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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge
Diane S. Goodstein, Circuit Court Judge

Consolidated Cases For Trial

Case No.: 2010-CP-28-322

Case No. 2010-CP-28-323

Jamie Curley, Plaintiff,

v.

SCENT Land Holdings, LLC, Amy Puchalski, and Robert Puchalski, Defendants
and Dr. Orville Dyce, Plaintiff,

v.

South Carolina ENT, Allergy & Sleep Medicine, P.A., Amy Puchalski, and Robert
Puchalski, Defendants

Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South
Carolina ENT, Allergy & Sleep Medicine, P.A. are the Appellants/Respondents.

RECORD ON APPEAL VOL. I

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS -2 PH 3:17

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP28323

Dr. Orville Dyce

South Carolina ENT Allergy & Sleep Medicine P.A. and Dr.
Robert Puchalski

JUDICIAL BRANCH
CLERK OF COURT
KERSHAW COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Plaintiff's Motion for Summary Judgment on Defendant's counterclaims is granted solely on the South Carolina Unfair Trade Practices Act claim. It is denied with respect to all of Defendant's other counterclaims.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge W.P. Judge Code 2161 Date July 31, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Debra M. Howard
Clerk of Court Kershaw County

cc: Ellison,
Shelton,
Mc...

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP28322

Jamie Curley

S.C.E.N.T Allergy and Sleep Medicine P.A. and Dr. Robert Puchalski

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

Plaintiff's Motion for Summary Judgment against SCENT Land seeking dissolution of the company is granted solely on the grounds that the company failed to deliver her the purchase agreement as required by SC code ann. § 33-44-702(c)

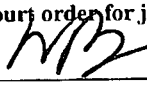
INFORMATION FOR THE PUBLIC INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge



Judge Code 2161

Date July 31, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

cc: Clerk
Shelley

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010-CP-28-00322

Jamie Curley

2013 FEB -1

SCENT Land Holdings, LLC, Amy Puchalski, and Robert Puchalski

PLAINTIFF(S)

STATE OF SOUTH CAROLINA
CLERK OF COURT
RICHLAND COUNTY, S.C.

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Defendant's Motion for Reconsideration is denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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Circuit Court Judge

h/b

Judge Code

2161

Date

1-28-13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Morris Ellison, Jana B. Baker

ATTORNEY(S) FOR THE PLAINTIFF(S)

Vincent A. Sheheen

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

cc: Judge Benjamin
Ellison, Baker
Sheheen
2-1-13

The South Carolina Court of Appeals

Jamie Curley, Respondent,

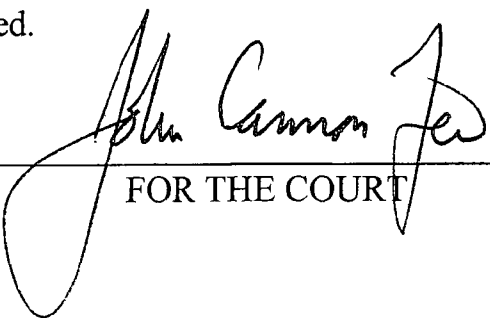
v.

S.C.E.N.T. Allergy & Sleep Medicine, P.A. and Dr.
Robert Puchalski, Appellants.

Appellate Case No. 2013-000448

ORDER

Respondent has filed a motion to dismiss this appeal as interlocutory. Thereafter, the parties filed an agreement, which is in effect a motion seeking the dismissal of this appeal without prejudice. It appears the parties have contemplated that the issues raised in the underlying order may be appealed after a final judgment. This court agrees the underlying order may be reviewable after final judgment under section 14-3-330(1) of the South Carolina Code (1976). Accordingly, the parties' request to dismiss this appeal is granted.



FOR THE COURT

Columbia, South Carolina

cc:

Vincent Austin Sheheen
Michael Dennis Wright
Morris Arthur Ellison
Jana Bebergal Baker

FILED
8/21/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CIVIL ACTION NO. 2010-CP-28-00322
JAMIE CURLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SCENT LAND HOLDINGS, LLC,	)	
AMY PUCHALSKI AND ROBERT	)	
PUCHALSKI,	)	
	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CIVIL ACTION NO. 2010-CP-28-00323
DR. ORVILLE DYCE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SOUTH CAROLINA ENT, ALLERGY &	)	
SLEEP MEDICINE, P.A., AMY	)	
PUCHALSKI AND ROBERT PUCHALSKI,	)	
	)	
Defendants.	)	

Judge:

The Honorable Diane Schafer Goodstein

Attorneys for Plaintiffs:

**Morris A. Ellison, Esquire,
William C. Cleveland, III, Esquire,
and Jana B. Baker, Esquire**

Attorneys for Defendants:

**Vincent A. Sheheen, Esquire,
and Michael D. Wright, Esquire**

This matter came before the Court for a bench trial on the following dates: November 19, 2013 – November 26, 2013; March 31, 2014 – April 2, 2014 and November 24, 2014 -

November 25, 2014 (the “**Trial**”).¹ Morris A. Ellison, Esquire, William C. Cleveland, III, Esquire, and Jana B. Baker, Esquire, appeared on behalf of Plaintiffs Dr. Orville Dyce (“**Dr. Dyce**”) and his wife Jamie Curley (“**Ms. Curley**”) (collectively, the “**Plaintiffs**”). Vincent A. Sheheen, Esquire and Michael D. Wright, Esquire, appeared on behalf of Defendants Dr. Robert Puchalski (“**Dr. Puchalski**”), his wife Dr. Amy Puchalski (“**Dr. Amy Puchalski**”), South Carolina ENT Allergy & Sleep Medicine, P.A. (“**SCENT**”) and SCENT Land Holdings, LLC (“**SCENT Land**”) (collectively, the “**Defendants**”). Dr. Dyce’s lawsuit against SCENT, Dr. Robert Puchalski and Dr. Amy Puchalski, Civil Action No. 2010-CP-28-00323, was consolidated for trial with Ms. Curley’s lawsuit against SCENT Land, Dr. Robert Puchalski and Dr. Amy Puchalski, Civil Action No. 2010-CP-28-00322.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of Fact

1. At all times relevant to this dispute, SCENT was a Subchapter S corporation.

Dr. Puchalski formed SCENT in 2004² and elected for SCENT to be a Subchapter S corporation. Pursuant to its initial articles of incorporation dated October 28, 2004, SCENT was only authorized to issue a single class of shares.³ SCENT’s amended articles of incorporation filed June 12, 2008, similarly prohibited SCENT from authorizing any securities which would cause the corporation to have classes of stock that vary other than by voting rights.⁴

¹ The Court would like to take this opportunity to acknowledge Professors McWilliams and Freeman’s testimony in this case. Although both are excellent expert witnesses and both outstanding members of the South Carolina legal community the opinions regarding corporate governance are opinions regarding questions of law that the court must decide. Based upon the objections of counsel that this testimony is improper expert testimony this objection is sustained. *See Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003).

²SCENT was originally known as Kershaw Ear Nose and Throat.

³Plaintiffs’ Exhibit 261, ¶4.

⁴Plaintiffs’ Exhibit 108, ¶10(a)(1).

2. **Dr. Dyce became a fifty percent (50%) shareholder in SCENT on February 1, 2008.**

In 2005, Dr. Dyce joined SCENT as an employee physician. Beginning in 2007 there was a series of documents executed between SCENT, Dr. Dyce, and Dr. Puchalski. The final agreements executed by the parties were the July 16, 2008 Stock Purchase Agreement⁵ and the July 16, 2008 Shareholder Agreement⁶.

In March 2007, Drs. Puchalski and Dyce agreed Dr. Dyce had become a shareholder and would pay for his shares by having his profit distributions paid to Dr. Puchalski until Dr. Dyce's buy-in was complete.⁷ Dr. Puchalski's staff, under Dr. Puchalski's supervision, created a spreadsheet that kept a record of the distributions that would have been paid to Dr. Dyce as an equal shareholder, but which were instead paid to Dr. Puchalski (and/or Dr. Amy Puchalski) pursuant to the March 2007 agreement between Drs. Dyce and Puchalski, to fund Dr. Dyce's buy-in (the "**Dyce Buy-In Spreadsheet**").⁸ The amounts paid to Dr. Puchalski under this process consisted of (i) \$21,000 profit distributions (or sweeps) approximately every two (2) weeks totaling \$604,000 beginning in March 2007 through January 2008; (ii) additional profit distributions in July, August, September, October, November and December 2007 totaling \$586,000; and (iii) an additional profit distribution of \$178,216 in January 2008. The Dyce Buy-In Spreadsheet's file name is "DyceBuyinandupdates.xls."⁹

In recognition that Dr. Dyce had become a shareholder in March 2007, SCENT's internal bookkeepers established a K-1 distribution account in SCENT's books in March 2007 to record distributions credited to Dr. Dyce but being paid to Dr. Puchalski pursuant to the March 2007

⁵ Plaintiff's Exhibit Number 9

⁶ Plaintiff's Exhibit Number 7

⁷ March 31, 2014 – April 2, Tr. 8:11 – 10:7.

⁸ November 26, 2013 Tr. 297: 12 – 287: 3.

⁹ Plaintiffs' Exhibit 5.

agreement between Drs. Dyce and Puchalski.¹⁰ Importantly, only shareholders receive K-1 distributions in a Subchapter S corporation such as SCENT.¹¹

On or about August 31, 2007, Drs. Dyce and Puchalski executed (i) the August 31, 2007 Shareholders' Agreement¹²; (ii) a Stock Purchase Agreement¹³; and (iii) a Bill of Sale.¹⁴ The Bill of Sale provides, in part, that Dr. Puchalski "hereby transfers and conveys unto Orville Dyce, M.D. ... 50,000 shares of the capital stock in SCENT for \$50,000."

Throughout the rest of 2007 and during January of 2008, SCENT continued to distribute profits to Drs. Robert and Amy Puchalski that were due to Dr. Dyce as an equal shareholder and which payments were recorded on the Dyce Buy-In Spreadsheet and credited to Dr. Dyce as K-1 distributions.

At some point near the end of 2007 or the beginning of 2008, SCENT's outside accountant, Austin Sheheen, advised Dr. Puchalski that the mechanism by which Dr. Dyce was paying for his shareholder interest violated rules applicable to Subchapter S corporations.¹⁵ Those rules required that shareholders receive distributions exactly equal to their proportionate share of ownership in the corporation.¹⁶

As a result, Drs. Puchalski and Dyce orally agreed to undo their prior agreements and to postpone Dr. Dyce's admission as a shareholder until Dr. Dyce completed his buy-in.¹⁷ Consistent with that approach, the monies recorded in Dr. Dyce's K-1 distribution account in 2007 were zeroed out and the distributions paid to Dr. Dyce in 2007 were reported to the IRS as

¹⁰Plaintiffs' Exhibit 124.

¹¹March 31, 2014 – April 2, Tr. 410: 9-12.

¹²Plaintiffs' Exhibit 3.

¹³Plaintiffs' Exhibit 4.

¹⁴Plaintiffs' Exhibit 6.

¹⁵March 31, 2014 – April 2, Tr. 414:17-417:16

¹⁶March 31, 2014 – April 2, Tr. 402:16-403:7

¹⁷Dr. Puchalski testified that this alternate buy-in mechanism for Dr. Dyce was never written down. November 25-26, 2013 Tr. 227:18 – 229:12.

employee income using a Form 1099.

The actions and testimony of SCENT's outside accountant, Austin Sheheen, confirm that Dr. Dyce had completed his buy-in and became a SCENT shareholder as of February 1, 2008. SCENT and Dr. Puchalski took the position that Dr. Dyce was not yet a shareholder in 2007, therefore Mr. Sheheen directed that Dr. Dyce's 2007 SCENT K-1 distribution account be zeroed out and that his 2007 compensation be reported using a Form 1099.¹⁸ Under the accounting strategy recommended by Mr. Sheheen and implemented by SCENT, these actions recognized that Dr. Dyce had not yet completed his buy-in by year end 2007 and was not yet, under the parties' new oral agreement, a shareholder. Subsequently, Mr. Sheheen became aware that SCENT established a K-1 distribution account for Dr. Dyce commencing February 1, 2008. Unlike as he had done in 2007, Mr. Sheheen took no steps to alter the account established in February 2008 which showed Dr. Dyce's receiving SCENT K-1 distributions commencing in February 2008.¹⁹ Mr. Sheheen testified that it would not have been proper for Dr. Dyce to receive K-1 distributions beginning in February 2008 unless he was a shareholder in SCENT at that time.²⁰

Commencing February 1, 2008, SCENT began paying Dr. Dyce bi-weekly profit distributions of \$21,000. Dr. Dyce also began receiving additional profit sweeps in the same amount as those that were paid to Dr. Puchalski and/or Dr. Amy Puchalski.

Contrary to Dr. Puchalski's claim that the February-July 2008 distributions to Dr. Dyce were not reported to the IRS as shareholder K-1 distributions, SCENT's tax records establish that SCENT reported the profit distributions it paid to Dr. Dyce beginning February 1, 2008 as

¹⁸March 31 – April 2, 2014 Tr. 442:7 – 443: 10. See note 23, *supra*, and accompanying text.

¹⁹ Mr. Sheheen indicated in his testimony that he explained to both Drs. Dyce and Puchalski many times that if Dr. Dyce was not a shareholder the proper tax treatment would be to pay Dr. Dyce W-2 wages and withhold to appropriate taxes rather than issue K-1 distributions.

²⁰March 31 – April 2, 2014 Tr. 443:11 – 446:11.

shareholder K-1 distributions, not employee wages.

In 2008, SCENT issued Dr. Dyce a Form W-2 reflecting that Dr. Dyce received wages from SCENT in the amount of \$300,500. A review of SCENT's payroll records reflect that all of these monies were paid to Dr. Dyce as salary. In the first twenty-six (26) weeks of 2008, he received \$10,000 every two weeks, totaling \$130,000. In the second twenty-six (26) weeks of 2008, he received \$13,000 every two weeks, totaling \$169,000. Finally, at the end of 2008, he received a \$1,500 payment.²¹ The sum of these three (3) series of payments equal \$300,500.

Contrary to Dr. Puchalski's contention that the payments SCENT started paying to Dr. Dyce in February 2008, and which SCENT labelled K-1 distributions, were actually reported as W-2 wages, none of the compensation reported to have been paid to Dr. Dyce as W-2 employee wages included the profit distributions paid to him commencing February 1, 2008. Dr. Puchalski testified repeatedly that SCENT reported the monies paid to Dr. Dyce between February 1, 2008 and July 16, 2008 as W-2 employee wages.²² As noted above, SCENT's records establish conclusively this testimony was incorrect.

3. Dr. Puchalski and Dr. Amy Puchalski took substantially more in distributions from SCENT than did Dr. Dyce after Dr. Dyce became an equal shareholder on February 1, 2008.

SCENT'S general ledger reflects that between February 1, 2008 and December 31, 2008 SCENT distributed \$872,992.16 more to Drs. Robert and Amy Puchalski²³ than it distributed to Dr. Dyce. The items comprising the \$872,992.16 are revealed by comparing Drs. Puchalski's and Dyce's K-1 distribution accounts maintained by SCENT, under the monthly supervision of SCENT's outside accountant, Mr. Sheheen, who testified:

²¹Plaintiffs' Exhibit 304.052.

²²November 25-26, 2013 Tr. 204:21 – 205:2; March 31 – April 2, 2014 Tr. 22:14-22.

²³Although Dr. Amy Puchalski received some distributions she was at no time a member of SCENT. Dr. Robert Puchalski testified that any distributions made to Dr. Amy Puchalski were for his benefit.

Q. Under the assumptions that I've asked you to make [that Dr. Dyce became an equal shareholder on February 1, 2008] Dr. Dyce was entitled to receive the same amount of distributions as Dr. Puchalski during this period of time, was he not?

A. Yes.

Q. And if that's the case, would you agree that he has been shortchanged by the tune of \$872,992?

A. Yes, without any other circumstances.²⁴

Between January 1, 2009 and December 31, 2009, Drs. Robert and Amy Puchalski received \$98,542.06 more than Dr. Dyce received. This difference resulted primarily, but not exclusively, from the fact that in the summer of 2009, Dr. Dyce endorse to Dr. Puchalski a June 2009 SCENT distribution check in the amount of \$50,000.²⁵ Dr. Puchalski claims that he was entitled to receive the distribution as additional compensation from Dr. Dyce for his shares.²⁶ It is clear that Dr. Puchalski was not entitled to these additional funds under the agreement of the parties. However, the decision to endorse this check to Dr. Puchalski was completely within the control of Dr. Dyce. It is undisputed that Dr. Dyce freely and voluntarily endorsed the check and there is no cause of action alleged which would entitle Dr. Dyce to recoup this excess distribution from Dr. Puchalski. Therefore, the court finds that between January 1, 2009 and December 31, 2009, Dr. Pulaski received excess distribution from SCENT in the amount of \$48,542.06 (98,543.06 – 50,000.00). Therefore, Dr. Puchalski received a total of \$921,534.22 in excess distributions.

4. Dr. Dyce was terminated without cause effective May 9, 2010.

In March 2010, Dr. Puchalski terminated Dr. Dyce's employment with SCENT with the termination to become effective sixty (60) days later, on May 9, 2010. The termination followed

²⁴March 31 – April 2, 2014 Tr. 408:12-18.

²⁵November 19 – 22, 2013 Tr. 252:22-253:19.

²⁶ Dr. Puchalski asserted that he was entitled to this additional amount in order to cover taxes that Dr. Puchalski was required to pay as a result of the sale of the stock in SCENT

approximately seven (7) months of escalating tension between the doctors in the practice over a number of issues.

In September 2008, Dr. Puchalski formed SCENT Land.²⁷ However, Drs. Puchalski and Dyce who negotiated on behalf of their wives did not agree on the terms of an operating agreement for SCENT Land until September 2009 when Drs. Robert and Amy Puchalski and Ms. Curley executed the Operating Agreement of SCENT Land Holdings, LLC. (the “2009 SCENT Land Operating Agreement”).²⁸ In 2009, SCENT began constructing a medical office building in Lugoff, South Carolina. During this time, Dr. Puchalski was working with the Nelson Mullins law firm to create a new shareholders agreement for SCENT that consolidated much of the decision making authority for SCENT in Dr. Puchalski.²⁹ Dr. Puchalski testified that consolidating power in him was in SCENT’s best interest. However, he conceded that Dr. Dyce did not share this view and preferred a more open and participatory decision making process. In February and early March 2010, Dr. Dyce submitted a number of requests for financial and other information to SCENT personnel.³⁰ In response Dr. Puchalski placed various conditions upon allowing Dr. Dyce to take possession of copies of SCENT’s records. During this time period, mistrust between Drs. Dyce and Puchalski grew exponentially.

²⁷Plaintiffs’ Exhibit 17.

²⁸Plaintiffs’ Exhibit 16.

²⁹On January 13, 2010, Ed White, an attorney with the Nelson Mullins law firm, emailed Dr. Dyce’s attorney, Bruce Arman, a draft of a new shareholder’s agreement (the “January 2010 Shareholders’ Agreement”) (Plaintiffs’ Exhibit 12). The draft January 2010 Shareholders’ Agreement contained a number of significant changes in SCENT’s governance. The changes included: creation of a Board of Directors (§3.2.1) with Dr. Puchalski as CEO and Chairman (Plaintiffs’ Exhibit 12.036) empowering the Chairman with a substantial severance package (Plaintiffs’ Exhibit 12.036), allocating to the Chairman the right to set other shareholders’ compensation (§3.4.3), and the right to determine vacation schedules. The footer on the document indicates it is version 35. [The footer on the July 16, 2008 Shareholders’ Agreement bears the same document number, but shows it as version 10.] (Plaintiffs’ Exhibit 7.001). Upon receipt of the draft January 2010 Shareholders’ Agreement, Dr. Dyce was shocked and asked to see the prior versions. He was never provided the other versions. (November 19-22, 2013 Tr. 261: 11-263:4.) Dr. Dyce also requested these drafts in discovery. They were never provided.

³⁰Defendants’ Exhibit 40.

