due the facility.)
with \$ _____ MONTHLY ALLOWANCE AMOUNT.

2. BURIAL ACCOUNT (Deposit only account - monies to be used for burial expenses only.)

- ☐ Revocable (May be closed prior to death.)
☐ Irrevocable (To be closed after death or if resident transfers from facility or if transferred to another burial account.)
☐ Non-interest bearing burial account (Interest will be paid if this item is NOT checked.)

DIRECT DEPOSIT - Please enroll my indicated recurring benefit payments for direct deposit.

- ☐ Social Security ☐ Supplemental Security Income
☐ Veterans Administration ☐ Civil Service
☐ Railroad Retirement ☐ Miners Benefit/Black Lung

*** Note - Enter the direct deposit information in the RFMS software, or complete the appropriate pension direct deposit form. If you are enrolling for any of the federal government agencies listed above and the resident has a representative payee, the representative payee MUST sign this form.

By my signature below, I hereby authorize the facility named above to establish and manage an FDIC insured interest bearing resident fund or burial account with the options as specified above. I understand, I may have my recurring checks direct deposited to my resident fund account, I may make deposits to and withdrawals from my resident fund account at the facility, and I will receive a statement of any account I have at least quarterly.

In the event that I elect to have a resident fund transferring account, I direct that the amount stipulated by me or required or permitted under federal, state or local law from time to time in effect, be withheld monthly for my personal use and that the remainder be transferred to the facility for the payment of my care costs. I hereby authorize the facility administrator and/or his/her designated staff, to from time to time adjust my personal allowance amount to comply with governing laws as they apply to me.

In the event of my death, I direct that any funds owed or advanced to me by the facility prior to my death are to be paid to the facility with any remaining balance in my resident fund account to become part of my estate.

By signing this form, I under penalties of perjury, certify that (1) the number shown on this form is my correct taxpayer identification number, and (2) I am not subject to backup withholding because (a) I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (b) the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding. [If the signer has been notified by the IRS that he/she is subject to backup withholding, cross out the language in (2) above.]

**** RESIDENT'S ILLEGIBLE SIGNATURE OR MARK (X) REQUIRES TWO WITNESS SIGNATURES ****

Witness _____ RESIDENT *

Signature or Mark (X) _____

Witness _____ Date _____

ANYONE SIGNING FOR THE RESIDENT MUST SIGN THE CERTIFICATION BELOW

I, the undersigned, certify that I am the legal representative as stated below for the above named resident and agree to all the terms stated above and will provide valid legal supporting documentation of my legal capacity and authority upon the facility's request.

PRINTED NAME OF REPRESENTATIVE _____

CHOOSING NOT TO OPEN ACCOUNT
SIGNATURE OF LEGAL REPRESENTATIVE

LEGAL TITLE _____

REP PAYEE, GUARDIAN, CONSERVATOR, TRUSTEE, POA

**PRIVACY ACT STATEMENT FOR DISCLOSURES
TO THE CENTERS FOR MEDICARE AND MEDICAID ("CMS")**

THIS FORM IS NOT A CONSENT FORM TO RELEASE OR USE HEALTH CARE INFORMATION PERTAINING TO YOU; RATHER, IT IS A REQUIREMENT OF THE PRIVACY ACT OF 1974.

Pursuant to the Privacy Act of 1974, this long-term care facility is required to submit certain personal information, including some of your medical information, to the Centers for Medicare and Medicaid ("CMS"). The submission of this information will facilitate tracking of changes in your health and functional status over time for purposes of evaluating and assuring the quality of care provided by nursing homes that participate in the Medicare or Medicaid programs. The gathering of such data is mandated by Sections 1819(f), 1919(f), 1819(b)(3)(A), 1919(b)(3)(A), and 1864 of the Social Security Act.

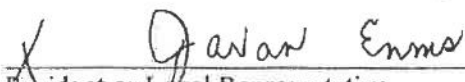
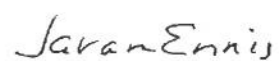
The information will also aid in the administration of the survey and certification of Medicare/Medicaid long-term care facilities and help to study the effectiveness and quality of care given in those facilities. This system will further support regulatory, reimbursement, policy, and research functions. Please note that it will collect the minimum amount of personal data needed to accomplish its stated purpose.

The information collected will be entered into the Long Term Care Minimum Data Set (LTCMDS) system of records, System No. 09-70-1517. Information from this system may be disclosed, under specific circumstances, to: (1) a congressional office from the record of an individual in response to an inquiry from the congressional made at the request of that individual; (2) the Bureau of Census; (3) the Department of Justice; (4) an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease of disability, or the restoration of health; (5) contractors working for CMS to carry out Medicare/Medicaid functions, collating or analyzing data, or to detect fraud or abuse; (6) an agency of a State government for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or quality of health care services provided in the State; (7) another Federal agency to fulfill a requirement of a Federal statute that implements a health benefits program funded in whole or in part with Federal funds or to detect fraud or abuse; (8) Peer Review Organizations to perform Title XI or Title XVIII functions, (9) another entity that makes payment for or oversees administration of health care services for preventing fraud or abuse under specific conditions.