In early 2010, Dr. Puchalski wanted to have SCENT Land borrow the construction funding for the Lugoff building. Dr. Puchalski negotiated with First Palmetto Bank and obtained its agreement in February 2010 for SCENT Land to receive the loan without requiring Dr. Dyce to guarantee its repayment.³¹ The bank's approval of the construction loan to SCENT Land without requiring Dr. Dyce to personally guarantee the loan remained in effect until the loan was eventually closed in May 2010.³² Despite First Palmetto Bank having agreed to this request on February 17, 2010 in exchange for Dr. Puchalski's pledging additional collateral for the loan; on March 1, 2010 Dr. Puchalski's staff forwarded to Dr. Dyce copies of loan documents that were represented to be necessary for the loan closing.³³ The forwarded documents included a personal guaranty from Dr. Dyce even though First Palmetto Bank had agreed that Dr. Dyce did not need to guarantee the loan.³⁴ Dr. Puchalski followed up on March 2, 2010 with his email to Ms. Curley representing to her that a mechanic's lien had been filed against the project and that it was critical that she and Dr. Dyce sign the documents.³⁵

When Dr. Dyce received the draft loan documents, he emailed Dr. Puchalski reiterating his request for financial and other information, including, among other documents, a copy of a budget for the project and a proposed closing statement.³⁶ In his email, Dr. Dyce stated,

You apparently forgot to tell me in all of your email correspondence that the Bank wants my personal guaranty. I am not prepared to provide it at the present time.

Dr. Puchalski responded,

³¹Defendants' Exhibit 37.

³²March 31 – April 2, 2014 Tr. 137:10-144:17-18.

³³Plaintiffs' Exhibit 301. The records subpoenaed from First Palmetto Bank contained only one loan approval memo for the loan. The loan approval memo stated First Palmetto was not requiring Dr. Dyce's guaranty.

³⁴Dr. Puchalski included this personal guarantee in order to avoid providing additional collateral for the loan. Although First Palmetto did not require Dr. Dyce's personal guarantee they did require additional collateral from Dr. Puchalski.

³⁵Defendants' Exhibit 43. The loan was not closed until approximately sixty (60) days later though Dr. Puchalski represented that the closing was critical.

³⁶Plaintiffs' Exhibit 18.

I did indeed discuss this with you. This is just like the Hartsville deal. It is my understanding that you have personal guarantees on the Hartsville property and the Columbia land currently. If you recall, this is why the bank requested your personal tax returns.

Dr. Puchalski's representation that a mechanic's lien had been filed against the project was incorrect. Dr. Puchalski's representation that Dr. Dyce needed to sign the personal guaranty was also false. When Dr. Dyce did not attend a loan closing which Dr. Puchalski had scheduled for March 3, 2010, Dr. Puchalski prepared the March 3 "consent" terminating Dr. Dyce without cause.³⁷ However, Dr. Puchalski did not immediately make Dr. Dyce aware that this March 3 "consent" had been prepared.

On March 5, 2010, Dr. Dyce forwarded Dr. Puchalski an email listing the SCENT documents that he had requested, but which had not been provided.³⁸ On March 10, 2010, Dr. Puchalski delivered the March 3 "consent" to Dr. Dyce, and declared Dr. Dyce's employment had been terminated without cause to be effective in sixty (60) days.

On March 30, 2010, Dr. Puchalski issued a "management directive" that included a demand that Dr. Dyce "comply with [his] obligations under this directive as well as the provisions of the [July 16, 2008] Shareholders' Agreement and [the June 1, 2008] Employment Agreement."³⁹ The "management directive" ordered Dr. Dyce to cooperate in recruiting a new physician, not to disparage the Group, to refrain from soliciting patients and requested that Dr. Dyce advise where he intended to practice after May 9. Dr. Puchalski did not submit the "management directive" for a vote to SCENT's shareholders.

On May 8, 2010, the day before Dr. Dyce's last day as a SCENT employee under the March 3 "consent" terminating Dr. Dyce *without cause*, Dr. Puchalski issued the May 8

³⁷ This "Consent" was never consented to by Dr. Dyce. This was a mechanism in the operating agreement of SCENT that allowed the members of the corporation to act without holding a formal meeting.

³⁸ Defendants' Exhibit 40.

³⁹ Plaintiffs' Exhibit 22.

“consent” purporting to terminate Dr. Dyce *for cause*, citing as the sole reason, “Dr. Dyce shared numerous pieces of information regarding a proposed contract to other non-shareholder physicians of SCENT to further his own personal position.” Dr. Puchalski did not submit the May 8 “consent” to a vote of SCENT’s shareholders. All of these allegations revolved around the alleged communications between Dr. Dyce and Dr. Gunnlauggson which Dr. Puchalski alleges were held to conspire to the detriment of SCENT.

Dr. Dyce did not participate in Dr. Gunnlauggson’s setting up or conducting of Dr. Gunnlauggson’s medical practice upon his departure from his employment with SCENT.

Dr. Dyce did not practice medicine from the date he left SCENT on May 9, 2010 until October 18, 2010. There is no evidence Dr. Dyce solicited any patients prior to October 18, 2010. There is no evidence that Dr. Dyce maintained malpractice insurance during this time. There is no evidence Dr. Dyce disparaged SCENT at any time. Having not received payment for his stock in SCENT, on October 18, 2010, Dr. Dyce began working for Carolina Pines where he works today.⁴⁰

Under Section 4.6.1 of the July 16, 2008 Shareholder Agreement, SCENT was obligated to commence purchasing Dr. Dyce’s shares within sixty (60) days of the effective date of Dr. Dyce’s termination, July 8, 2010. At no time has SCENT offered Dr. Dyce anything for his SCENT shares.

I find that there were a total of two shareholders in SCENT at the time of the end of Dr. Dyce’s employment with SCENT. I further find that Dr. Dyce was terminated without cause on May 9, 2010. As a result of that termination, SCENT or the remaining shareholder(s) were

⁴⁰Plaintiffs’ Exhibit 0080.001

required to purchase Dr. Dyce's shares according to the formula set out in the Shareholder's Agreement section 4.5⁴¹ and 4.6.1⁴²

CONCLUSIONS OF LAW

DR. DYCE ALLEGES THAT SCENT AND DR. PUCHALSKI BREACHED ITS AGREEMENT WITH HIM BY FAILING TO COMPENSATE HIM APPROPRIATELY IN 2008 AND 2009 WHEN HE WAS A 50% SHAREHOLDER OF SCENT. DR. DYCE FURTHER ALLEGES THAT SCENT AND DR. PUCHALSKI BREACHED AGREEMENTS WITH HIM FOR FAILING TO COMPENSATE HIM FOR HIS SHARES IN SCENT FOLLOWING HIS TERMINATION WITHOUT CAUSE. THE COURT FINDS THAT DR. DYCE HAS SUSTAINED HIS BURDEN OF PROOF.

In order to prove a breach of contract claim, one must prove: (1) a binding agreement entered into by the parties, (2) the defendant's failure to perform in accordance with the agreement, and (3) damage suffered by the plaintiff as a direct and proximate result of the defendant's breach. *Fuller v. Eastern Fire Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602, 609 (1962).

Dr. Dyce became a fifty (50%) percent shareholder in SCENT on February 1, 2008. As a shareholder, he was entitled to receive distributions in proportion to his stock ownership. At all times relevant to this dispute, SCENT was a Subchapter S corporation.⁴³ As a Subchapter S corporation, SCENT may have only one class of shares of stock. 26 U.S. Code § 1361(b)(1)(D).

Defendants SCENT and Dr. Puchalski materially breached their obligations to Dr. Dyce by failing to make equal distributions to him in 2008 and 2009. Dr. Dyce was entitled to receive fifty (50%) percent of SCENT's distributions commencing February 1, 2008 when he became an equal shareholder. Yet Drs. Robert and Amy Puchalski received \$872,992.16 more than Dr. Dyce received in 2008, and Dr. Puchalski caused himself and his wife to be paid \$48,542.06

⁴¹Plaintiffs' Exhibit 0007.016

⁴²Plaintiffs' exhibit 0007.017

⁴³For example, SCENT's tax returns, of which Plaintiffs' Exhibit 253, state that SCENT is a Subchapter S Corporation.

more in distributions than Dr. Dyce received in 2009.⁴⁴ Dr. Dyce is entitled to recover from Dr. Puchalski and SCENT one-half (1/2) of the difference in what was distributed in 2008, which is \$436,496.08, and one-half (1/2) of the difference in what was distributed in 2009, which is \$24,271.03.

Dr. Dyce is thus entitled to judgment against Dr. Robert Puchalski and SCENT, jointly and severally, in the amount of \$460,767.11, which represents the sum of \$436,496.08 and \$24,271.03 together with prejudgment interest, because of the failure by Dr. Puchalski and SCENT to make equal distributions in 2008 and 2009. Dr. Amy Puchalski's receipt of some of these distributions results in her being jointly and severally liable for a portion of the above amount as set out below.⁴⁵

Plaintiffs have requested prejudgment interest. The law allows prejudgment interest on obligations to pay money from the time when either by agreement of the parties or operation of law, the payment is demandable. Babb v. Rothrock, 310 SC 350, 352, 426 SE2d 798,791 (1993). The agreement of the parties required that both Dr. Puchalski and Dr. Dyce receive equal distributions each year. Therefore, the amounts due as stated above were demandable at the end of 2008 and 2009 respectively.

1. **SCENT and Dr. Puchalski breached their obligation to pay Dr. Dyce for his shares in SCENT.**

The July 16, 2008 Shareholders' Agreement is a binding agreement. The evidence established that Defendants SCENT and Dr. Puchalski breached its terms by failing to redeem Dr. Dyce's shares after he had been terminated without cause. As a direct and proximate result of the breach, Dr. Dyce suffered damages.

⁴⁴These numbers are distinguished from the \$986, that Dr. Dyce paid for his shares through the buy-in procedure that was in place between March 2007 and February 1, 2008.

⁴⁵The causes of action that support Dr. Amy Puchalski's liability are set forth below.

Section 4.5 of the July 18, 2008 Shareholders' Agreement states, in pertinent part, the following:

Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall pay the Departing Shareholder a purchase price ("Purchase Price") for the Shares in an amount equal to (a) one-fourth of the total collected revenue of the group for the 12 whole calendar months preceding the Departure Event divided by the number of Shareholders of the Corporation including the Departing Shareholder plus (b) one-third of the sum of the accounts receivable of the Corporation, booked in accordance with Corporation's normal accounting methods, and the cash (to include cash equivalents and marketable securities) of the Corporation divided by the number of Shareholders of the Corporation including the Departing Shareholder, and minus (c) any amount, if any, owed by the Departing Shareholder as of the effective date of the Termination of Employment under Section 4.6.4 of this Agreement. The Departing Shareholder also agrees that he shall sell his interest in SCENT Land Holdings, LLC at the price specified in that company's Operating Agreement at the same time the Shareholder's Shares are redeemed pursuant to this Agreement. Provided, however, the Purchase Price shall be reduced by fifty percent (50%) if (i) the term of Physician's employment did not consist of at least thirty-six (36) whole calendar months (ii) Physician elects to terminate the Employment Agreement without cause pursuant to Section 2.3(d) of the Employment Agreement and Physician fails to give the Group the twelve (12) whole calendar months written notice requested by that provision, or (iii) Physician is terminated pursuant to Sections 2.2(c)-(h) or Section 2.3(a). For clarity, any termination pursuant to Section 2.2(a) (death), Section 2.2(b) (disability), Section 2.2(i) (change in law), Section 2.3(a) ((i) material breach by the Corporation), Section 2.3(b) (mutual agreement), or Section 2.3(c) (by the group without cause) or Section 2.3(d) (by Physician without cause with 12 months' notice) shall be subject to payment for Physician's Shares at the Purchase Price. The Corporation and the Departing Shareholder may agree that such payments may be made in cash or as a distribution of corporate assets in kind to satisfy the Corporation's obligations. Notwithstanding anything in this Agreement to the contrary, a Departing Shareholder shall not be entitled to any distribution from the Corporation nor be entitled to vote the Shares subsequent to the Event of Departure.

(Emphasis added).

Section 4.6.1 of the July 16, 2008 Shareholders' Agreement requires that SCENT shall commence payment of the Purchase Price set forth in Section 4.5 within sixty (60) days following the effective date of the termination date. It further provides that to the extent permitted by applicable law, the Purchase Price shall be paid in sixty (60) equal monthly installments as evidenced by a promissory note. There was no evidence presented that a promissory note was ever issued by Dr. Puchalski or SCENT to Dr. Dyce.

The valuation of the component elements of "accounts receivable" was hotly contested. In summary, SCENT and Dr. Puchalski maintained at trial that based upon the definition contained in paragraph 4.5 of the July 18th, 2008 shareholders agreement the value is zero. Dr. Dyce maintained he is entitled to one third of the Accounts receivable as recorded by SCENT, also citing the dictates of paragraph 4.5 of the same agreement.

SCENT and Dr. Puchalski presented the testimony of accounting expert Marc Quigley in support of their position. Mr. Quigley opined that the word "booked" as used in paragraph 4.5 of the July 16th, 2008 shareholders' agreement meant to record in the practice's general ledger. It is uncontroverted that SCENT does not record its accounts receivable in its general ledger because SCENT maintains its books on a cash basis rather than an accrual basis. Mr. Quigley opined that because SCENT's accounts receivable are not recorded in its general ledger zero (\$0) should be used as the amount of accounts receivable for the buyout formula in paragraph 4.5.

Mr. Quigley, however, was unable to offer any authority for his opinion that "booked" meant to record in the general ledger. Mr. Quigley testified further that he knew of no authority supporting his opinion and acknowledging he had looked for none.⁴⁶

There was a secondary dispute regarding accounts receivable. SCENT and Dr. Puchalski maintained that even if the Court was to consider an amount of accounts receivable it must only

⁴⁶ November 24, 2014 Tr. 199: 23 – 200: 17.

consider those amounts actually collected in the buyout formula. Mr. Quigley propounded these calculations on behalf of SCENT and Dr. Puchalski. However, a fundamental problem with Mr. Quigley's analysis is that he tracks the accounts receivable and utilizes only those that were in fact paid during the time period he examined. This type of "look-back" could have been utilized by the parties as the accounts receivable element of the buyout formula, but did not. These parties made allowance for the prospect that some of the accounts receivable may not ultimately be paid by providing in the July 16, 2008 Shareholders' Agreement that only one-third (1/3) of the accounts receivable would be included as an element in the buy-out formula for Dr. Dyce's shares. One could certainly reasonably infer that problems of collectability were built into a buyout formula to be used by equal partners when one-third (1/3) of the stated value of SCENT's accounts receivable would be included in the buy-out formula for a departing shareholder.

It is uncontested that SCENT kept meticulous track of its accounts receivable in its books, although not maintained as part of its general ledger.

Kim Koumas, SCENT's business office director, supervised SCENT's billing department. In that capacity, she regularly ran accounts aging reports on SCENT's practice management computer system. Ms. Koumas testified at length regarding the reports generated and was able to identify those reports as being the foundation of Plaintiff's exhibit 250. The Court finds that the accounts receivable reports generated by SCENT under the supervision of Ms. Koumas were summarized in Plaintiff's exhibit 250. Ms. Koumas testified that Plaintiff's exhibit 250 contained the best records of SCENT's accounts receivable.

Further, the amounts in SCENT's answers to Plaintiff's interrogatories asserted that the accounts receivable "booked" in accordance with SCENT's normal accounting methods yielded the amounts which became Plaintiff's exhibit 250.

Dr. Puchalski, in asserting that any amount considered should be those amounts collected, offered a “60 day accounts receivable report,” which is Defendants’ exhibit 214. Dr. Puchalski’s position was corroborated by Mr. Quigley, who opined that many of the accounts receivables in Plaintiff’s exhibit 250 were not ultimately collected and therefore should not be included. Mr. Quigley testified concerning standards that relate to how accounts receivable are kept when a company keeps its books according the generally accepted accounting principles (GAAP). However, it must be noted that SCENT keeps its books on a cash basis which is not GAAP. Further, there is no requirement under the July 16, 2008 Shareholders’ agreement that the accounting methods be GAAP.

When examined on direct Mr. Sheehen adopted the premise that the 60 day report Defendants’ exhibit 214 should be utilized as the accounts receivable component of the buy-out formula; but on cross examination when confronted with a number of discrepancies in the “60 day report” he conceded that Plaintiff’s exhibit 250 was a more reliable report from which to determine SCENT’s accounts receivable.⁴⁷

Based upon the Court’s review of the evidence and the credibility of the witnesses’ testimony regarding the basis of the inclusion of accounts receivable and the appropriate sum to be considered this Court concludes as follows:

Paragraph 4.5 of the July 16, 2007 shareholders’ agreement is clear and unambiguous that an amount for SCENT’s accounts receivable should be used in the buyout formula. It would be nonsensical for the formula to include a value for accounts receivable if the very definition of

⁴⁷ Q. My question is don’t you, based on what you’ve seen today, believe that Exhibit 250 is a more reliable document by which to determine the way in which the company booked its accounts receivables on a normal basis than Defendant’s Exhibit 214?

A. Yes.

March 31 – April 2, 2014 Tr. 470:25-471:1-4.

accounts receivable would dictate a value of zero. In formulating a buyout formula as part of the July 16, 2008 Shareholders' Agreement, the parties were free to agree on whatever buy-out formula they chose and to specify whatever level of accuracy they felt appropriate with respect to the components of that formula. For instance, the parties could have required that SCENT's books be audited as part of the valuation process. The parties could have provided for a future adjustment of the purchase price depending on what actually occurred with SCENT's accounts receivable. Rather than include any such provisions, the parties agreed the buy-out formula should utilize only one-third (1/3) of SCENT's accounts receivable, implicitly recognizing that not all of the accounts receivables on SCENT's books would be collected.

Unfortunately, the practice management software utilized by SCENT is unable to extract accounts receivable retroactively and there was no contemporaneous determination of accounts receivable on May 9, 2010, so the Court will consider the accounts receivable information closest to the date which is April 30, 2010 (9 days earlier). Utilizing the records of account receivables closest to the operative date of May 9, 2010, the accounts receivable for SCENT on that date is \$1,868,707 (One Million Eight Hundred Sixty Eight Thousand Seven Hundred and Seven Dollars).

The parties agreed that the cash in the practice amounted to \$472,227.00.

The parties disagree as to whether the cash value of "key man" insurance maintained by SCENT and a note payable from SCENT Land to SCENT are 'cash equivalents' that should be included in the buy-out formula. The cash value of the life insurance was \$33,000. Austin Sheheen testified on direct examination that because there was a penalty associated with converting the life insurance to cash, he would not consider the surrender value of the insurance to be a cash equivalent. The buy-out formula in the July 16, 2008 Shareholders' Agreement does

not require the cash equivalents be converted to cash, but simply that the value of the cash equivalents be included in the redemption formula.⁴⁸ I find that the \$33,000 of life insurance is a cash equivalent that should be included in the redemption formula used to calculate the price owed Dr. Dyce for his shares. If the court had been provided with the amount of penalty to cash in the policy the court may have taken that into account, however, no evidence of the penalty was provided and is not considered. Therefore, the \$33,000.00 for life insurance shall be included in the redemption formula.

I further find that the \$726,000 note from SCENT Land to SCENT constitutes a cash equivalent that should be included in the redemption formula. As explained by Mr. Sheheen, the issue is whether SCENT had a reasonable expectation of receiving that money within a reasonable period of time from the relevant termination date of March 2010. With this standard as a guide the Court considers that: (1) SCENT's receivable from SCENT Land was from an entity owned by the wife of the owner of SCENT; (2) the manager of SCENT Land was Dr. Puchalski; (3) the receivable was going to be repaid from the proceeds of a previously approved construction loan from First Palmetto Bank. (Although this loan was approved in February 2010 before Dr. Dyce was terminated, the loan was not closed until May 5, 2010, four days before the valuation date.) It is clear to the Court that SCENT Land had readily available proceeds from the loan as of the May 9, 2010 valuation date and in fact repaid the loan to SCENT within four (4) days after the valuation date. Based upon reasoning provided by the experts, to include Mr. Sheheen, the court finds that the note from SCENT Land was a cash equivalent.⁴⁹ Therefore I

⁴⁸Mr. Sheheen testified that if the redemption price formula calls for the value of cash equivalents to be used, rather than requiring that the cash equivalents actually be converted to cash, then his opinion as to the appropriateness of including the cash surrender of the life insurance is different than he testified on direct. March 31 – April 2, 2014 Tr. 475: 2-21.

⁴⁹March 31 – April 2, 2014 Tr. 474: 21-23.

find that the \$726,000 (Seven Hundred Twenty Six Thousand Dollar) note payable should be included in the redemption formula.

Based upon the evidence presented I find that the total collected revenue of SCENT for the twelve (12) whole calendar months preceding the end of Dr. Dyce's employment with SCENT was \$10,340,061 (Ten Million Three Hundred Forty thousand Sixty One Dollars).

I further find that the purchase price that SCENT owed Dr. Dyce for his shares, as prescribed by Section 4.5 of the July 16, 2008 Shareholders' Agreement, is \$1,809,472 (One Million Eight Hundred Nine Thousand Four hundred Seventy Two Dollars). This redemption formula is set out in Plaintiffs' Exhibit 292.2.

	<u>Dyce</u>
Purchase Price Calculation:	
(A) Total Collected Revenue for Group	\$ 10,340,061
Divide by Four	<u>4</u>
Subtotal	2,585,015
Divided by Number of Shareholders	<u>2</u>
Subtotal (A)	<u>1,292,508</u>
(B) Accounts Receivable	1,868,707
Cash	472,227
CSV - Life Insurance	33,902
Receivable from SCENT Land	<u>726,950</u>
Total A/R, Cash and Marketable Securities	3,101,786
Divide by Three	<u>3</u>
Subtotal	1,033,929
Divided by Number of Shareholders	<u>2</u>
Subtotal (B)	<u>516,964</u>
(C) Minus: Amount owed by Departing Shareholder	<u>-</u>
Total Owed to Shareholder before 50% Adjustment	1,809,472
50% Adjustment Pursuant to Section 4.5	<u>-</u>
Total Owed to Shareholder	<u>\$ 1,809,472</u>

Plaintiff Exhibit 296.2

I find that the amount to be paid Dr. Dyce was a liquidated amount and capable of being ascertained 60 days after the effective date of Dr. Dyce's termination on May 9, 2010 (July 7, 2010). Defendants have made none of the sixty (60) payments that were due nor did they issue a promissory note as contemplated under section 4.6.1 of the Shareholders Agreement. Therefore, Plaintiffs are entitled to prejudgment interest at the legal rate of eight and three-quarters percent (8.75%) from July 7, 2010 (60 days after the effective date of termination) until the date that this judgment is entered.⁵⁰

2. Dr. Puchalski's purported termination of Dr. Dyce with cause was invalid and of no force or effect.

Dr. Puchalski contends that on May 8, 2010, he terminated Dr. Dyce for cause because Dr. Dyce had allegedly violated a management directive that Dr. Puchalski had issued on March 30, 2010.⁵¹ For reasons stated supra and infra the "management directive" and the subsequent May 8 "Consent" terminating Dr. Dyce for cause are invalid and unenforceable.

The source of Dr. Puchalski's claimed authority to terminate Dr. Dyce for violating a "management directive" is paragraph 2.2(c) of the June 1, 2008 Employment Agreement.⁵²

⁵⁰South Carolina Code § 34-31-20.

⁵¹Plaintiffs' Exhibit 22

⁵²Plaintiffs' Exhibit 10. The signatures to Dr. Dyce's June 1, 2008 Employment Agreement state unequivocally that the document was signed on June 1, 2008. The first paragraph under the title of the agreement on page one states, "THIS AGREEMENT (the "Agreement") is entered into effective as of the 1st day of June, 2008 ("Effective Date")." Moreover, Dr. Puchalski testified that the June 1, 2008 date was of significance and it was the parties' intent that the document be effective as of June 1, 2008. November 25-26, 2013 Tr. 51:25 – 52:16. Likewise, the Exhibit A Covenant (Defendants' Exhibit 10) states that it was signed on June 1, 2008 and the first paragraph of the Covenant clearly states that the agreement is made as of the first day of June 2008. The problem this causes is that the July 16, 2008 Shareholders' Agreement expressly provides in section 8.1 that "[a]ll other agreements dated prior to the date of this agreement are hereby superseded in their entirety by the terms and conditions of this agreement." Section 8.1 goes on to state, "provided however, that this Agreement shall not be deemed to supersede the terms and conditions of the Employment Agreements executed simultaneously with this Agreement."

Dr. Puchalski offered parole evidence that he did not sign the June 1, 2008 Employment Agreement and Covenant until July 16, 2008, the date of the July 16, 2008 Shareholders' Agreement. The record is unclear when Dr. Dyce actually signed the June 1, 2008 Employment Agreement and Covenant. However, the June 1, 2008

Paragraph 2.2(c) requires both that the “management directive of the Group’s Managing Shareholder” be (i) reasonable under the circumstances; and (ii) “approved by a majority of the Shareholders, after Physician has been advised in writing that failure to so comply may be grounds for termination.”⁵³ Furthermore, Section 3.3 of the July 16, 2008 Shareholders’ Agreement provides,

Except as otherwise provided in this Section, each outstanding Share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of the Shareholders. In the event of a tie in the voting on any matter requiring a majority vote, the Managing Shareholder shall break the tie casting a second vote to decide the matter.

From the time the management directive was issued, on March 30, 2010, through the date of the May 8 “Consent” terminating Dr. Dyce for cause for having failed to comply with the management directive, Dr. Dyce remained a SCENT shareholder and was entitled to vote on whether the management directive was reasonable and whether it should be issued.⁵⁴ Dr. Puchalski unilaterally issued the March 30, 2010 “management directive” without submitting it to a vote of the shareholders as required by Section 2.2(c) of the June 1, 2008 Employment Agreement and Section 3.3 of the July 16, 2008 Shareholders’ Agreement. Therefore, the management directive was not a properly authorized.

Employment Agreement and Covenant are unambiguous and, under applicable law, cannot be altered by the introduction of parole evidence. Because the Court finds that the Covenant contained in the June 1, 2008 Employment Agreement is unenforceable and because the Court finds that the management directive issued by Dr. Puchalski on March 30, 2010 (presumably pursuant to section 2.2(c) of the June 1, 2008 Employment Agreement) was unauthorized and therefore invalid and unenforceable, it does not appear to be necessary to adjudicate Dr. Dyce’s contention that the provisions of the June 1, 2008 Employment Agreement and Covenant have been superseded and, on that additional ground, are of no force and effect. However, were it necessary to adjudicate that issue, the Court would find that the June 1, 2008 Employment Agreement has been superseded and is of no force and effect. This may be a harsh result, but the Court is not allowed to rewrite clear, unambiguous contracts for the parties.

⁵³Plaintiffs’ Exhibit 10.002 – 003

⁵⁴While it is true that Section 3.3 of the July 16, 2008 Shareholders’ Agreement gives Dr. Puchalski, as Managing Shareholder, the right to vote a second time and break any tie that might exist on a matter requiring majority approval, that section does not allow Dr. Puchalski to dispense with submitting issues to other shareholders and allowing them the opportunity to vote.

Dr. Puchalski contends that because Dr. Dyce previously had been terminated without cause on March 3, 2010, Dr. Dyce was no longer entitled to vote as a shareholder pursuant to Section 4.5 of the July 16, 2008 Shareholders' Agreement. That section states,

Notwithstanding anything in this Agreement to the contrary, a Departing Shareholder shall not be entitled to any distribution from the Corporation nor be entitled to vote the Shares subsequent to the Event of Departure.

Dr. Dyce's termination without cause on March 3, 2010 was not a "Departure Event" and even assuming it was, it did not become effective for sixty (60) days after delivery of notice. Therefore, until May 9, 2010 Dr. Dyce remained entitled to vote his shares.

Page 2 of the July 16, 2008 Shareholders' Agreement defines a "Departure Event" as "any event described in Section 4.2, 4.3 and 4.4. Sections 4.2 and 4.3 are not pertinent. Although Section 4.4 does reference a termination for cause pursuant to paragraph 2.3(a) of the June 1, 2008 Employment Agreement, none of the referenced sections refer to a termination without cause under paragraph 2.3(c) of the June 1, 2008 Employment Agreement. Therefore, Dr. Dyce's termination without cause under paragraph 2.3(c) was not a Departure Event as defined in the July 16, 2008 Shareholders' Agreement.

Additionally, pursuant to the March 3 "Consent", purporting to terminate Dr. Dyce without cause, the termination without cause was expressly not effective until May 9, 2010; sixty (60) days after it was delivered. Therefore, even if the termination without cause could be characterized as a Departure Event, it was not effective until after the March 30, 2010 issuance of the "management directive." For both of these reasons, Dr. Dyce retained his right to vote his shares until the effective date of his termination without cause. Because the March 30, 2010, "management directive" was never submitted to the shareholders as required by paragraph 2.2(c), it was unauthorized, invalid and unenforceable.

The May 8 “consent” purporting to terminate Dr. Dyce for cause was itself an action on which Dr. Dyce was entitled to vote. While it is true that Section 3.3.2(iv) of the July 16, 2008 Shareholders’ Agreement precludes a shareholder from voting his shares when the subject of the vote is termination of that shareholder’s employment without cause, no similar provision precludes a shareholder from voting on his own termination for cause.⁵⁵ The July 16, 2008 shareholder agreement does not specifically address the voting requirement when terminating a shareholder for cause. Therefore, the voting requirement for terminating Dr. Dyce for cause would fall under the default rule in section 3.3 and only a majority vote of the shareholder is required to terminate a shareholder for cause at a properly noticed meeting.⁵⁶ However, there was never a meeting of the shareholders nor any attempt to convene such a meeting.

The authority to issue “consents,” such as those issued by Dr. Puchalski in this case, is found in Section 3.3.3 of the July 16, 2008 Shareholders’ Agreement. That section states:

Informal Action by Shareholders. Any action required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by all of the Shareholders entitled to vote with respect to the subject matter thereof and are delivered to the Corporation for inclusion in the minute book. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

As described above, Dr. Dyce was entitled to vote on the issue of his termination with cause. The issue was never submitted to him and he did not sign the May 8 “consent” as required by Section 3.3.3. Therefore, the May 8 “consent” was issued without the necessary authority and the alleged termination for cause is invalid and unenforceable.

⁵⁵Section 3.3.2(iv) does not help Dr. Puchalski in this dispute because Dr. Dyce does not contest his termination without cause and makes no argument that Dr. Puchalski’s March 3 CONSENT terminating him without cause was deficient. It is only the action taken by Dr. Puchalski and SCENT to terminate Dr. Puchalski with cause that are contested.

⁵⁶Section 3.3 further provides that “in the event of a tie in the voting on any matter requiring a majority vote, the Managing Shareholder shall break the tie by casting a second vote to decide the matter.”

Even if the March 30, 2010 “management directive” had been validly issued, Dr. Dyce did not violate it. The March 30, 2010 “management directive” states,

In accordance with Section 2.2(c) of your Employment Agreement, this is a management directive that you comply with your obligations under this directive as well as the provisions of the Shareholders Agreement and your Employment Agreement.

The May 8 “Consent” that states the reasons why Dr. Dyce was deemed to have violated the management directive states,

Dr. Dyce shared numerous pieces of information regarding a proposed contract to other non-shareholder physicians of SCENT to further his own personal position.⁵⁷

The Court finds even assuming arguendo, there was no requirement for proper notice and a shareholder meeting to issue the management directive, there is no evidence Dr. Dyce violated the agreement or the directive which makes reference to following the shareholders’ agreement. To wit: The July 16, 2008 Shareholders’ Agreement expressly allowed Dr. Dyce to discuss SCENT’s information with other non-shareholder physicians of SCENT:

Section 3.7 of the July 16, 2008 Shareholders’ Agreement states,

Confidentiality. The Shareholders shall not disclose any information relating to the Corporation regarding the Corporation’s operations, records, patients or procedures, to any persons other than employees of the Corporation, federal and state regulatory agencies, third-party reimbursement agencies, the Corporation’s accountants, lawyers, consultants and other professional advisors, without the prior written consent of the Corporation or, as the case may be, an enforceable subpoena, or the final order of a court of competent jurisdiction. Each Shareholder shall use information related to the business of the Corporation to advance the Corporation’s best interest, and not to benefit their personal interest. All forms, templates, systems (including billing systems) are the property of the Corporation and shall not be used apart from the Corporation by Shareholder or

⁵⁷Plaintiffs’ Exhibit 162.

Departing Shareholder without the written consent of the Corporation. (Emphasis added)⁵⁸

Dr. Dyce, a fifty percent (50%) shareholder in SCENT, was confronted with his co-shareholder's actions directed towards securing to himself control of the corporation and arrogate largely to himself effectively all meaningful decision making authority and accomplish this before admitting Dr. Gunnlauggson as a shareholder. Under SCENT's written confidentiality policy, Dr. Dyce was within his rights to discuss information relating to the practice, particularly Dr. Gunnlauggson, an employee, who was on a shareholder track. I find that if Dr. Dyce discussed with Dr. Gunnlauggson the proposed changes in governance sought to be implemented by Dr. Puchalski, such a discussion did not violate Dr. Dyce's obligations under either the July 16, 2008 Shareholders' Agreement or his June 1, 2008 Employment Agreement.

Finally, the alleged termination of Dr. Dyce with cause was purported to be effective immediately, with no notice.⁵⁹ Dr. Puchalski contends that paragraph 2.2(c) of the June 1, 2008 Employment Agreement empowered him to terminate Dr. Dyce effective immediately for violating a management directive. However, there is nothing in the June 1, 2008 Employment Agreement providing that termination for violation of a management directive can be done and is effective immediately. On the contrary, paragraph 2.2(c) can be read to require that before the Group can terminate a doctor for an alleged violation of a management directive, the majority of the shareholders must first approve the termination. Moreover, paragraph 2.3(a) of the June 1, 2008 Employment Agreement expressly addresses the notice required to terminate the agreement for cause. That paragraph requires thirty (30) days' notice. The May 8 "Consent" states that Dr. Dyce is being terminated "for cause," pursuant to the clear provisions of the June 1, 2008

⁵⁸Plaintiffs' Exhibit 7.

⁵⁹Not only did Dr. Puchalski provide no time period before the purported termination for cause became effective, he did not provide Dr. Dyce with a copy of the May 8 "Consent". Dr. Dyce learned of it during discovery in this litigation. November 19-22, 2013 Tr. 206:17-19.

Employment Agreement, terminations for cause can only be done upon thirty (30) days' written notice. Therefore, because the purported termination with cause was issued without any notice, along with the other grounds articulated infra, it is invalid and of no force or effect.

3. The Covenant contained in Dr. Dyce's June 1, 2008 Employment Agreement is unenforceable.

Dr. Puchalski contends that any amounts owed to Dr. Dyce should be reduced by either the damages that SCENT allegedly incurred because Dr. Dyce allegedly violated his Covenant Not to Compete or by the stipulated damages in the amount of \$750,000 set forth in Paragraph 3.11 of the June 1, 2008 Employment Agreement. The Court disagrees.

South Carolina law bars the Defendants from seeking to enforce the Covenant because as already discussed, the Court finds that the Defendants breached the June 1, 2008 Employment Agreement and the July 16, 2008 Shareholders' Agreement. As described above, there are were a number of ways in which Dr. Puchalski and SCENT breached their obligations to Dr. Dyce before Dr. Dyce accepted employment with Carolina Pines. These include, among other things, (i) Dr. Puchalski's causing SCENT to pay himself more than SCENT paid Dr. Dyce between February 1, 2008 and December 31, 2009;⁶⁰ (ii) Dr. Puchalski and SCENT failing to redeem Dr. Dyce's shares and begin paying the redemption price that was due commencing July 9, 2010; and (iii) Dr. Puchalski and SCENT breaching the July 16, 2008 Shareholders' Agreement and the June 1, 2008 Employment Agreement by attempting to terminate Dr. Dyce with cause.

Pursuant to the legal authority cited below, SCENT and Dr. Puchalski's breaches of their contractual obligations excuse Dr. Dyce from having to comply with the Covenant.

⁶⁰As explained above, Drs. Robert and Amy Puchalski received \$872,991.80 more than Dr. Dyce in distributions between February 1, 2008 when Dr. Dyce's buy-in was completed and the end of 2008. They received \$48,542.08 more in distributions than did Dr. Dyce in 2009. The sum of the two is \$921,533.88.

Where an employer materially breaches its contract with its employee, the employer may not thereafter enforce a non-competition agreement against the employee. *Williams v. Riedman*, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 2000).

In the instant case, the June 1, 2008 Employment Agreement incorporates, and is governed by, the terms of the July 16, 2008 Shareholders' Agreement.

Except as otherwise provided in the Shareholders' Agreement, this Agreement contains the complete, full and exclusive understanding of the parties with respect to the Physician's engagement by the Group. . . . The parties acknowledged and agree that certain provisions of the Shareholders' Agreement may modify this Agreement and in the event of a conflict between any terms in this Agreement and the Shareholders' Agreement, the terms of the Shareholders' Agreement shall control.⁶¹

Defendants' breaches of the parties' agreements render the Covenant unenforceable.

4. The covenant is overly broad in scope, and therefore, not enforceable.

In South Carolina, "[r]estrictive covenants not to compete are generally disfavored and will be strictly construed against the employer." *Team 1A v. Lucas*, 395 S.C. 237, 245, 717 S.E.2d 103, 107 (Ct. App. 2011) (citing *Rental Uniform Service of Florence, Inc. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983)). A covenant not to compete will only be upheld if it meets the following five part test:

- 1) It must be necessary for the protection of the legitimate interest of the employer;
- 2) It must be reasonably limited with respect to time and place;
- 3) It must not be unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a living;
- 4) It must be reasonable from the standpoint of public policy; and
- 5) It must be supported by valuable consideration.

⁶¹Plaintiffs' Ex. 0010.011.

Id.

Significantly, “[i]f a covenant not to compete is defective in one of the above-referenced areas, the covenant is totally defective and cannot be saved.” *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39 at 42, 455 S.E.2d 707 at 709 (Ct. App. 1995). In addition, “in South Carolina the restrictions in a non-compete clause cannot be rewritten by a court or limited by the parties’ agreement, but must stand or fall on their own terms.” *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583 at 588, 694 S.E.2d 15 at 18 (2010).

The covenant states:

1. For a period of eighteen (18) whole calendar months from the date of termination of the Employment Agreement, Physician shall not directly or indirectly practice medicine or provide medical services within a twenty (20) mile radius of any practice site maintained by the Group. Physician further covenants and agrees that during the eighteen (18) whole calendar month period immediately after termination of the Employment Agreement, Physician shall not directly, or indirectly, for himself or for any person, corporation, partnership, professional association, unincorporated association, limited liability company, limited liability partnership, or other entity by which Physician is compensated for performing medical services or in which Physician has an economic interest, call upon, solicit, accept business from, or provide health care or related services to, any Patient, except for any Patient who delivers to the Group a valid consent to release their medical records to Physician. In the event the Employment Agreement is terminated for a material breach by the Group related to the payment of Physician's Base Compensation or Variable Compensation (after the applicable cure periods in Section 2.3(a) of the Employment Agreement) or a change in law as described in Section 2.2(i) of the Employment Agreement, this Covenant Not to Compete shall not apply.

On its face, the covenant is overly broad. The restriction, as drafted, prohibits Dr. Dyce from (i) practicing any type of medicine; (ii) providing any type of medical services in the specified territorial area; or (iii) calling upon or accepting business from SCENT patients if he

works for any kind of entity in which he has an economic interest.⁶² The last provision has no geographic limitation. SCENT's practice is limited to otolaryngology and the ancillary services incident to otolaryngology. For example, SCENT does not compete with general practitioners or with emergent care facilities. In fact, general practitioners are a primary source of SCENT's business.