For nursing home residents residing in a certified Medicare/Medicaid nursing facility, the requested information is mandatory for the reasons stated above. Refusal to allow use of this information as explained in this Notice, may result in the loss of Medicare/Medicaid benefits provided by the nursing home.

Your signature merely acknowledges that you have been advised of the foregoing. A copy of this form will be furnished to you.

By signing below, I acknowledge that I have been notified of the requirements set forth in the Privacy Act of 1974 pertaining to my medical information.

	2/17/2020	
Resident or Legal Representative	Date	Printed Name/Relationship to Resident

	2/17/2020	
Witness Signature	Date	Printed Name of Witness

Original: Business File • Photocopy: Resident/Representative

Bed Hold Policy

Hospitalization

When a resident is admitted to the hospital, a bed may be reserved if a resident wishes.

Residents who privately pay for their rooms, residents will be charged privately for all reserved days, in accordance with state regulation when applicable. The facility does not call private pay families asking if you wish to hold the bed. It is assumed by the facility that private pay resident's wish to hold their bed, as it is prepaid at the beginning of each month. If the resident is hospitalized, without the bed prepaid, the family/resident will be asked if they wish to hold the bed, as the bed will be paid in three day increments.

Residents with Medicare as the primary payer must call/contact the business office immediately if they wish to hold the bed. If the bed is not reserved, the family must come to the facility, pack the residents belongings, and take them home. The facility does not have adequate storage space available for personal belongings, and cannot be responsible for the safety. If you choose to reserve the bed, you will be charged the daily private rate for the bed.

Medicare NEVER pays for a bed reserve.

Residents with Medicaid (Public Assistance) as their primary payer source must call/contact the business office immediately if they wish to hold the bed. If the bed is not reserved, the family must come to the facility, pack the residents belongings, and take them home. The facility does not have adequate storage space available for personal belongings, and cannot be responsible for the safety. Medicaid will pay for a bed hold in some states; however it is for a limited amount of time. The facility will inform you on admission if this state pays for any bed reserve days. If you choose to reserve the bed, you will be charged the daily private pay rate for the bed.

Therapeutic Leave

This is an overnight visit in a private residence. A resident may take overnight leave only upon written order of the attending physician.

Private pay residents must continue to pay for the room and board rate during leave.

Medicare recipients cannot have overnight leaves, however may, with attending physician's written order leave the facility for a few hours a day. Medicare will not pay for the therapeutic leave, and the resident/family must reimburse the facility for the first time away from the facility.

Medicaid recipients may take therapeutic leave upon notification to the facility and with approval of the attending physician and the Medicaid program. If the therapeutic leave exceeds the number of days allowed by the state Medicare program, the resident will be readmitted to the facility depending upon bed availability. The resident will be admitted to the first available bed, however, a new history and physical, chest x-ray, and other mandatory medical information must be presented to the facility.

X Jamar Ennis
Resident/ Responsible Party

2/17/2020
Date

Jamie E. Ouse
Facility Representative

2/17/2020
Date

Smoking Policy for Residents and Visitors
Effective: APRIL 1, 2010

As a health care provider, our nursing facility discourages smoking due to complications that may arise due to medications, illnesses and smoking accidents. Further, we have the added responsibility of ensuring all residents, visitors and staff is free from all fire and smoking hazards. While we recognize our residents have the right to use tobacco products, the exercising of this right is subject to the Facility's policies and safety rules, and it must not interfere with the rights of other residents in our building to a safe living environment.

Accordingly, the following smoking policy has been implemented in our Facility and shall be enforced for ALL residents admitted after August 14, 2006. Please note that, for those residents admitted before this date, the State requires Facility to permit their continued smoking under previously determined parameters.

- This Facility is a smoke-free environment and, as such, there are NO designated smoking areas inside the building or on its premises for either residents or visitors.
- Smoking in any areas of the Facility or on its premises, including but not limited to resident bedrooms, activity areas, hallways or other common areas, is strictly prohibited and will not be tolerated.
- Violations of this policy endanger the health and safety of others at the facility and appropriate action will be taken. In instances where residents violate this policy, it may be cause for his/her involuntary discharge.
- All residents are prohibited from keeping any type of smoking materials (lighter, matches, cigarettes, etc.) in their rooms or on their person. Residents' smoking materials will be kept in assigned lockers adjacent to the exit door to the garden area between Units 100 and 200. The keys for the lockers will be controlled by the medication nurse on the back hall of Unit 200 and kept in the medication cart.
- Smoking of illegal substances is never permitted and violators will be reported to the authorities for handling.