The scope of the covenant's restriction is broader than necessary to protect SCENT's legitimate interests and unduly harsh and oppressive in limiting the legitimate efforts of Dr. Dyce to earn a livelihood. The covenant does not limit the entities in which Dr. Dyce is forbidden to have an economic interest to ones that provide otolaryngological services, or even medical services, and it does not limit the type of business Dr. Dyce can solicit. Clearly, the covenant contained in the June 1, 2008 Employment Agreement is overly broad and not reasonably necessary to protect SCENT's interests.

Faces Boutique, Ltd. v. Gibbs, 318 S.C. 39, 455 S.E.2d 707 (Ct. App. 1995) is particularly instructive in analyzing the enforceability of the SCENT Covenant. In *Gibbs*, the plaintiff had worked for Faces, a facial spa, as an esthetician who performed facials. While at Faces, she signed an employment agreement containing a post-termination non-compete clause prohibiting her from owning or working for any business in direct competition with Faces. Direct competition was defined to include facials, selling of cosmetics, and all cosmetic application or facial spa related services. After taking maternity leave, Ms. Gibbs decided not to return to Faces. Instead, she went to work for Tara's, a beauty salon, as a manicurist. Because

⁶²Specifically, the Covenant provides that "Physician shall not...for...any...corporation...or other entity by which Physician is compensated for performing medical services or in which Physician has an economic interest, call upon, solicit, accept business from, or provide health care or related services to, any Patient, except for any Patient who delivers to the Group a valid consent to release their medical records to Physician." (Emphasis added).

Tara's derived some of its revenues from facials, Faces brought suit against Ms. Gibbs seeking to enforce the non-compete agreement.

The trial court found the covenant defective and unenforceable. When Faces appealed, the Court of Appeals affirmed, using the following language directly applicable to the present case:

We agree with the trial court the covenant not to compete violates the requirements that a covenant be 'necessary for the protection of the legitimate interest of the employer' and 'not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood.' Specifically, the trial court found '[t]he covenant seeks to prevent [Gibbs] from being associated in any capacity with any business which gives facials, sells cosmetics, etc. Such a prohibition goes beyond the protection of any legitimate business interest [Faces] may be able to articulate. This broad prohibition also prevents [Gibbs] from earning a livelihood through legitimate means.' The trial court noted that under the terms of the covenant, Gibbs would be unable to work for any of the various department stores which sell cosmetics, even if she worked in an area of the store not involved in the sale of cosmetics....

Id. at 42-43, 455 S.E.2d at 709.

Defendants rely on the recent case of *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013), which upheld the validity of a non-compete agreement involving two former Columbia Heart Clinic doctors. However, *Baugh* supports Dr. Dyce's position that the covenant is unenforceable. The non-compete agreements in that case prohibited the doctors from practicing medicine "*in the field of cardiology*" for a period of twelve (12) months "within a 20 mile radius of any Columbia Heart office at which Physician routinely provided services during the year prior to the date of termination"*Id.* at 9, 738 S.E.2d at 484 (emphasis added). As indicated above, the non-compete in *Baugh* prohibited the doctors from practicing medicine only in the field of cardiology. The prohibitions contained in Dr. Dyce's covenant do not contain such a limitation; rather, they provide, among other things, that he shall

not (i) “practice medicine or provide medical services” within the territorial restriction or (ii) have, call upon, solicit, accept any business from, any Patient on behalf of any type of business in which Dr. Dyce has an economic interest.⁶³ *Baugh* clearly demonstrates how easy it is to properly limit the scope of a non-compete to protect only the legitimate interest of the employer by limiting the breadth of the restriction. In this instant case the non-compete was not limited to the protection of a legitimate interest of SCENT but rather was an oppressive covenant denying Dr. Dyce from being able to making a living.

5. Dr. Dyce did not conspire against SCENT or Dr. Puchalski.

Defendants contend that (i) Dr. Dyce and Dr. Gunnlauggson conspired against SCENT and Dr. Puchalski in order to, among other things, compete with SCENT; (ii) Dr. Dyce solicited SCENT employees to assist him at Carolina Pines; and (iii) breached the confidentiality agreement in the July 16, 2008 Shareholders’ Agreement and the June 1, 2008 Employment Agreement by sharing confidential information with SCENT employees. I find that the evidence fails to support these allegations.

Dr. Dyce testified he did not conspire with Dr. Gunnlauggson. Specifically, Dr. Dyce testified he did not engage in a coordinated legal strategy with him; never provided him copies of confidential information such as the 2010 draft shareholders agreement and/or employment agreement and never provided him copies of insurance contracts.⁶⁴ Dr. Dyce did not have conversations with Dr. Gunnlauggson about opening a separate practice or about SCENT’s insurance contracts.⁶⁵ It is telling that Dr. Dyce did not even have malpractice insurance when he left SCENT on May 9, 2010 and did not work as a physician in any capacity from the time Dr.

⁶³ This provision fails to have a territorial limitation.

⁶⁴ November 19-22, 2013 Tr.294:1-295:1-8. Dr. Vidrine also corroborated Dr. Gunnlauggson’s testimony when he admitted that Dr. Puchalski called a meeting which Drs. Vidrine and Gunnlauggson both attended. Dr. Vidrine recalled Dr. Puchalski stating that Dr. Dyce should be paid approximately \$1.5 million for his interest in SCENT. November 24, 2014 Tr. 95:3-24.

⁶⁵ November 19-22, 2013 Tr. 313:8-16.

Dyce's employment ended with SCENT through the middle of August.⁶⁶ Dr. Gunnlauggson's testimony substantiated Dr. Dyce's testimony.⁶⁷ Any conversations that Dr. Dyce had were in order to obtain information from SCENT and to confer about the future of SCENT. The Court specifically finds that none of these conversations rise to the level of doing harm to the corporation. The Court affirmatively finds that the information that Dr. Dyce was attempting to obtain from the corporation of which he was a 50% shareholder was in SCENT's best interest. It is unreasonable that Dr. Dyce, a 50% shareholder, should be uninformed about any information regarding the entity of which he is an equal owner.

Finally, Defendants did not provide any evidence that Dr. Dyce solicited SCENT employees. On the contrary, Dr. Dyce's witness, Tammy Amerson, testified that she voluntarily left SCENT to work with Dr. Dyce at Carolina Pines. She discovered an opening to work with Dr. Dyce through the internet - - not through Dr. Dyce.⁶⁸

Dr. Puchalski testified he believed that Dr. Dyce was conferring with Dr. Gunnlauggson about the terms of the proposed new shareholders agreement. Even if this was true, it would not violate SCENT's express written confidentiality policy that allowed disclosure of SCENT information to SCENT physicians.⁶⁹

Dr. Dyce is entitled to the amount due him for the redemption of his shares as set forth above and his share of SCENT distributions, with no offset.

6. **To the extent Dr. Amy Puchalski received monies from SCENT for the benefit of her husband, Dr. Puchalski acknowledges that these funds were for his benefit and should be attributable to him.**

⁶⁶November 19-22, 2013 Tr. 318:16-21.

⁶⁷November 19-22, 2013 Tr. 487:16-24; 488:5-10, 25-499:3. Dr. Puchalski shared this information with Dr. Gunnlauggson - - not Dr. Dyce. November 19-22, 2013 Tr. 488:8-24. Moreover, both Drs. Dyce and Gunnlauggson agreed that they spoke to each other more often in December 2009 and texted each other during this time period due to a patient who had complications and required emergency surgery. November 19-22, 2013 Tr. 489:6 - 490-14. Dr. Puchalski failed to prove that the increased communications was in reality a conspiracy against him and SCENT.

⁶⁸November 19-22, 2013 Tr. 554:13-555:15.

⁶⁹See discussion above.

Monies were distributed to Dr. Amy Puchalski after February 1, 2008 through August 2009, a time when Dr. Dyce was a SCENT shareholder entitled to receive distributions equal to those paid to Dr. Robert Puchalski and for his benefit. Dr. Amy Puchalski has been joined as a party because she received distributions, some of which should have been paid to Dr. Dyce. Although Dr. Amy Puchalski received monies in the form of SCENT distributions that belonged to Dr. Dyce during this time period, Dr. Robert Puchalski's testimony is clear that these distributions were in actuality distributions to Dr. Puchalski and should be considered as such. While the Court acknowledges and appreciates the representations of Dr. Robert Puchalski, because there were monies paid to Dr. Amy Puchalski that rightfully belonged to Dr. Dyce, Dr. Dyce is entitled to judgment against Dr. Amy Puchalski for those distributions paid to her as those funds were converted by her receipt. As to these sums, Dr. Amy Puchalski, Dr. Robert Puchalski, and SCENT are jointly and severally liable.

7. **Defendants SCENT and Drs. Robert and Amy Puchalski are Liable to Dr. Dyce for Conversion.**

Defendants SCENT and Dr. Robert Puchalski are jointly and severally liable to Dr. Dyce under his conversion claim in the amount of \$460,767.11 representing Dr. Dyce's share of distributions SCENT made in 2008 and 2009. SCENT and Dr. Robert Puchalski are additionally liable for \$1,809,472.00, the amount to which Dr. Dyce was entitled for the buyout of his SCENT shares. The two of these totaling \$2,270,239.11.

Defendant Dr. Amy Puchalski is only liable for the portions of the excess distributions that she received. Mr. Livingston and Austin Sheheen both testified regarding the amount of distributions that Dr. Amy Puchalski received from 2008 to 2009. Defendant's exhibit 250 purports to be the excess distributions that were made for the benefit of Dr. Amy Puchalski. Austin Sheheen explained that the final four distributions on this exhibit were not for the benefit

of Dr. Amy Puchalski. The Court finds as such. The three payments to AT&T were for periods of time where Dr. Robert Puchalski was using Dr. Amy Puchalski's cell phone and therefore these were proper reimbursements of a business expense which Dr. Amy Puchalski absorbed.

The payment to Nelson Mullins should likewise not be attributed to Dr. Amy Puchalski.

Although this payment description indicates that this payment was related to the 310 Ocean Oaks property testimony showed that this payment was actually for drafting of a new partnership for Dr. Robert Puchalski. Therefore, Dr. Amy Puchalski is only jointly and severally liable for \$25,596.87.

To recover for conversion, one must show the following three elements: (i) an interest by the plaintiff in the thing converted; (ii) the defendant converted the property to his or her own use; and (iii) the use was without the plaintiff's permission. *See Richardson's Rests. v. Nat'l Bank of S.C.*, 304 S.C. 289, 403 S.E.2d 669 (Ct. App. 1990). To establish the first element, plaintiff must show either title or right to possession of personal property. *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990). As to the second element, conversion "may arise by some illegal use or misuse, or by illegal detention of another's chattel." *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (1975) (citing *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964)). "Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *Id.* Finally, the third element requires proof that "defendant gained control and possession of the plaintiff's property without the plaintiff's permission." *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964).

Dr. Dyce has sustained his burden of proof and shall have judgment against Defendants

SCENT and Dr. Robert Puchalski, jointly and severally, under the conversion cause of action in the amount of \$460,767.11 representing the sum of \$436,496.08 and \$24,271.03 together because of the failure by Dr. Puchalski and SCENT to make equal distributions in 2008 and 2009 as discussed herein. Dr. Amy Puchalski received \$25,596.87 of the above referenced amount. While responsible for this entire amount, Dr. Dyce is entitled to one half of this amount as an excess distribution for the benefit of Dr. Robert Puchalski. Therefore, Dr. Amy Puchalski is only jointly and severally liable for \$25,596.87 of the \$436,496.08 referenced above.

8. Defendants Drs. Robert and Amy Puchalski accepted monies that did not belong to them, and therefore, are liable to Dr. Dyce under the cause of action for constructive trust.

Dr. Robert Puchalski is liable to Dr. Dyce under his constructive trust claim in the amount of \$460,767.11 for Dr. Dyce's share of distributions SCENT made in 2008 and 2009.

Dr. Amy Puchalski is jointly and severally liable for \$25,596.87 of the above amount.

Defendants SCENT and Dr. Robert Puchalski are jointly and severally liable in the amount of \$1,809,472 as the amount to which Dr. Dyce was entitled as the purchase price for his SCENT shares.

Drs. Robert and Amy Puchalski accepted monies that did not belong to them, and therefore, are liable to Dr. Dyce under the cause of action for constructive trust. "A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust." *Cox*, 301 S.C. 500, 392 S.E.2d 793-94. "A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it." *Id.* 500, 794-795. A constructive trust can result when money has been paid by "accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty." *McNair v. Rainsford*, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (Ct. App. 1998). A party must demonstrate

that the money was wrongfully obtained by clear and convincing evidence. Dr. Dyce sustained his burden by clear cogent and convincing evidence. The Court specifically finds that these monies were wrongfully obtained.

9. SOMNUS

Dr. Dyce also asserts that he is entitled to monies from a company called Somnus, LLC ("Somnus") of which Dr. Dyce and Dr. Puchalski were members. SOMNUS is not a party to this lawsuit and a necessary party. Due Process dictates if relief is requested of SOMNUS then it must be before the Court. As a result the Court will not be considering any issues regarding SOMNUS.

10. Defendants' counterclaims against Dr. Dyce are dismissed with prejudice.

Defendants asserted the following counterclaims against Dr. Dyce: (1) breach of contract; (2) breach of fiduciary duty; (3) conspiracy; (4) interference with contract; (5) defamation; (6) payment of debt; (7) shareholder oppression; and (8) breach of contract accompanied by fraudulent act. The defendants have failed to meet the burden of proof with regard to those causes of action.

a. *Defendants' failed to prove their counterclaim for breach of contract.*

The preponderance of the evidence fails to prove that Dr. Dyce breached his contracts. Defendants contend Dr. Dyce breached the terms of the June 1, 2008 Employment Agreement and July 16, 2008 Shareholders' Agreement by sharing confidential information with Dr. Gunnlauggson, who was not a shareholder of SCENT. First, Dr. Puchalski has not established that Dr. Dyce shared any confidential information with Dr. Gunnlauggson. Dr. Gunnlauggson testified that he obtained copies of an unsigned 2010 shareholders' agreement from Dr.

Puchalski.⁷⁰ Moreover, Section 3.7 of the July 16, 2008 Shareholders' Agreement states that the "Shareholders shall not disclose any information relating to the Corporation regarding the Corporation's operations, records, patients, or procedures to any persons other than employees of the Corporation"⁷¹ It is undisputed that Dr. Gunnlauggson was an employee of SCENT. Therefore, even if Dr. Dyce shared confidential information with Dr. Gunnlauggson, it would have not have constituted a breach of the July 16, 2008 Shareholders' Agreement.

Second, Defendants claim Dr. Dyce breached the June 1, 2008 Employment Contract by violating the Covenant.⁷² As stated above, the Covenant is unenforceable.⁷³

Third, Defendants claim that Dr. Dyce breached the non-solicitation clause in the June 1, 2008 Employment Agreement by soliciting SCENT employees to work with him at Carolina Pines. The evidence failed to support these assertions. These allegations largely involve Dr. Dyce's hiring of Tammy Amerson. Tammy Amerson, as stated above, testified that she voluntarily left her job at SCENT and, through her own internet search, discovered a job opening with Dr. Dyce.⁷⁴ Accordingly, Dr. Dyce did not breach the non-solicitation provision.

Accordingly, Defendants' breach of contract counterclaim is dismissed *with prejudice*.

b. Defendants' failed to prove their counterclaim for breach of fiduciary duty.

Defendants assert that Dr. Dyce breached his fiduciary duty to SCENT and Dr. Puchalski on the grounds that Dr. Dyce knew of Dr. Gunnlauggson's plans to open a new office and would compete with SCENT.⁷⁵ Dr. Dyce testified he never knew that Dr. Gunnlauggson intended to open a practice and he only discovered this when Dr. Gunnlauggson called him after he had

⁷⁰November 19-22, 2013 Tr. 509:2- 510:5.

⁷¹Plaintiffs' Ex. 0007.011.

⁷²November 25-26, 2013 Tr. 236.

⁷³See Conclusions of Law Section of this Order.

⁷⁴November 19-22, 2013 Tr. 554:17-555:15,

⁷⁵November 25-26, 2013 Tr. 242.

opened the office.⁷⁶ The Court had extensive opportunity to observe and listen to the witnesses and judge their credibility regarding all of the issues raised in the summons and complaint and counterclaims. Based upon the evidence presented, including the testimony of Dr. Dyce, Dr. Gunnlauggson, and Dr. Puchalski the court is satisfied that Dr. Puchalski has failed to meet his burden of proof that Dr. Dyce breached any fiduciary duty owed to SCENT or Dr. Puchalski. Moreover, Defendants have not provided any evidence that they have been damaged by the alleged failure to notify SCENT or Dr. Puchalski that Dr. Gunnlauggson would open a competing practice. Dr. Puchalski simply stated that Dr. Dyce should not receive \$340,000.00 in compensation.⁷⁷ Based upon the foregoing, defendants' counterclaim for breach of fiduciary duty is dismissed with prejudice.

c. *Defendants' failed to prove their counterclaim for conspiracy.*

Defendants assert a counterclaim for conspiracy. Under South Carolina law, "[t]he tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App.1989); *see also Pye v. Estate of Fox*, 633 S.E.2d 505, 511 (2006) ("The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.").

Defendants failed to sustain their burden of proof that Drs. Dyce and Gunnlauggson conspired. Dr. Dyce testified that he did not conspire with Dr. Gunnlauggson. Dr. Dyce testified he did not engage in a coordinated legal strategy with Dr. Gunnlauggson, never provided copies of confidential information such as the 2010 draft shareholders agreement and/or employment

⁷⁶November 19-22, 2013 Tr. 314:5-15.

⁷⁷November 25-26, 2013 Tr. 242:24 – 243:2

agreement and never provided copies of insurance contracts. The Court finds Dr. Dyce did not have conversations with Dr. Gunnlauggson about opening a separate practice or conversations with him regarding SCENT's insurance contracts. The Court is satisfied that while both Dr. Gunnlauggson and Dr. Dyce separated from SCENT, clearly Dr. Dyce's departure was non-voluntary. The timing of each doctor's return to practice is very different as is their practice post SCENT. The Court finds that there is no credible evidence that Dr. Dyce conspired with Dr. Gunnlauggson or anyone else to injure or damage SCENT or Dr. Puchalski.

Even if a preponderance of the evidence had supported Defendants' conspiracy claims, which it does not, Defendants have failed to prove special damages as required in order state a claim for conspiracy. An essential element under this cause of action is pleading and proving special damages. Defendants generally plead that they have been specially damaged, but they have not itemized or otherwise described those damages. "Special damages...are not implied at law because they do not necessarily result from the wrong. Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871, 875 (Ct. App. 2009). If plaintiffs merely repeat the damages from another claim instead of specifically identifying the special damages sustained, the conspiracy claim should be dismissed. *Hackworth*, 385 S.C. 110, 682 S.E.2d at 875; *Vaught*, 300 S.C. at 208, 387 S.E.2d at 95 ("The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred."). As set forth in *Hackworth*, special damages must differ entirely from the alleged damages described in the other causes of action.

Defendants have not pled or proven any damages differing from the damages allegedly

sustained in the other counterclaims. Accordingly, for the reasons stated above, Defendants' conspiracy counterclaim is dismissed with prejudice.

d. *Defendants' failed to prove their counterclaim for interference with a contract.*

Defendants asserted a counterclaim against Dr. Dyce for interference with a contract. Defendants claim that Dr. Dyce's failure to close on the \$1,700,000 construction loan damaged SCENT and SCENT Land. However, First Palmetto Bank personnel testified, and the bank's own files confirm, that Dr. Dyce's guaranty was not required to close the loan. On the contrary, Dr. Puchalski could have closed the loan in February 2010 without Dr. Dyce, as evidenced by the First Palmetto Bank Savings Bank, FSB Loan Approval/Loan Summary Memorandum dated February 10 2010.⁷⁸ Moreover, the closing did occur two (2) months later on May 5, 2010 based on the Palmetto Bank Savings Bank, FSB Loan Approval/Loan Summary Memorandum dated February 10 2010. As a result of the closing, SCENT received \$725,000.00 and Dr. Amy Puchalski benefitted because she was repaid \$170,000.00 that she previously loaned to SCENT Land.⁷⁹ Therefore, neither SCENT nor SCENT Land was damaged by Dr. Dyce's refusal to guarantee the May 5, 2010 loan closing.

As set out in detail herein, Dr. Dyce began to take certain actions as a direct consequence of his inability to receive financial information regarding SCENT and due to the deteriorating relationship between Dr. Dyce and Dr. Puchalski. The Court is not convinced that the refusal to guarantee a loan for SCENT Land⁸⁰ resulted from anything other than that mentioned above. The Court determines that the Defendants have failed to meet their burden of proof that Dr. Dyce interfere with a contract from which the defendants were damaged.

⁷⁸Plaintiffs' Ex. 0283.0176.

⁷⁹November 25-26, 2013 Tr. 274:20-25.

⁸⁰ SCENT Land is an entity of which Dr. Dyce has no interest. It should be noted his wife, Jamie Curley is a member of SCENT Land.

Accordingly, Defendants' interference with contract counterclaim is hereby dismissed with prejudice.

e. *Defendants' failed to prove their counterclaim for defamation.*

Defendants asserted a counterclaim for defamation against Dr. Dyce. Defendants failed to meet their burden to prevail under this counterclaim. Defamation is a tort action encompassing libel and slander. Defendants must allege and prove the following: (1) a defamatory meaning; (2) publication with actual or implied malice; (3) falsity; (4) publication by the Plaintiffs; (5) the message concerns the Defendants; and (6) legally presumed damages or special damages to the Defendants. *Parker v. Evening Post Publishing Co.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994).

"The intent and meaning of an alleged defamatory statement must be gathered not only from the words singled out as libelous, but from the context; all of the parts of the publication must be considered in order to ascertain the true meaning, and words are not to be given a meaning other than that which the context would show them to have." *Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968) (citing 33 Am. Jur., LIBEL AND SLANDER, Section 87). Malice, in actions for libel or slander, is of two kinds: implied malice or malice in law, and actual malice or malice in fact. *Id.* at 488, 158 S.E.2d at 913. "Malice in law, or legal malice, is a presumption of law and dispenses with the proof of malice when words which raise such presumption are shown to have been uttered." *Id.* at 488-89, 158 S.E.2d at 913-914. "This form of malice is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill will, personal malice, hatred, or a purpose to injure." *Id.*

As to falsity, truth is a defense to this element. *Beckman v. Sun News*, 289 S.C. 28, 344 S.E.2d 603 (1986). To render the defamatory statement actionable, the statement must have been communicated to someone other than the Defendants in this case. *Tyler v. Macks Stores of South*

Carolina, Inc., 275 S.C. 456, 272 S.E.2d 633 (1980) (stating “[a] mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain). *Duckworth v. First Nat’l Bank*, 254 S.C. 563, 570, 176 S.E.2d 297, 301 (1970) (stating [t]he burden of proof was upon the respondent to show not only that the statement was made, but that such was communicated or published to some third person.”).

The alleged statement must be about the claimant. *Burns v. Garner*, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997). “To prevail in a defamation action, a plaintiff must establish that the defendant’s statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred.” Finally, for recover the claimant must show special damages. *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978).

Defendants presented no evidence showing that Dr. Dyce defamed SCENT and/or Dr. Puchalski. Accordingly, the counterclaim is dismissed *with prejudice*.

f. *Defendants’ failed to prove their counterclaim for payment of debt.*

Defendants assert a counterclaim for payment of debt. Payment of debt is not a cause of action recognized in South Carolina. Furthermore, no evidence supports this claim. Accordingly, the counterclaim is dismissed *with prejudice*.⁸¹

g. *Defendants’ failed to prove their counterclaim for shareholder oppression.*

Defendants assert a counterclaim for shareholder oppression. Defendants presented no evidence that Dr. Dyce had oppressed Dr. Puchalski. At best, the evidence presented tended to

⁸¹ Defendants claim that Dr. Dyce is responsible for SCENT debt. However, as previously stated, debt is not part of the buyout formula in the July 16, 2008 SCENT Shareholders’ Agreement. Dr. Dyce is not responsible for payment of SCENT’s debt. Significantly, Section 4.5 of Dr. Vidrine’s Shareholders’ Agreement, which governs the purchase price of his shares upon Dr. Vidrine’s departure from SCENT, suggests that his buy-out will be reduced by the corporation’s debt as this provision states, in part, that Dr. Vidrine’s shares will be “the net asset value . . . minus liabilities.” Plaintiffs’ Exhibit 0111.017 -.018 (emphasis added). This holds true for Section 4.5 unsigned 2010 shareholders’ agreement created by Dr. Puchalski’s attorneys. Plaintiffs’ Exhibit 0011.013. The July 16, 2008 Shareholders’ Agreement does not state anywhere in Section 4.5 or the agreement that the value of his shares shall be reduced by the corporation’s liabilities or debt. Plaintiffs’ Exhibit 7.016.

show a deterioration of these two people's relationships particularly as they related to SCENT. At least, the evidence tended to show oppression of Dr. Dyce by Dr. Puchalski and SCENT. Accordingly, this counterclaim is dismissed *with prejudice*.

h. Defendants' failed to prove their counterclaim for breach of contract accompanied by fraudulent act.

Defendants' asserted a counterclaim for breach of contract accompanied by fraudulent act. Defendants' counterclaim fails because the Court has determined *infra* that Dr. Dyce had not breached his agreement with SCENT and/or Dr. Puchalski. Accordingly, Defendants breach of contract accompanied by fraudulent act counterclaim is dismissed *with prejudice*.

Dissolution of SCENT Land Holdings, LLC.

On July 31, 2012, The Honorable DeAndrea Benjamin ordered that "Plaintiff's Motion for Summary Judgment against SCENT Land seeking dissolution of the company is granted solely on the grounds that the company failed to deliver [the Plaintiff] the purchase agreement as required by SC Code Ann. §33-44-702(c)." The order was not appealed and therefore is the law of the case. After over three years, dissolution of the company has not taken place. Therefore, this Court hereby orders that pursuant to 33-44-803(a) SCENT Land shall be wound up. The Court further finds that the Plaintiff has shown good cause that there should be judicial supervision of the winding up.

SCENT Land, LLC is an ongoing business with ongoing issues such as maintenance, taxes, and insurance. As a result of the ongoing concerns of the LLC the court is in need of assistance in supervising the winding up and liquidation of the LLC. Pursuant to the Court's inherent authority and in order to provide effective and efficient judicial supervision, the court appoints Marty Ouzts to assist the court in supervising the winding up of SCENT Land, LLC's business. Courts have the inherent power to do all things reasonably necessary to insure that just

results are reached to the fullest extent possible. *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). The Court is familiar with and finds that Mr. Ouzts is a well-respected CPA with extensive experience working with the court system and is knowledgeable in the duties and responsibilities to the parties and to the court in such matters.

Mr. Ouzts shall be empowered to collect all information needed to provide an accurate accounting of assets and liabilities of SCENT Land and to assist the court in marshaling the assets, selling the assets, paying debts, and making a report and recommendation regarding winding up of the LLC. The parties are ordered to immediately cooperate fully with Mr. Ouzts. Mr. Ouzts shall as quickly as possible have the property of the LLC appraised and placed on the market with a real estate agency of his choosing. The property shall be listed at the fair market value and the parties are ordered to cooperate with showing the property. Any offer to purchase the property shall be referred to the court and a hearing held in the event that the parties object to the sale of the property at the offered price. In the event that the property has not sold within 12 months of being placed on the market, the property shall be scheduled for judicial sale by the court.

The LLC shall continue to make all mortgage payments, taxes, insurance, and all other expenses associated with maintaining these properties. In the event that the LLC is not able to make all payments, Mr. Ouzts shall make a recommendation to the court and the court will order an appropriate amount of rent to be paid to the LLC for the use of the property.

Mr. Ouzts shall make a report to the parties and the court every 6 months and the court will hold a status conference on the record to review the report and any objections or other concerns that the parties may have at that time

The Court finds that Dr. Amy Puchalski and Ms. Jamie Curley are 50/50 owners of SCENT Land and therefore are entitled to equal distributions. The Court finds that the tax returns provided to the Internal Revenue Service are the best evidence of the ownership of the LLC. Those documents show that Dr. Amy Puchalski and Ms. Jamie Curley shared equally in profits and losses of the LLC.

Fees and costs incurred by Mr. Ouzts in carrying out this matter shall be borne equally by Dr. Amy Puchalski and Ms. Jamie Curley. Dr. Amy Puchalski and Ms. Jamie Curley shall each escrow \$25,000.00 to Mr. Ouzts for services to the court. Mr. Ouzts shall be paid monthly from escrow and present an accounting of the fees to the members and provide a copy to the court. In the event that Dr. Amy Puchalski or Ms. Jamie Curley should have an objection to the payments made to Mr. Ouzts she shall notify the court and a hearing will be held. If at any time the escrow should reach an amount below \$10,000.00 then Dr. Amy Puchalski and Ms. Jamie Curley shall replenish the escrow equally to the amount of \$50,000.00.

While the Court has appointed Mr. Ouzts if the members of SCENT Land agree to another qualified person by December 18, 2015 that person may be substituted for Mr. Ouzts. Any objection to this appointment shall be submitted to the Court by December 18, 2015 and a hearing will be convened.

CONCLUSION

Based on the reasons set forth in this Order it is hereby Ordered, Adjudged and Decreed that:

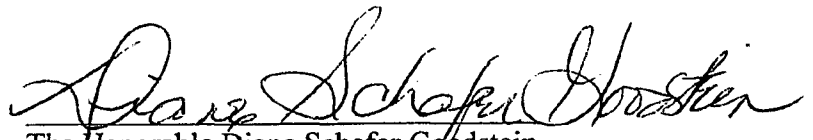
1. Dr. Dyce is entitled to judgment in the amount of one half (1/2) of the excess distributions paid to Drs. Robert and Amy Puchalski in 2008. I hereby award Dr. Dyce judgment against SCENT and Dr. Robert Puchalski, jointly and severally, in the amount of \$436,496.08, on Dr. Dyce's breach of contract claim, his accounting claim, his

constructive trust claim and his conversion claim plus prejudgment interest that shall accrue at the legal rate from December 31, 2008 until the entry of the order of judgment. Dr. Amy Puchalski is jointly and severally liable with SCENT and Dr. Robert Puchalski for \$25,596.87 of the \$436,496.08, on Dr. Dyce's constructive trust claim and his conversion claim plus prejudgment interest that shall accrue at the legal rate from December 31, 2008 until the entry of the order of judgment.

2. Dr. Dyce is entitled to judgment in the amount of one half (1/2) of the excess distributions paid to Dr. Robert Puchalski in 2009. I hereby award Dr. Dyce judgment on his breach of contract claim, his accounting claim, his constructive trust claim and his conversion claim against SCENT and Dr. Robert Puchalski, jointly and severally, in the amount of \$24,271.03, plus prejudgment interest that shall accrue at the legal rate from December 31, 2009 until the entry of the order of judgment.
3. Dr. Dyce is entitled to judgment for the redemption of his shares pursuant to the formula set forth in Paragraph 4.5 of the July 18, 2008 Shareholders' Agreement. I hereby award Dr. Dyce judgment on his breach of contract claim, his accounting claim, his constructive trust claim and his conversion claim against SCENT and Dr. Robert Puchalski, jointly and severally, in the amount of \$1,809,472, plus prejudgment interest that shall accrue at the legal rate from July 8, 2010 until the entry of the order of judgment.
4. Total Judgement to the plaintiff is the sum of one half of the excess distributions made to Dr. Puchalski in 2008 (\$436,496.08), one half of the excess distributions made to Dr. Puchalski in 2009 (\$24,271.03), and the redemption value of the Dr. Dyce's Stock (\$1,809,472). Total judgement shall be \$2,270,239.11 plus prejudgment interest as set forth above.

5. Defendants counterclaims, namely, (1) breach of contract; (2) breach of fiduciary duty; (3) conspiracy; (4) interference with contract; (5) defamation; (6) payment of debt; (7) shareholder oppression; and, (8) breach of contract accompanied by fraudulent act are hereby dismissed *with prejudice*.
6. Ms. Jamie Curley has shown good cause that there should be judicial supervision of the winding up of SCENT Land Holdings, LLC and the Court appoints Marty Ouzts⁸² to assist the court in winding up the business of the LLC as set forth herein.

IT IS SO ORDERED!


The Honorable Diane Schafer Goodstein
Circuit Court Judge

November 25, 2015
Dorchester, South Carolina

⁸² Or other qualified person as addressed herein.

Judge Benjamin's order was appealed but the parties filed a joint dismissal of the appeal without prejudice based on the appeal being interlocutory. Although this distinction is important if the parties decide to appeal this matter, this Court was bound by the ruling of Judge Benjamin in making her decision regarding the dissolution of the LLC. See Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979); Steele v. Charlotte, C & A R Co., 14 S.C. 324 (1879); Cudd v. Williams, 39 S.C. 452, 18 S.E. 3 (1893); State v. Harrelson, 211 S.C. 11, 43 S.E.2d 593 (1947); Dukes & Dukes, Inc. v. Hygrade Food Products Corp., 236 S.C. 69, 113 S.E.2d 254 (1960); Ex Parte State, 263 S.C. 363, 210 S.E.2d 600 (1974). "[O]ne Circuit Judge has no power to review, revise or reverse the action of another Circuit Judge". State v. Harrelson, 211 S.C. 11, 15, 43 S.E.2d 593, 594 (1947).

Defendants' Objection further request that the Court reconsider its decision to appoint a receiver and wind up and liquidate SCENT Land. This request is respectfully denied. This request does not raise any novel issues for the Court's consideration.

Therefore, the requested relief in Defendants' Objection to appointment of receiver is **DENIED!**

B. Defendants' Motion to Alter or Amend and for Reconsideration

Defendants' Motion to Alter or Amend and for Reconsideration raised 14 issues for the Courts reconsideration. Each of these exceptions fails to address any novel issues for the Court's consideration.

The Defendants' raised the issue that additional people have become members of SCENT Land, LLC. Based on the assertion of Defendants that there are additional members of the LLC, once SCENT Land, LLC is dissolved the Court will hold the

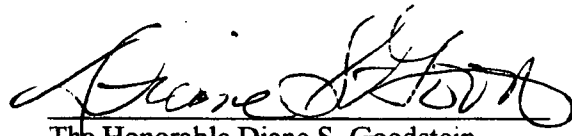
one-half of any remaining assets owed to Amy Puchalski pursuant to the original order of this court in escrow for further determination by the Court of the proper distribution of Amy Puchalski's assets among the remaining members of the LLC.

Therefore, the relief requested in Defendants' Motion to Alter or Amend and for Reconsideration is **DENIED!**

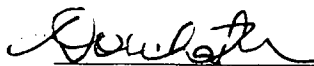
C. **Plaintiffs' Motion to Alter or Amend Judgment under South Carolina Rule of Civil Procedure 59(e)**

Plaintiffs' Motion to Alter or Amend Judgment under South Carolina Rule of Civil Procedure 59(e) raises 4 issues for the Court's reconsideration. Each of these exceptions fails to address any novel issues for the Court's consideration.

Therefore, the relief requested in Plaintiffs' Motion to Alter or Amend Judgment under South Carolina Rule of Civil Procedure 59(e) is **DENIED!**


The Honorable Diane S. Goodstein

February 19, 2016

 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ORVILLE DYCE,

Plaintiff(s)

vs.

SOUTH CAROLINA ENT, ALLERGY & SLEEP
MEDICINE, P.A., AND ROBERT PUCHALSKI

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 28- 323

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(Please Print)

Submitted By: Morris A. Ellison

Address: P. O. Box 999, Charleston, SC 29402-999

SC Bar #: 1881

Telephone #: (843) 722-3400

Fax #: (843) 723-7398

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☒ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)		

Submitting Party Signature: J. A. C.

Date: March 12, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

SOUTH CAROLINA ENT, ALLERGY &)
SLEEP MEDICINE, P.A.,)
AND ROBERT PUCHALSKI,)
Defendants.)

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CLERK OF COURT
HARRIS COUNTY, TEXAS

cc: Ellenor
3-15-19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CIVIL ACTION NO. 10-CP-28- <u>323</u>
ORVILLE DYCE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Non-Jury)
	)	(Declaratory Judgment)
SOUTH CAROLINA ENT, ALLERGY &	)	(Accounting/ Derivative Action)
SLEEP MEDICINE, P.A.,	)	
AND ROBERT PUCHALSKI,	)	
Defendants.	)	
_____	)	

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 CLERK OF COURT
 FIFTH JUDICIAL CIRCUIT
 KERSHAW COUNTY, SOUTH CAROLINA

Plaintiff, Orville Dyce, (the "**Plaintiff**"), by and through his undersigned attorneys respectfully alleges and says as follows:

1. Plaintiff is a citizen and resident of Darlington County, South Carolina.
2. Defendant, South Carolina ENT, Allergy & Sleep Medicine, P.A., (the "**SCENT**"), is a statutory close corporation organized and existing under the laws of the State of South Carolina with its principal place of business is in Kershaw County, South Carolina.
3. Defendant Robert Puchalski ("**Puchalski**" or the "**President**") is a citizen and resident of Kershaw County, South Carolina
4. Plaintiff and Puchalski are, and, at all times relevant hereto, were shareholders of SCENT (the "**Shareholders**").

FACTS

5. The principal purpose of SCENT is to render services in connection with the practice of otolaryngology.

6. The Articles of Incorporation for SCENT were filed on November 5, 2004 and amended on June 10, 2008.

7. Plaintiff, Puchalski and SCENT entered into that certain Shareholders' Agreement dated as of July 16, 2008 ("Shareholders' Agreement").

8. Puchalski is, and, at all times relevant hereto, was the Managing Shareholder of SCENT. The Managing Shareholder also means the President of SCENT as defined in the Shareholder's Agreement.

9. Puchalski, is, and was at all time relevant hereto, also the Treasurer of SCENT.

10. Article III, Section 3.4.4 of the Shareholders' Agreement charges Puchalski, as the President and Managing Shareholder of SCENT, with, among other things, supervising and controlling all of the business affairs of SCENT.

11. Article III, Section 3.4.7 of the Shareholders' Agreement, charges Puchalski as the Treasurer of SCENT, with, among other things, "(a) hav[ing] charge and custody of and be responsible for all funds and security of [SCENT]; (b) receiv[ing] and giv[ing] receipts of moneys due and payable to [SCENT] from any source whatsoever and deposit all such moneys in the name of [SCENT] in such banks, trust companies or other depositaries as shall be selected by the Shareholders; and (c) in general perform all of the duties incident to the office of Treasurer . . ."

12. Accordingly, Plaintiff is informed and believes Puchalski, as President and Treasurer of SCENT, is in control of, and has sole access to, SCENT's records.

13. S.C. Code Ann. §§ 33-16-102 and 103 of the South Carolina Corporation Code entitle a shareholder of a corporation to inspect and copy any of the records of the corporation

14. Moreover, pursuant to S.C. Code § 33-16-200 a “corporation shall furnish its shareholders annual financial statements . . . that include a balance sheets as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders’ equity for the year . . .”

15. On numerous occasions, Plaintiff notified Puchalski, both orally and in writing that he wished access to, and copies of, SCENT’s corporate information, including, without limitation, financial information and other documents concerning the corporation.

16. In violation of, without limitation, S.C. Code Ann. § 33-16-102 & 103 and S.C. Code § 33-16-200, Defendants have refused and continue to refuse, to provide the requested information and documentation to the Plaintiff.

17. Puchalski’s acts, as set forth above, have been oppressive and unfairly prejudicial to the Plaintiff.

18. As a result of Puchalski’s failure to provide Plaintiff with SCENT complete information, as requested, Plaintiff has been forced to institute this action to seek judicial assistance in obtaining same.

FOR A FIRST CAUSE OF ACTION AS TO THE DEFENDANTS
(Declaratory Judgment)

19. Plaintiff repeats and realleges the allegations of paragraphs 1 through 18 above as if set forth fully herein.

20. Plaintiff brings this cause of action pursuant to the terms of the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. seq., seeking a declaration of rights, duties and other legal relations by and among the parties under South Carolina Business Corporation Act, S.C. Code Ann. § 33-1-101, et. seq. and the Shareholders’ Agreement.