VIOLATIONS OF THIS POLICY ENDANGER THE HEALTH AND SAFETY OF OTHERS AT THE FACILITY, FIRST OFFENSES WILL RESULT IN A WRITTEN WARNING; SECOND OFFENSES MAY RESULT IN A RESIDENT'S INVOLUNTARY DISCHARGE FROM THE FACILITY.

We appreciate your full cooperation in adhering to this policy.

By my signature below, I hereby state that I have read, understand and agree to the above Smoking Policy for this Health Care Center.

X Jaron Ennis
Resident or Responsible Party

2/17/2020
Date

Jaron Ennis
Printed Name

CARD REQUEST

Admissions Office

Resident: MICHAEL ENNIS

Admission Date: 2/15/2020

We have requested that the Responsible Party of the resident listed above provide copies of all Primary and Secondary Insurance, Medicare, and Social Security cards. During our Initial Admissions Assessment these documents were unavailable. In order to verify coverage and benefits, and avoid billing problems, we must have front and back copies of all Social Security, Insurance, Medicare, and /or Medicaid cards. Please forward copies (front and back) of the below requested information to the Business Office Manager in our Business Office within the next 48 hours. Thank you very much for your assistance in this matter.

Please provide the below checked items:

Social Security card	<u>—</u>
Insurance card / cards	<u>✓</u>
Medicare card	<u>—</u>
Medicaid card	<u>—</u>

Notes: _____

X JANAN ENNIS
Responsible Party

2-17-2020
Date

Jamie H. Ouse
Facility Representative

2-17-2020
Date

tp020104

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

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-00671

Javan Ennis
as Personal Representative of the Estate of Michael Ennis,

Respondent,

v.

Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center
and Kellie Hiers,

Appellants.

NOTICE OF APPEAL

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

Attorneys for Appellants

Other Counsel of Record:

HUGHEY LAW FIRM, LLC

D. Nathan Hughey (SC Bar No. 68409)

A. Stuart Hudson (SC Bar No. 71691)

Bradley H. Banyas (SC Bar No. 101668)

1311 Chuck Dawley Boulevard, Suite 201

P.O. Box 348 (29465)

Mount Pleasant, South Carolina 29464

(843) 881-8644

Attorneys for Respondent

Defendants/Appellants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Kellie Hiers (collectively, “Appellants”), hereby appeal the following order of the Honorable Maite Murphy, Circuit Court Judge:

- **Order Denying Defendants’ Motion to Stay and Compel Arbitration, filed September 23, 2025.**

A copy of the appealed order is attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on September 23, 2025.

Respectfully submitted,
CLEMENT RIVERS, LLP

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

Charleston, South Carolina

October 22, 2025

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

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-00671

Javan Ennis
as Personal Representative of the Estate of Michael Ennis,

Respondent,

v.

Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center
and Kellie Hiers,

Appellants.

PROOF OF SERVICE

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

Attorneys for Appellants

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

HUGHEY LAW FIRM, LLC

D. Nathan Hughey, Esquire

nate@hugheyfirm.com

A. Stuart Hudson, Esquire

stuart@hugheyfirm.com

Bradley H. Banyas, Esquire

brad@hugheyfirm.com

Attorneys for Respondent

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, October 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

October 22, 2025

Hines, Russell

From: Hines, Russell
Sent: Wednesday, October 22, 2025 5:57 PM
To: Nate Hughey; Stuart Hudson; Brad Banyas
Cc: Brown, Stephen L.; Davis, Jay; Riddle, Matthew; Justman, Aimee; Bell, Pollyana (Polly); Peterson, Susan; Bohannon, Kiara
Subject: Ennis v. Hallmark (2024-CP-18-00671) -- Notice of Appeal
Attachments: Ennis v. Hallmark (2024-CP-18-00671) -- Notice of Appeal.pdf; Appealed Order -- 2025 09-23 -- Order Denying Defs.' Mot. to Stay Action & Compel Arbitration.pdf

Attached for service in the above-referenced matter please find our **Notice of Appeal** and the **Appealed Order** attached thereto.

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



CLEMENT RIVERS, LLP

25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com



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

A filing has been submitted to the court RE: 2024CP1800671

Official File Stamp: 10-22-2025 06:01:04 PM
Court: CIRCUIT COURT
Common Pleas
Dorchester
Case Caption: Javan Ennis Prs , plaintiff, et al VS Hallmark Longterm Care Llc , defendant, et al
Event(s): Notice/Notice of Appearance

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- 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 Hallmark Longterm Care Llc et al
Arthur Stuart Hudson for Javan Ennis Prs, Michael Ennis
Donald Jay Davis, Jr. for Hallmark Longterm Care Llc et al

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

Estate Of Michael Ennis
Michael Ennis Estate

RECEIVED

May 26 2026

SC Court of Appeals

CERTIFICATE OF COUNSEL

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

Respectfully submitted,
CLEMENT RIVERS, LLP

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

Charleston, South Carolina

May 26, 2026