21. Pursuant to S.C. Code Ann. § 33-16-102 & 103, a “shareholder of a corporation is entitled to inspect and copy . . . any of the records of the corporation . . .”

22. Moreover, S.C. Code § 33-16-200 provides, in part, that a “corporation shall furnish its shareholders annual financial statements . . .that include a balance sheets as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders’ equity for the year . . .”

23. As stated above, Plaintiff has notified Puchalski, both orally and in writing, that he wished access to, and copies of, SCENT’s corporate information, including, without limitation, financial information and other documents concerning the corporation.

24. Puchalski has refused and continues to refuse, to provide the requested information and documentation to Plaintiff.

25. Plaintiff seeks a declaration that Puchalski and SCENT have violated, without limitation, the South Carolina Business Corporation Act, S.C. Code Ann. S.C. Code Ann. § 33-16-102 & 103 & 200, by, among other things, not providing Plaintiff with Company information as requested by the Plaintiff.

26. Plaintiff is entitled to a declaratory judgment that Puchalski and SCENT must provide Plaintiff with all requested SCENT corporate information, including, without limitation, the right to access, inspect and/or copy such information.

27. Plaintiff also prays that this Court determine the rights, status and other legal relations by and among Puchalski, Plaintiff, and SCENT, pursuant to S.C. Code Ann. § 15-53-10 et seq.

FOR A SECOND CAUSE OF ACTION AS TO THE DEFENDANTS
(Accounting/ Derivative Action)

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 above as if set forth fully herein.

29. Plaintiffs bring this action as a shareholder derivative action pursuant to S.C. Code Ann. § 33-18-400 and S.C. Code Ann. § 410.

30. Plaintiff is informed and believes that Puchalski has wrongfully excluded Plaintiff from SCENT's property and information.

31. As stated above, Puchalski's acts have been oppressive and unfairly prejudicial to the Plaintiff.

32. Plaintiff is informed and believes that Defendant Puchalski has, and continues, to mismanage corporate affairs.

33. Puchalski owes certain fiduciary duties to the Plaintiff and is accountable to the Plaintiff for his conduct relating to SCENT.

34. The facts and circumstances alleged in this Complaint render it fair and equitable for Defendants to account to Plaintiff for all financial activities of SCENT since the formation of SCENT pursuant to S.C Code Ann. § 33-18-410(5). This accounting should include, without limitation, all direct or indirect payments, distributions or other types of compensation made in any form to or for the benefit of the directors, officers, and shareholders of SCENT.

35. Plaintiff hereby demands a complete accounting of all financial activities of SCENT as described above as his statutory and common law rights thereto.

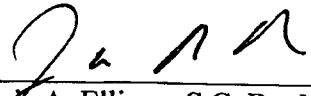
36. Defendant Puchalski controls SCENT and has ignored Plaintiff's demands for access to and copies of SCENT's information. Thus, further demand upon Puchalski would be futile.

37. Pursuant to S.C. Code Ann. § 33-18-400 & 410, Plaintiff is entitled to reasonable expenses, including, without limitation, attorneys' fees and costs for prosecuting this action.

WHEREFORE, Plaintiff requests that this Court order the following relief:

- (A) That this Court inquire into the matters and things hereinabove alleged and that this Court determine the rights of the parties hereto;
- (B) Plaintiff is entitled to a declaratory judgment that Robert Puchalski and the Company shall provide the Plaintiff all requested South Carolina ENT, Allergy & Sleep Medicine, P.A. information, including, without limitation, the right to access, inspect and/or copy such information;
- (C) That Defendants, South Carolina ENT, Allergy & Sleep Medicine, P.A., and Robert Puchalski, be directed to account for the disposition of the funds, monies, assets and property of South Carolina ENT, Allergy & Sleep Medicine, P.A. pursuant to S.C Code Ann. § 33-18-410(5);
- (D) That Defendants, South Carolina ENT, Allergy & Sleep Medicine, P.A., and Robert Puchalski be compelled to pay the cost of these and any related proceedings incurred by Plaintiff, including Plaintiff's attorneys' fees, and that Plaintiff be reimbursed for any disbursements made in pursuing these or any related proceedings, including any accountants' fees in bringing this action on behalf of himself as a shareholder derivative action; and,
- (E) That Plaintiff receives such other and further relief as this Court deems just and proper.

BUIST MOORE SMYTHE MCGEE P.A.



Morris A. Ellison, S.C. Bar No. 1881
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ATTORNEYS FOR PLAINTIFF

March 11, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323
)

Plaintiff,)
)

vs.)

South Carolina ENT, Allergy & Sleep)
Medicine, P.A., and Robert Puchalski,)
)
SCENT.)

ANSWER

FILED FOR RECORD
2010 APR 21 AM 10:13
JOYCE HODGSON
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendant Robert Puchalski ("Puchalski"), through his undersigned counsel,

Answers the Complaint of Plaintiff Orville Dyce as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, Defendant Puchalski admits the allegations in paragraph 1 of the Complaint.
2. Defendant Puchalski admits the allegations of paragraph 2 of the Complaint.
3. Defendant Puchalski admits the allegations in paragraph 3 of the Complaint.
4. Defendant Puchalski admits so much of the allegations of paragraph 4 as allege that Defendant Puchalski is a shareholder of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski also admits that Plaintiff Orville Dyce has been a shareholder of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski denies any and all remaining allegations of paragraph 4.

5. Defendant Puchalski admits so much of the allegations of paragraph 5 as allege that Defendant Puchalski is in the business of providing otolaryngological services. Defendant Puchalski denies any and all remaining allegations of paragraph 5.

6. Defendant Puchalski responds to the allegations of paragraph 6 of the Complaint by stating that South Carolina ENT Allergy & Sleep Medicine, P.A.'s Articles of Incorporation speak for themselves, and Defendant Puchalski craves reference to those documents. Defendant Puchalski specifically denies any and all allegations of paragraph 6 of the Complaint that are inconsistent with South Carolina ENT Allergy & Sleep Medicine, P.A.'s Articles of Incorporation and also denies any and all further allegations in paragraph 6 of the Complaint.

7. Defendant Puchalski responds to the allegations of paragraph 7 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 7 of the Complaint that are inconsistent with the Shareholders' Agreement and also denies any and all further allegations of paragraph 7 of the Complaint.

8. Defendant Puchalski responds to the allegations of paragraph 8 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 8 of the Complaint that are inconsistent with the Shareholders' Agreement.

9. Defendant Puchalski admits so much of paragraph 9 of the Complaint as alleges that the Shareholders' Agreement designates Defendant Puchalski as the Managing Shareholder and Treasurer of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski specifically denies any and all allegations of paragraph 9 of the Complaint that are inconsistent with the Shareholders' Agreement.

10. Defendant Puchalski responds to the allegations of paragraph 10 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 10 of the Complaint that are inconsistent with the Shareholders' Agreement.

11. Defendant Puchalski responds to the allegations of paragraph 11 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 11 of the Complaint that are inconsistent with the Shareholders' Agreement.

12. Defendant Puchalski admits so much of the allegations of paragraph 12 of the Complaint as allege that Defendant Puchalski has certain rights, duties, and responsibilities in his capacity as President and Treasurer of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski denies any and all remaining allegations of paragraph 12 of the Complaint.

13. Defendant Puchalski responds by stating that paragraph 13 of the Complaint states a legal conclusion to which no response is required. Defendant

Puchalski further responds by stating that the referenced statutes speak for themselves and Defendant Puchalski craves references to those statutes. Defendant Puchalski denies any and all allegations of paragraph 13 of the Complaint that are inconsistent with the referenced statutes.

14. Defendant Puchalski responds by stating that paragraph 14 of the Complaint states a legal conclusion to which no response is required. Defendant Puchalski further responds by stating that the referenced statutes speak for themselves and Defendant Puchalski craves references to those statutes. Defendant Puchalski denies any and all allegations of paragraph 14 of the Complaint that are inconsistent with the referenced statutes.

15. Defendant Puchalski admits so much of the allegations of paragraph 15 of the Complaint as allege that Plaintiff has at various times made requests for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information, however, Plaintiff has failed to make a request for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information that complies with applicable statutory and common law in South Carolina and his contractual obligations. Defendant Puchalski specifically denies the allegations of paragraph 15 of the Complaint insofar as they imply that Plaintiff's requests for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. Defendant Puchalski denies any and all remaining allegations of paragraph 15 of the Complaint.

16. Defendant Puchalski responds by stating that paragraph 16 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendant Puchalski denies the allegations of paragraph 16 of the Complaint.

17. Defendant Puchalski denies the allegations in paragraph 17 of the Complaint.

18. Defendant Puchalski denies the allegations in paragraph 18 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

19. Defendant Puchalski incorporates and realleges his responses to paragraphs 1-18 above as if repeated verbatim herein.

20. Defendant Puchalski responds by stating that paragraph 20 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Defendant Puchalski denies the allegations of paragraph 20 of the Complaint.

21. Defendant Puchalski responds by stating that paragraph 21 of the Complaint states a legal conclusion to which no response is required. Defendant Puchalski further responds by stating that the referenced statutes speak for themselves and Defendant Puchalski craves reference to those statutes. Defendant Puchalski denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the referenced statutes.

22. Defendant Puchalski responds by stating that paragraph 22 of the Complaint states a legal conclusion to which no response is required. Defendant Puchalski further responds by stating that the referenced statutes speak for themselves and Defendant Puchalski craves reference to those statutes. Defendant Puchalski denies any and all allegations of paragraph 22 of the Complaint that are inconsistent with the referenced statutes.

23. Defendant Puchalski admits so much of the allegations of paragraph 23 of the Complaint as allege that Plaintiff has at various times made requests for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information, however, Plaintiff has failed to make a request for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information that complies with applicable statutory and common law in South Carolina and his contractual obligations. Defendant Puchalski specifically denies the allegations of paragraph 15 of the Complaint insofar as they imply that Plaintiff's requests for South Carolina ENT Allergy & Sleep Medicine, P.A corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. Defendant Puchalski denies any and all remaining allegations of paragraph 23 of the Complaint.

24. Defendant Puchalski denies the allegations of paragraph 24 of the Complaint.

25. Defendant Puchalski denies the allegations of paragraph 25 of the Complaint.

26. Defendant Puchalski denies the allegations of paragraph 26 of the Complaint.

27. Defendant Puchalski denies the allegations of paragraph 27 of the Complaint.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

28. Defendant Puchalski incorporates and realleges his responses to paragraphs 1-27 above as if repeated verbatim herein.

29. Defendant Puchalski responds by stating that paragraph 29 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendant Puchalski denies the allegations of paragraph 29 of the Complaint.

30. Defendant Puchalski denies the allegations of paragraph 30 of the Complaint.

31. Defendant Puchalski denies the allegations of paragraph 31 of the Complaint.

32. Defendant Puchalski denies the allegations of paragraph 32 of the Complaint.

33. Defendant Puchalski admits so much of the allegations of paragraph 33 as allege that Defendant Puchalski has certain rights, responsibilities, and duties in his capacity as a corporate officer of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski specifically denies the allegations of paragraph 33 of the Complaint insofar as they allege that Defendant Puchalski has violated any of these

duties or responsibilities. Defendant Puchalski denies any and all remaining allegations of paragraph 33 of the Complaint.

34. Defendant Puchalski denies the allegations of paragraph 34 of the Complaint.

35. Defendant Puchalski denies the allegations of paragraph 35 of the Complaint.

36. Defendant Puchalski admits so much of the allegations of paragraph 36 that allege Defendant Puchalski has certain rights, obligations, and duties with respect to the affairs of South Carolina ENT Allergy & Sleep Medicine, P.A by virtue of his role as a corporate officer of South Carolina ENT Allergy & Sleep Medicine, P.A. Defendant Puchalski specifically denies that he has violated any of his obligations or duties. Defendant Puchalski denies any and all remaining allegations of paragraph 36 of the Complaint.

37. Defendant Puchalski denies the allegations of paragraph 37 of the Complaint, including all subparts.

38. Defendant Puchalski expressly denies every allegation of Plaintiff's Complaint that is not specifically admitted in this Answer.

39. Defendant Puchalski denies every allegation and claim for relief, specifically including, but not limited to, Plaintiff's prayers for relief in the WHEREFORE paragraph of its Complaint, including all of its subparts.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

40. The claims set forth in Plaintiff's Complaint may be subject to binding arbitration.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

41. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against SCENT.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

42. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

43. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in accordance with the Shareholders' Agreement and applicable statutory law, Plaintiff failed to satisfy all conditions precedent to Defendant Puchalski's performances under the Shareholders' Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. Defendant Puchalski was, therefore, relieved of any obligations to perform and was entitled to withhold performance.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

44. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

45. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly, consented to the complained of actions of SCENT.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

46. Plaintiff's claims are barred because of Plaintiff's own conduct.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION

47. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

48. Defendant Puchalski reserves the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and reserve the right to amend their answer to assert such defenses.

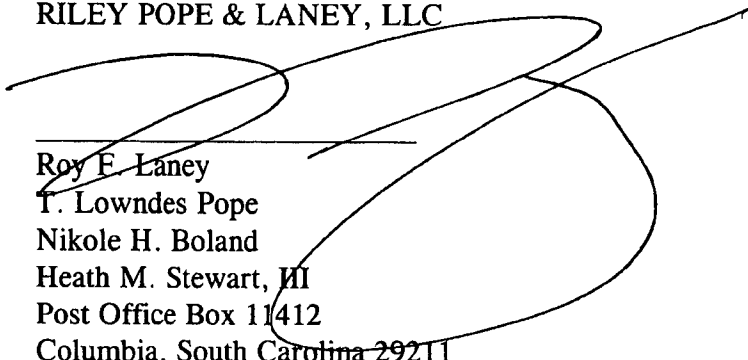
FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

49. Defendant Puchalski is not a proper party to this suit.

WHEREFORE, having fully answered the Complaint of Plaintiff Orville Dyce, and having asserted the affirmative defense above, Defendant Puchalski prays that the Complaint be dismissed with prejudice on all counts and that Defendant Puchalski be provided with the following relief:

- (a) actual, compensatory, and consequential damages;
- (b) judgment and post-judgment interest at lawful rates;
- (c) attorneys' fees and costs expended in the defense of this action; and
- (d) such other and further relief as the Court may deem just and proper.

RILEY POPE & LANEY, LLC



Roy E. Laney
T. Lowndes Pope
Nikole H. Boland
Heath M. Stewart, III
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendant Puchalski

April 20, 2010

Columbia, South Carolina

F:\CLIENT FILES\GENERAL LITIGATION\Puchalski, M.D., Robert (5052)\Dyce, Orville v. SCENT, Allergy & Sleep
Medicine, P.A., & Robert Puchalski (5052.06210)\Pleadings\Answer - Dyce v SCENT et al (3) RPL v.1.doc

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323
)

Plaintiff,)
)

vs.)

CERTIFICATE OF SERVICE

South Carolina ENT, Allergy & Sleep)
Medicine, P.A., and Robert Puchalski,)
)
Defendant.)

FILED FOR RECORD
2010 APR 21 AM 10:24
JESSICA PERSONAL
CLERK OF COURT
KERSHAW COUNTY, SC

This is to certify that I, Paula P. Ash, an employee with the law firm of Pope & Laney, LLC, have this day caused to be served upon the person named below the **Answer** in the above-captioned matter via United States mail, first-class postage prepaid, to the following individuals:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee PA
5 Exchange Street
Charleston, SC 29401

Paula P. Ash
Paula P. Ash

Columbia, South Carolina

April 20, 2010

F:\CLIENT FILES\GENERAL LITIGATION\Puchalski, M.D., Robert (5052)\Dyce, Orville v. SCENT, Allergy & Sleep Medicine, P.A., & Robert Puchalski (5052.06210)\COS - Answer - Dyce v SCENT et al - 4-20-10.doc

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323
)

Plaintiff,)

vs.)

ANSWER

South Carolina ENT, Allergy & Sleep)
Medicine, P.A., and Robert Puchalski,)

Defendants.)

FILED FOR RECORD
2010 APR 21 AM 10:16
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendant South Carolina ENT, Allergy & Sleep Medicine, P.A. ("SCENT"),
through its undersigned counsel, Answers the Complaint of Plaintiff Orville Dyce as
follows:

FOR A FIRST DEFENSE

1. Upon information and belief, SCENT admits the allegations in paragraph 1 of the Complaint.
2. SCENT admits the allegations of paragraph 2 of the Complaint.
3. SCENT admits the allegations in paragraph 3 of the Complaint.
4. SCENT admits so much of the allegations of paragraph 4 as allege that Dr. Puchalski is a shareholder of SCENT. SCENT also admits that Plaintiff Orville Dyce has been a shareholder of SCENT. SCENT denies any and all remaining allegations of paragraph 4.
5. SCENT admits so much of the allegations of paragraph 5 as allege that SCENT is in the business of providing otolaryngological services. SCENT denies any and all remaining allegations of paragraph 5.

6. SCENT responds to the allegations of paragraph 6 of the Complaint by stating that its Articles of Incorporation speak for themselves, and SCENT craves reference to those documents. SCENT specifically denies any and all allegations of paragraph 6 of the Complaint that are inconsistent with its Articles of Incorporation and also denies any and all further allegations in paragraph 6 of the Complaint.

7. SCENT responds to the allegations of paragraph 7 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 7 of the Complaint that are inconsistent with the Shareholders' Agreement and also denies any and all further allegations of paragraph 7 of the Complaint.

8. SCENT responds to the allegations of paragraph 8 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 8 of the Complaint that are inconsistent with the Shareholders' Agreement.

9. SCENT admits so much of paragraph 9 of the Complaint as alleges that the Shareholders' Agreement designates Dr. Puchalski as the Managing Shareholder and Treasurer of SCENT. SCENT specifically denies any and all allegations of paragraph 9 of the Complaint that are inconsistent with the Shareholders' Agreement.

10. SCENT responds to the allegations of paragraph 10 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 10 of the Complaint that are inconsistent with the Shareholders' Agreement.

11. SCENT responds to the allegations of paragraph 11 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 11 of the Complaint that are inconsistent with the Shareholders' Agreement.

12. SCENT admits so much of the allegations of paragraph 12 of the Complaint as allege that Dr. Puchalski has certain rights, duties, and responsibilities in his capacity as President and Treasurer of SCENT. SCENT denies any and all remaining allegations of paragraph 12 of the Complaint.

13. SCENT responds by stating that paragraph 13 of the Complaint states a legal conclusion to which no response is required. SCENT further responds by stating that the referenced statutes speak for themselves and SCENT crave references to those statutes. SCENT denies any and all allegations of paragraph 13 of the Complaint that are inconsistent with the referenced statutes.

14. SCENT responds by stating that paragraph 14 of the Complaint states a legal conclusion to which no response is required. SCENT further responds by stating that the referenced statutes speak for themselves and SCENT crave references to those statutes. SCENT denies any and all allegations of paragraph 14 of the Complaint that are inconsistent with the referenced statutes.

15. SCENT admits so much of the allegations of paragraph 15 of the Complaint as allege that Plaintiff has at various times made requests for SCENT corporate information, however, Plaintiff has failed to make a request for SCENT corporate information that complies with applicable statutory and common law in South Carolina and his contractual obligations. SCENT specifically denies the allegations of

paragraph 15 of the Complaint insofar as they imply that Plaintiff's requests for SCENT corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. SCENT denies any and all remaining allegations of paragraph 15 of the Complaint.

16. SCENT responds by stating that paragraph 16 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, SCENT denies the allegations of paragraph 16 of the Complaint.

17. SCENT denies the allegations in paragraph 17 of the Complaint.

18. SCENT denies the allegations in paragraph 18 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

19. SCENT incorporates and realleges its responses to paragraphs 1-18 above as if repeated verbatim herein.

20. SCENT responds by stating that paragraph 20 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required SCENT denies the allegations of paragraph 20 of the Complaint.

21. SCENT responds by stating that paragraph 21 of the Complaint states a legal conclusion to which no response is required. SCENT further responds by stating that the referenced statutes speak for themselves and SCENT craves reference to those statutes. SCENT denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the referenced statutes.

22. SCENT responds by stating that paragraph 22 of the Complaint states a legal conclusion to which no response is required. SCENT further responds by stating that the referenced statutes speak for themselves and SCENT craves reference to those

statutes. SCENT denies any and all allegations of paragraph 22 of the Complaint that are inconsistent with the referenced statutes.

23. SCENT admits so much of the allegations of paragraph 23 of the Complaint as allege that Plaintiff has at various times made requests for SCENT corporate information, however, Plaintiff has failed to make a request for SCENT corporate information that complies with applicable statutory and common law in South Carolina and his contractual obligations. SCENT specifically denies the allegations of paragraph 15 of the Complaint insofar as they imply that Plaintiff's requests for SCENT corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. SCENT denies any and all remaining allegations of paragraph 23 of the Complaint.

24. SCENT denies the allegations of paragraph 24 of the Complaint.

25. SCENT denies the allegations of paragraph 25 of the Complaint.

26. SCENT denies the allegations of paragraph 26 of the Complaint.

27. SCENT denies the allegations of paragraph 27 of the Complaint.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

28. SCENT incorporates and realleges its responses to paragraphs 1-27 above as if repeated verbatim herein.

29. SCENT responds by stating that paragraph 29 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, SCENT denies the allegations of paragraph 29 of the Complaint.

30. SCENT denies the allegations of paragraph 30 of the Complaint.

31. SCENT denies the allegations of paragraph 31 of the Complaint.

32. SCENT denies the allegations of paragraph 32 of the Complaint.

33. SCENT admits so much of the allegations of paragraph 33 as allege that Dr. Puchalski has certain rights, responsibilities, and duties in his capacity as a corporate officer of SCENT. SCENT specifically denies the allegations of paragraph 33 of the Complaint insofar as they allege that Dr. Puchalski has violated any of these duties or responsibilities. SCENT denies any and all remaining allegations of paragraph 33 of the Complaint.

34. SCENT denies the allegations of paragraph 34 of the Complaint.

35. SCENT denies the allegations of paragraph 35 of the Complaint.

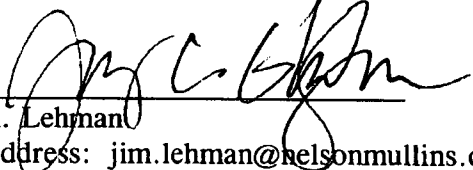
36. SCENT admits so much of the allegations of paragraph 36 that allege Dr. Puchalski has certain rights, obligations, and duties with respect to the affairs of SCENT by virtue of his role as a corporate officer of SCENT. SCENT specifically denies that Dr. Puchalski has violated any of his obligations or duties. SCENT denies any and all remaining allegations of paragraph 36 of the Complaint.

37. SCENT denies the allegations of paragraph 37 of the Complaint, including all subparts.

38. SCENT expressly denies every allegation of Plaintiff's Complaint that is not specifically admitted in this Answer.

39. SCENT denies every allegation and claim for relief, specifically including, but not limited to, Plaintiff's prayers for relief in the WHEREFORE paragraph of its Complaint, including all of its subparts.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

James K. Lehman

Email Address: jim.lehman@nelsonmullins.com

Jeremy C. Hodges

Email Address: jeremy.hodges@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211)

Columbia, SC 29201

(803) 799-2000

Attorneys for South Carolina ENT, Allergy & Sleep
Medicine, P.A.

April 20, 2010

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina ENT, Allergy & Sleep Medicine, P.A., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

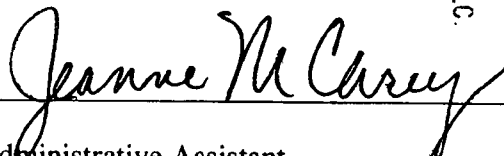
Pleadings:

South Carolina ENT, Allergy & Sleep Medicine, P.A.'s
Answer to Plaintiff's Complaint

Counsel Served:

Morris A. Ellison, Esquire
Buist Moore Smythe McGee, P.A.
Post Office Box 999
Charleston, SC 29402

FILED FOR RECORD
2010 APR 21 AM 10:14
CLERK OF COURT
NORTH CHARLESTON, S.C.


Administrative Assistant

April 20, 2010

6. The principal purpose of the Company is, among other things, to own real estate in South Carolina.

7. The Company is a manager-managed limited liability company.

8. Puchalski is and, at all times relevant hereto, was the Manager of the Company.

9. Plaintiff is informed and believes Puchalski, as Manager of the Company, is in control of the Company's records and is denying Plaintiff access to such records.

10. Pursuant to Section 3.6 of the Operating Agreement each Member is, among other things, "entitled for any purpose reasonably related to the Member's Membership: [t]o view any financial information in the Company's possession or control; and [t]o inspect and to copy any documents and other media in the Company's possession or control. . ."

11. Section 12.11 of the Operating Agreement requires Puchalski, as the manager of the Company to "use reasonable efforts to inform the Members on an annual basis, or as requested by the Members, concerning the internal affairs of the Company and the condition of its business."

12. On numerous occasions, Plaintiff, through her husband, Orville Dyce, has notified Puchalski, both orally and in writing, that she wished to view, inspect and copy Company information, including, without limitation, financial information and other documents concerning the Company.

13. In violation of the South Carolina Limited Liability Act (the "Act"), S.C. Code Ann. § 33-44-408, and the Operating Agreement, Puchalski has refused and continues to refuse, to provide Plaintiff access to, and copies of, the requested information/documentation.

14. Puchalski's acts, as set forth above, have been oppressive and unfairly prejudicial to the Plaintiff.

15. As a result of Puchalski's failure to provide the Plaintiff with Company information, as requested, Plaintiff has been forced to institute this action to seek judicial assistance in obtaining same.

FOR A FIRST CAUSE OF ACTION AS TO THE DEFENDANTS
(Declaratory Judgment)

16. Plaintiff repeats and realleges the allegations of paragraphs 1 through 15 above as if set forth fully herein.

17. Plaintiff brings this cause of action pursuant to the terms of the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. seq., seeking a declaration of rights, duties and other legal relations by and among the parties under the Act. and the Operating Agreement.

18. Section 14.1 of the Operating Agreement requires the Company to "maintain at its principal place of business (a) [a] copy of its Articles of Organization and operating agreement and amendments of these documents; (b) [c]opies of all of its federal and state tax returns; (c) [a] current list of the name and last known business, residence or mailing address of each of its Members; (d) [t]rue and complete information concerning: [t]he amount of cash and a description and statement of the value of any other property or services which each Member has contributed to the Company or which any Member has agreed to contribute to it; [a]ny return by the Company to a Member of cash or other property contributed by the Member; and (e) [a] record stating the date on which each Member became a Member (unless this is evident from the content of the Agreement."

19. Moreover, Section 14.2 of the Operating Agreement provides that the Company “shall maintain books of account concerning the business and affairs of the Company that shall be; (a) [a]ccurate; (b) [r]easonably current; and (c) [i]n compliance with financial and other standards normally applicable to the records of business organizations generally similar to the Company in size and business activities.”

20. Section 14.3 of the Operating Agreement further provides that “[t]hrough the provision of written financial reports or through other appropriate measures, the Company shall advise the Members on a regular basis concerning the financial and business condition of the Company.”

21. The Act and the Operating Agreement entitle Plaintiff and each member of the Company to view financial information in the Company’s possession or control and to inspect and to copy any documents and other media in the Company’s possession or control.

22. As stated above, on numerous occasions, Plaintiff, through her husband, Orville Dyce, notified Puchalski, both orally and in writing and orally, that she wished to access and copy Company information, including, without limitation, financial information and other documents concerning the Company.

23. Puchalski has refused and continues to refuse, to provide Plaintiff access to, and copies of, the requested information/documentation.

24. Plaintiff, as a member of the Company, has not been advised on “a regular basis” or any basis “concerning the financial and business condition of the Company” as required by the Operating Agreement.

25. Plaintiff seeks a declaration that Puchalski and the Company have violated, without limitation, the Act and the Operating Agreement, by, among other things, not providing Plaintiff with Company information she previously requested.

26. Plaintiff is entitled to a declaratory judgment that Puchalski and the Company shall provide the Plaintiff all requested Company information, including, without limitation, the right to access, inspect and/or copy such information.

27. Plaintiff also prays that this Court determine the rights, status and other legal relations by and among Puchalski, Plaintiff, and the Company, pursuant to S.C. Code Ann. § 15-53-10 et seq.

FOR A SECOND CAUSE OF ACTION AS TO THE DEFENDANTS
(Accounting/ Derivative Action)

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 above as if set forth fully herein.

29. Plaintiff brings this action as a member derivative action pursuant to S.C. Code §§ 33-44-1101 – 1104.

30. Plaintiff is informed and believes that Defendant Puchalski has wrongfully excluded Plaintiff from Company property and information.

31. Accordingly, Plaintiff is informed and believes that Defendant Puchalski has, and continues, to mismanage corporate affairs.

32. As a member of the Company, Plaintiff is entitled to an accounting pursuant to Sections 3.6 and 14 of the Operating Agreement and S.C. Code Ann. § 33-44-410 and all Company information, including, without limitation, financial information.

33. Puchalski owes certain fiduciary duties to the Plaintiff and the Members and is accountable to the Plaintiff for his conduct relating to the Company.

34. The facts and circumstances alleged in this Complaint render it fair and equitable for Puchalski and the Company to account to Plaintiff for all financial activities of the Company since the inception of the Company.

35. Plaintiff hereby demands a complete accounting of all financial activities of the Company as described above pursuant to the Operating Agreement and as her statutory and common law rights thereto.

36. Defendant Puchalski controls the Company and has ignored Plaintiff's demands for access to and copies of the information. Thus, further demand upon Puchalski would be futile.

37. Pursuant to S.C. Code Ann. § 33-44-1104, the Plaintiff is entitled to reasonable expenses, including, without limitation, attorneys' fees and costs for prosecuting this action.

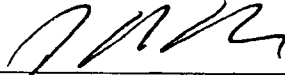
WHEREFORE, Plaintiff requests that this Court order the following relief:

- (A) That this Court inquire into the matters and things hereinabove alleged and that this Court determine the rights of the parties hereto;
- (B) Plaintiff is entitled to a declaratory judgment that Puchalski and the Company shall provide the Plaintiff all requested Company information, including, without limitation, the right to access, inspect and/or copy such information.

- (C) That Defendants, SCENT Land Holdings, LLC, and Robert Puchalski, be directed to account for the disposition of the funds, monies, assets and property of the Company;
- (D) That Defendants, SCENT Land Holdings, LLC, and Robert Puchalski be compelled to pay the cost of these and any related proceedings incurred by Plaintiff, including Plaintiff's attorneys' fees, and that Plaintiff be reimbursed for any disbursements made in pursuing these or any related proceedings, including any accountants' fees in bringing this action on behalf of herself as a member derivative action; and,
- (E) That Plaintiff receive such other and further relief as this Court deems just and proper.

[Signature page follows]

BUIST MOORE SMYTHE MCGEE P.A.



Morris A. Ellison, S.C. Bar No. 1881

Jana B. Baker, S.C. Bar No. 72487

5 Exchange Street

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

ATTORNEYS FOR PLAINTIFF

March 12, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Jamie Curley,) Civil Action No. 2010-CP-28-322
)

Plaintiff,)
)

vs.)

SCENT Land Holdings, LLC, and)
Robert Puchalski,)
)

LAND HOLDINGS.)

ANSWER

FILED FOR RECORD
2010 APR 21 AM 10:25
CLERK OF COURT
KERSHAW COUNTY, SC

Defendant Robert Puchalski ("Puchalski"), through his undersigned counsel,
Answers the Complaint of Plaintiff Jamie Curley as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, Defendant Puchalski admits the allegations in paragraph 1 of the Complaint.

2. Defendant Puchalski admits so much of the allegations of paragraph 2 of the Complaint as allege that it is a limited liability company organized and existing under the laws of the State of South Carolina. Defendant Puchalski further responds to the allegations of paragraph 2 by referring to and craving reference to its Articles of Organization. Defendant Puchalski specifically denies any and all of the allegations of paragraph 2 that are inconsistent with its Articles of Organization.

3. Defendant Puchalski admits the allegations of paragraph 3 of the Complaint.

4. Defendant Puchalski admits so much of the allegations of paragraph 4 of the Complaint as allege that Amy Puchalski is a Member of SCENT Land Holdings, LLC. Defendant Puchalski also admits that Plaintiff Jamie Curley has been a Member of SCENT Land Holdings, LLC. Defendant Puchalski denies any and all remaining allegations of paragraph 5.

5. Defendant Puchalski responds to the allegations of paragraph 5 of the Complaint by stating that the Operating Agreement speaks for itself and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 5 of the Complaint that are inconsistent with the Operating Agreement and also denies any and all further allegations in paragraph 5 of the Complaint.

6. Defendant Puchalski admits so much of the allegations of paragraph 6 of the Complaint as allege that SCENT Land Holdings, LLC was formed, in part, with the intent of owning real estate in South Carolina. Defendant Puchalski denies any and all further allegations in paragraph 6 of the Complaint.

7. Defendant Puchalski responds to the allegations of paragraph 7 by referring to and craving reference to the Articles of Organization and Operating Agreement. Defendant Puchalski specifically denies any and all of the allegations of paragraph 7 that are inconsistent with SCENT Land Holdings, LLC's Articles of Organization and Operating Agreement.

8. Defendant Puchalski responds to the allegations of paragraph 8 of the Complaint by stating that the Operating Agreement speaks for itself and Defendant

Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 8 of the Complaint that are inconsistent with its Operating Agreement and also denies any and all further allegations in paragraph 8 of the Complaint.

9. Defendant Puchalski admits so much of the allegations of paragraph 9 of the Complaint as allege that Dr. Puchalski is subject to certain duties and responsibilities in his capacity as Manager of SCENT Land Holdings, LLC. Defendant Puchalski denies any and all remaining allegations of paragraph 9 of the Complaint.

10. Defendant Puchalski responds to the allegations of paragraph 10 of the Complaint by stating that the Operating Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 10 of the Complaint that are inconsistent with the Operating Agreement.

11. Defendant Puchalski responds to the allegations of paragraph 11 of the Complaint by stating that the Operating Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 11 of the Complaint that are inconsistent with the Operating Agreement.

12. Defendant Puchalski admits so much of the allegations of paragraph 12 of the Complaint as allege that Orville Dyce has at various times made requests for SCENT Land Holdings, LLC' corporate information, however, Dr. Dyce has failed to make a request that complies with applicable statutory and common law in South

Carolina and his and the Plaintiff's contractual obligations. Defendant Puchalski specifically denies the allegations of paragraph 12 of the Complaint insofar as they imply that Dr. Dyce's requests for SCENT Land Holdings, LLC's corporate information were proper and in accordance with applicable statutory and common law and his and the Plaintiff's contractual obligations. Defendant Puchalski further responds that Plaintiff has been provided with certain SCENT Land Holdings, LLC corporate information in response to Dr. Dyce's requests on behalf of Plaintiff. Defendant Puchalski denies any and all remaining allegations of paragraph 12 of the Complaint.

13. Defendant Puchalski responds by stating that paragraph 13 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Defendant Puchalski denies the allegations of paragraph 13 of the Complaint.

14. Defendant Puchalski denies the allegations of paragraph 14 of the Complaint.

15. Defendant Puchalski denies the allegations of paragraph 15 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

16. Defendant Puchalski incorporates and realleges its responses to paragraphs 1-15 above as if repeated verbatim herein.

17. Defendant Puchalski responds by stating that paragraph 17 of the Complaint states a legal conclusion to which no response is required. To the extent a

response is required Defendant Puchalski denies the allegations of paragraph 17 of the Complaint.

18. Defendant Puchalski responds to the allegations of paragraph 18 of the Complaint by stating that the Operating Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 18 of the Complaint that are inconsistent with the Operating Agreement.

19. Defendant Puchalski responds to the allegations of paragraph 19 of the Complaint by stating that the Operating Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 19 of the Complaint that are inconsistent with the Operating Agreement.

20. Defendant Puchalski responds to the allegations of paragraph 20 of the Complaint by stating that the Operating Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 20 of the Complaint that are inconsistent with the Operating Agreement.

21. Defendant Puchalski responds by stating that paragraph 21 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Defendant Puchalski responds to the allegations of paragraph 21 of the Complaint by stating that the Operating Agreement and applicable South Carolina statutes speak for themselves, and Defendant Puchalski craves reference to

those documents. Defendant Puchalski specifically denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the Operating Agreement or applicable South Carolina statutory law.

22. Defendant Puchalski denies the allegations of paragraph 22 of the Complaint

23. Defendant Puchalski denies the allegations of paragraph 23 of the Complaint.

24. Defendant Puchalski denies the allegations of paragraph 24 of the Complaint.

25. Defendant Puchalski denies the allegations of paragraph 25 of the Complaint.

26. Defendant Puchalski denies the allegations of paragraph 26 of the Complaint.

27. Defendant Puchalski denies the allegations of paragraph 27 of the Complaint.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

28. Defendant Puchalski incorporates and realleges his responses to paragraphs 1-27 above as if repeated verbatim herein.

29. Defendant Puchalski responds by stating that paragraph 28 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendant Puchalski responds to the allegations of paragraph 28 of the Complaint by stating that the applicable South Carolina statutes speak for

themselves, and Defendant Puchalski craves reference to those statutes. Defendant Puchalski specifically denies any and all allegations of paragraph 29 of the Complaint that are inconsistent with applicable South Carolina law.

30. Defendant Puchalski denies the allegations of paragraph 30 of the Complaint.

31. Defendant Puchalski denies the allegations of paragraph 31 of the Complaint.

32. Defendant Puchalski responds by stating that paragraph 32 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Defendant Puchalski responds to the allegations of paragraph 32 of the Complaint by stating that the applicable South Carolina statutes speak for themselves, and Defendant Puchalski craves reference to those statutes. Defendant Puchalski specifically denies any and all allegations of paragraph 32 of the Complaint that are inconsistent with applicable South Carolina law.

33. Defendant Puchalski admits so much of the allegations of paragraph 33 as allege that Defendant Puchalski is subject to certain rights, responsibilities, and duties in his capacity as manager of SCENT Land Holdings, LLC. Defendant Puchalski specifically denies the allegations of paragraph 33 of the Complaint insofar as they allege that Defendant Puchalski has violated any of these duties or responsibilities. Defendant Puchalski denies any and all remaining allegations of paragraph 33 of the Complaint.

34. Defendant Puchalski denies the allegations of paragraph 34 of the Complaint.

35. Defendant Puchalski denies the allegations of paragraph 35 of the Complaint.

36. Defendant Puchalski denies the allegations of paragraph 36 of the Complaint.

37. Defendant Puchalski denies the allegations of paragraph 37 of the Complaint, including all subparts.

38. Defendant Puchalski expressly denies every allegation of Plaintiff's Complaint that is not specifically admitted in this Answer.

39. Defendant Puchalski denies every allegation and claim for relief, specifically including, but not limited to, Plaintiff's prayers for relief in the WHEREFORE paragraph of its Complaint, including all of its subparts.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

40. The claims set forth in Plaintiff's Complaint may be subject to binding arbitration.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

41. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against Defendant Puchalski.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

42. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

43. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in accordance with the Operating Agreement and applicable statutory law, Plaintiff failed to satisfy all conditions precedent to Defendant Puchalski's performances under the Operating Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. Defendant Puchalski was, therefore, relieved of any obligations to perform and was entitled to withhold performance.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

44. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

45. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly, consented to the complained of actions of Defendant Puchalski.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

46. Plaintiff's claims are barred because of Plaintiff's own conduct.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION

47. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

48. Defendant Puchalski reserves the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and reserve the right to amend their answer to assert such defenses.

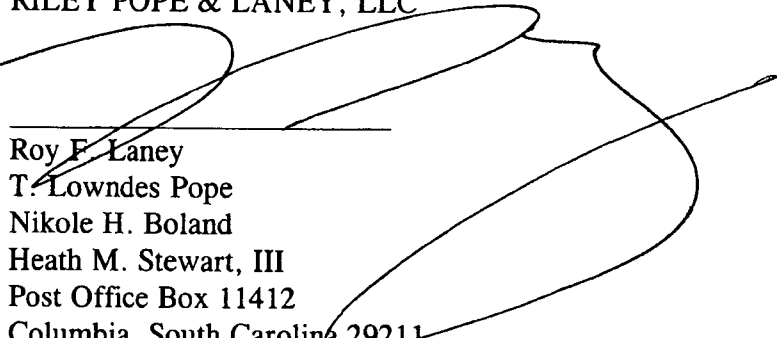
FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

49. Defendant Puchalski is not a proper party to this suit.

WHEREFORE, having fully answered the Complaint of Plaintiff Jamie Curley, and having asserted the affirmative defenses above, Defendant Puchalski prays that the Complaint be dismissed with prejudice on all counts and that Defendant Puchalski be provided with the following relief:

- (a) actual, compensatory, and consequential damages;
- (b) judgment and post-judgment interest at lawful rates;
- (c) attorneys' fees and costs expended in the defense of this action; and
- (d) such other and further relief as the Court may deem just and proper.

RILEY POPE & LANEY, LLC



Roy F. Laney
T. Lowndes Pope
Nikole H. Boland
Heath M. Stewart, III
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendant Puchalski

April 20, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Jamie Curley,) Civil Action No. 2010-CP-28-322
)

Plaintiff,)
)

vs.)

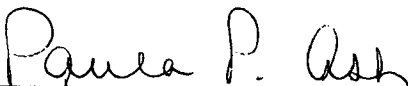
CERTIFICATE OF SERVICE

SCENT Land Holdings, LLC, and)
Robert Puchalski,)
)
Defendants.)

FILED FOR RECORD
2010 APR 21 AM 10:05
JAMES HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

This is to certify that I, Paula P. Ash, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the Answer in the above-captioned matter via United States mail, first-class postage prepaid, to the following individuals:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee PA
5 Exchange Street
Charleston, SC 29401



Paula P. Ash

Columbia, South Carolina

April 20, 2010

F:\CLIENT FILES\GENERAL LITIGATION\Puchalski, M.D., Robert (5052)\Curley, Jamie v. SCENT & Puchalski (5052.06110)\COS - Answer - 4-20-10.doc

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Jamie Curley,) Civil Action No. 2010-CP-28-322
)

Plaintiff,)
)

vs.)

SCENT Land Holdings, LLC, and)
Robert Puchalski,)

Defendants.)

ANSWER

FILED FOR RECORD
2010 APR 21 AM 10:14
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendant SCENT Land Holdings, LLC ("Land Holdings"), through its undersigned counsel, Answers the Complaint of Plaintiff Jamie Curley as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, Land Holdings admits the allegations in paragraph 1 of the Complaint.
2. Land Holdings admits so much of the allegations of paragraph 2 of the Complaint as allege that it is a limited liability company organized and existing under the laws of the State of South Carolina. Land Holdings further responds to the allegations of paragraph 2 by referring to and craving reference to its Articles of Organization. Land Holdings specifically denies any and all of the allegations of paragraph 2 that are inconsistent with its Articles of Organization.
3. Land Holdings admits the allegations of paragraph 3 of the Complaint.
4. Land Holdings admits so much of the allegations of paragraph 4 of the Complaint as allege that Amy Puchalski is a Member of Land Holdings. Land

Holdings also admits that Plaintiff Jamie Curley has been a Member of Land Holdings. Land Holdings denies any and all remaining allegations of paragraph 5.

5. Land Holdings responds to the allegations of paragraph 5 of the Complaint by stating that its Operating Agreement speaks for itself and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 5 of the Complaint that are inconsistent with its Operating Agreement and also denies any and all further allegations in paragraph 5 of the Complaint.

6. Land Holdings admits so much of the allegations of paragraph 6 of the Complaint as allege that Land Holdings was formed, in part, with the intent of owning real estate in South Carolina. Land Holdings denies any and all further allegations in paragraph 6 of the Complaint.

7. Land Holdings responds to the allegations of paragraph 7 by referring to and craving reference to its Articles of Organization and Operating Agreement. Land Holdings specifically denies any and all of the allegations of paragraph 7 that are inconsistent with its Articles of Organization and Operating Agreement.

8. Land Holdings responds to the allegations of paragraph 8 of the Complaint by stating that the Operating Agreement speaks for itself and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 8 of the Complaint that are inconsistent with its Operating Agreement and also denies any and all further allegations in paragraph 8 of the Complaint.

9. Land Holdings admits so much of the allegations of paragraph 9 of the Complaint as allege that Dr. Puchalski is subject to certain duties and responsibilities in his capacity as Manager of Land Holdings. Land Holdings denies any and all remaining allegations of paragraph 9 of the Complaint.

10. Land Holdings responds to the allegations of paragraph 10 of the Complaint by stating that the Operating Agreement speaks for itself, and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 10 of the Complaint that are inconsistent with the Operating Agreement.

11. Land Holdings responds to the allegations of paragraph 11 of the Complaint by stating that the Operating Agreement speaks for itself, and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 11 of the Complaint that are inconsistent with the Operating Agreement.

12. Land Holdings admits so much of the allegations of paragraph 12 of the Complaint as allege that Orville Dyce has at various times made requests for Land Holdings' corporate information, however, Dr. Dyce has failed to make a request that complies with applicable statutory and common law in South Carolina and his and the Plaintiff's contractual obligations. Land Holdings specifically denies the allegations of paragraph 12 of the Complaint insofar as they imply that Dr. Dyce's requests for Land Holdings' corporate information were proper and in accordance with applicable statutory and common law and his and the Plaintiff's contractual obligations. Land Holdings further responds that Plaintiff has been provided with certain Land Holdings'

corporate information in response to Dr. Dyce's requests on behalf of Plaintiff. Land Holdings denies any and all remaining allegations of paragraph 12 of the Complaint.

13. Land Holdings responds by stating that paragraph 13 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Land Holdings denies the allegations of paragraph 13 of the Complaint.

14. Land Holdings denies the allegations of paragraph 14 of the Complaint.

15. Land Holdings denies the allegations of paragraph 15 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

16. Land Holdings incorporates and realleges its responses to paragraphs 1-15 above as if repeated verbatim herein.

17. Land Holdings responds by stating that paragraph 17 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Land Holdings denies the allegations of paragraph 17 of the Complaint.

18. Land Holdings responds to the allegations of paragraph 18 of the Complaint by stating that the Operating Agreement speaks for itself, and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 18 of the Complaint that are inconsistent with the Operating Agreement.

19. Land Holdings responds to the allegations of paragraph 19 of the Complaint by stating that the Operating Agreement speaks for itself, and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 19 of the Complaint that are inconsistent with the Operating Agreement.

20. Land Holdings responds to the allegations of paragraph 20 of the Complaint by stating that the Operating Agreement speaks for itself, and Land Holdings craves reference to that document. Land Holdings specifically denies any and all allegations of paragraph 20 of the Complaint that are inconsistent with the Operating Agreement.

21. Land Holdings responds by stating that paragraph 21 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Land Holdings responds to the allegations of paragraph 21 of the Complaint by stating that the Operating Agreement and applicable South Carolina statutes speak for themselves, and Land Holdings craves reference to those documents. Land Holdings specifically denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the Operating Agreement or applicable South Carolina statutory law.

22. Land Holdings denies the allegations of paragraph 22 of the Complaint

23. Land Holdings denies the allegations of paragraph 23 of the Complaint.

24. Land Holdings denies the allegations of paragraph 24 of the Complaint.

25. Land Holdings denies the allegations of paragraph 25 of the Complaint.

26. Land Holdings denies the allegations of paragraph 26 of the Complaint.

27. Land Holdings denies the allegations of paragraph 27 of the Complaint.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

28. Land Holdings incorporates and realleges its responses to paragraphs 1-27 above as if repeated verbatim herein.

29. Land Holdings responds by stating that paragraph 28 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Land Holdings responds to the allegations of paragraph 28 of the Complaint by stating that the applicable South Carolina statutes speak for themselves, and Land Holdings craves reference to those statutes. Land Holdings specifically denies any and all allegations of paragraph 29 of the Complaint that are inconsistent with applicable South Carolina law.

30. Land Holdings denies the allegations of paragraph 30 of the Complaint.

31. Land Holdings denies the allegations of paragraph 31 of the Complaint.

32. Land Holdings responds by stating that paragraph 32 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required Land Holdings responds to the allegations of paragraph 32 of the Complaint by stating that the applicable South Carolina statutes speak for themselves, and Land Holdings craves reference to those statutes. Land Holdings specifically denies any and all allegations of paragraph 32 of the Complaint that are inconsistent with applicable South Carolina law.

33. Land Holdings admits so much of the allegations of paragraph 33 as allege that Dr. Puchalski is subject to certain rights, responsibilities, and duties in his capacity as manager of Land Holdings. Land Holdings specifically denies the allegations of paragraph 33 of the Complaint insofar as they allege that Dr. Puchalski has violated any of these duties or responsibilities. Land Holdings denies any and all remaining allegations of paragraph 33 of the Complaint.

34. Land Holdings denies the allegations of paragraph 34 of the Complaint.

35. Land Holdings denies the allegations of paragraph 35 of the Complaint.

36. Land Holdings denies the allegations of paragraph 36 of the Complaint.

37. Land Holdings denies the allegations of paragraph 37 of the Complaint, including all subparts.

38. Land Holdings expressly denies every allegation of Plaintiff's Complaint that is not specifically admitted in this Answer.

39. Land Holdings denies every allegation and claim for relief, specifically including, but not limited to, Plaintiff's prayers for relief in the WHEREFORE paragraph of its Complaint, including all of its subparts.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

40. The claims set forth in Plaintiff's Complaint may be subject to binding arbitration.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

41. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against Land Holdings.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

42. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

43. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in accordance with the Operating Agreement and applicable statutory law, Plaintiff failed

to satisfy all conditions precedent to Land Holdings' performances under the Operating Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. Land Holdings was, therefore, relieved of any obligations to perform and was entitled to withhold performance.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

44. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

45. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly, consented to the complained of actions of Land Holdings.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

46. Plaintiff's claims are barred because of Plaintiff's own conduct.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION

47. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

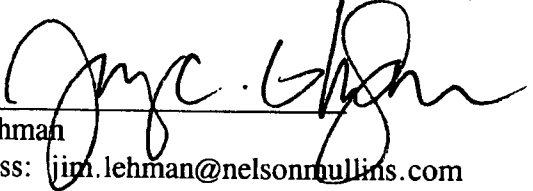
FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

48. Land Holdings reserves the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and reserve the right to amend their answer to assert such defenses.

WHEREFORE, having fully answered the Complaint of Plaintiff Jamie Curley, and having asserted the affirmative defenses above, Land Holdings prays that the Complaint be dismissed with prejudice on all counts and that Land Holdings be provided with the following relief:

- (a) actual, compensatory, and consequential damages;
- (b) judgment and post-judgment interest at lawful rates;
- (c) attorneys' fees and costs expended in the defense of this action; and
- (d) such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

James K. Lehman

Email Address: jim.lehman@nelsonmullins.com

Jeremy C. Hodges

Email Address: jeremy.hodges@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211)

Columbia, SC 29201

(803) 799-2000

Attorneys for SCENT Land Holdings, LLC

April 20, 2010

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SCENT Land Holdings, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

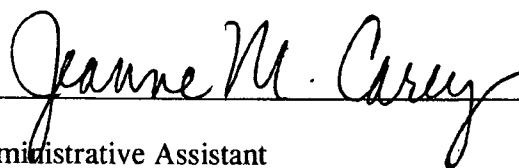
Pleadings:

SCENT Land Holdings, LLC's Answer to Plaintiff's
Complaint

Counsel Served:

Morris A. Ellison, Esquire
Buist Moore Smythe McGee, P.A.
Post Office Box 999
Charleston, SC 29402

FILED FOR RECORD
2010 APR 21 AM 10:14
CLERK OF COURT
BERKLEY COUNTY, S.C.


Administrative Assistant

April 20, 2010

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shareholder, he was entitled to access to its books and records. SCENT had hoped that the materials it has provided pursuant to Dr. Dyce's request for an accounting would resolve his concerns regarding the financial status of SCENT. In order to avoid this litigation, SCENT has even gone so far as to offer Dr. Dyce his old job back. Apparently, however, Dr. Dyce concerns have not been allayed and, despite the fact that SCENT has repeatedly offered him his old job, he has chosen to continue on with this litigation. Thus, because SCENT has attempted to avoid burdening this Court with this litigation and Dr. Dyce has refused to alter his position, SCENT requests this Court allow it to file the attached counterclaims pursuant to Rule 13(e).

In addition, SCENT has learned through its investigation of related litigation that Dr. Dyce is conspiring with a former non-partner physician with SCENT, Dr. Chad Gunnlaugsson. Dr. Gunnlaugsson left SCENT in May 2010 to start his own competing practice and filed a lawsuit at that time to avoid the non-competition clause in his employment contract (*see* Kershaw County C/A No. 2010-CP-28-00475). SCENT's investigation of Dr. Gunnlaugsson's claims has made clear that Drs. Dyce and Gunnlaugsson have been acting in concert against the interests of SCENT and that Dr. Dyce has breached his fiduciary duty by sharing information, including financial information and corporate governance issues, with Dr. Gunnlaugsson. For instance, Dr. Dyce has recently begun taking positions with respect to tax-related issues he knows are not accurate in order to provide Dr. Gunnlaugsson with more favorable evidence in his separate matter. These new revelations support the filing of SCENT's counterclaims pursuant to Rule 13(f).

Furthermore, no parties will be prejudiced by the amendment of SCENT's answer to add the attached counterclaims at this point in the litigation; no discovery has been completed

(other than SCENT providing materials to Dr. Dyce pursuant to his request for an accounting) and the case is not on a trial roster. Based on the arguments set forth above, SCENT requests that this Court allow it to amend its answer in this case to add the attached counterclaims pursuant to South Carolina Rule of Civil Procedure 13.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

James K. Lehman

Email Address: jim.lehman@nelsonmullins.com

Daniel D'Alberto

Email Address: dan.dalberto@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211)

Columbia, SC 29201

(803) 799-2000

Attorneys for Defendant SCENT

October 5, 2010
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
Dr. Orville Dyce,	)	Civil Action No. 2010-CP-28-00323
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	COUNTERCLAIMS OF
South Carolina ENT, Allergy & Sleep	)	DEFENDANT SOUTH CAROLINA
Medicine, P.A., and Dr. Robert	)	ENT, ALLERGY & SLEEP
Puchalski,	)	MEDICINE, P.A.
	)	
Defendant,	)	
	)	

Defendant South Carolina ENT, Allergy & Sleep Medicine, P.A. ("SCENT") hereby asserts Counterclaims against Plaintiff Dr. Orville Dyce ("Dr. Dyce") as follows:

INTRODUCTION AND JURISDICTION

1. SCENT incorporates by reference all of the preceding allegations of its Answer to the Complaints of Dr. Orville Dyce and Jamie Curley as if repeated verbatim herein.
2. SCENT is a corporation organized under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.
3. Dr. Dyce is a citizen and resident of the State of South Carolina.
4. The Court has jurisdiction over the parties and these Counterclaims and venue is proper in Kershaw County.

FACTUAL BACKGROUND FOR COUNTERCLAIMS

5. SCENT is a physician's practice with four locations (Columbia, Camden/Lugoff, Hartsville, and Cheraw) and employs approximately sixty (60) people.
6. Dr. Puchalski is the managing shareholder of SCENT.
7. Dr. Puchalski and Dr. Dyce had a longstanding personal and professional relationship dating back to their hospital residencies.
8. Due to this relationship, Dr. Dyce decided to join Dr. Puchalski at SCENT, first as an employee.
9. Dr. Dyce's employment agreement with SCENT contains a non-compete provision.
10. Dr. Dyce eventually became a shareholder of SCENT. Dr. Puchalski and Dr. Dyce each held a 50 percent share of SCENT.
11. Dr. Dyce's wife, Jamie Curley, was a member of SCENT Land Holdings, LLC ("SCENT LH") a separate, but related company used by SCENT to hold the real estate regarding several of its office locations.
12. During 2008 and 2009, Dr. Puchalski and Dr. Dyce, as SCENT's shareholders, engaged in discussions relating to the construction of a new building to house SCENT's Camden/Lugoff office.
13. During 2009, SCENT's shareholders approved the construction of a new office to be located on Highway 601 between I-20 and downtown Lugoff. Specifically, both Dr. Puchalski and Dr. Dyce approved of SCENT loaning money to SCENT LH to begin the construction of a new building.

14. Beginning in January 2010, SCENT and Dr. Puchalski became embroiled in a dispute with Dr. Dyce.

15. The dispute with Dr. Dyce apparently concerned SCENT's efforts to negotiate a new Shareholders' Agreement with Dr. Dyce in contemplation of eventually adding a third shareholder, Dr. Chad Gunnlaugsson, although Dr. Dyce has never provided specific comments on or engaged in any specific or constructive negotiations regarding the proposed new Shareholders' Agreement.

16. Specifically, Dr. Dyce refused to return phone calls, e-mails, or other communications despite the fact that he was a shareholder of SCENT and, as a result, had a fiduciary duty to ensure that he took actions in the best interests of the company and of his fellow shareholders.

17. During the course of this dispute, Dr. Dyce requested a variety of financial and related information from SCENT.

18. SCENT agreed to provide such information to Dr. Dyce provided that he enter into an agreement to maintain the confidentiality of the materials he was requesting.

19. The requested confidentiality agreement was consistent with the confidentiality provisions of his employment contract with SCENT and his shareholder agreement.

20. Inexplicably, Dr. Dyce refused to sign the confidentiality agreement.

21. During the course of this dispute, Dr. Dyce began taking actions that created serious difficulties in managing the practice and its real estate affiliate, SCENT LH. Despite having approved initial advances by SCENT to SCENT LH in order to

facilitate the construction of SCENT's new Camden/Lugoff office, Dr. Dyce and his wife, both of whose approval was required, refused to approve the closing on the permanent loan financing for SCENT LH at five consecutive loan closings scheduled during January and February 2010.

22. SCENT and Dr. Puchalski expressed concern to Dr. Dyce that his behavior was impacting SCENT's ability to finish construction on the new office building and to enable another physician, Dr. Chad Gunnlaugsson, to become a shareholder of SCENT.

23. As a result of Dr. Dyce's refusal to take part in even one of these closings, SCENT LH was unable to pay the contractors working on the new office in a timely fashion. Numerous subcontractors in the Camden/Lugoff area were not being paid as a result.

24. Furthermore, because SCENT had advanced funds to SCENT LH to provide temporary financing for construction on the new office building, SCENT was unable to make sweep distributions (*i.e.* payments to its shareholders) until SCENT LH obtained permanent financing and repaid its loans to SCENT. SCENT's daily operations were being threatened by an inability to maintain adequate cash flow.

25. On March 1, 2010, the general contractor working on the new building filed a mechanics lien against SCENT LH.

26. As a result of this mechanic's lien and the financial pressures put on both SCENT and SCENT LH as a result of Dr. Dyce's refusal to close, Dr. Puchalski, as the managing shareholder, sent an e-mail to Dr. Dyce on March 1, 2010 literally begging Dr. Dyce to put aside whatever differences he had with Dr. Puchalski and

approve the closing so SCENT's loan could be paid back and the contractors could be paid.

27. Dr. Dyce again refused to allow the loan to close.

28. As a result of Dr. Dyce's continued refusal to allow the permanent financing to close, both SCENT and SCENT LH were in financial jeopardy; SCENT could not continue to operate much longer without SCENT LH paying back the loan it owed, and SCENT LH could not finish the building or pay back the loan without Dr. Dyce's approval and signature.

29. In order to avoid significant adverse financial consequences to SCENT and SCENT LH caused by Dr. Dyce's behavior, and to ensure the local contractors would be paid, SCENT, through its managing shareholder, Dr. Puchalski, provided notice to Dr. Dyce that his employment would be terminated in 60 days. (*See* 3/3/10 Consent, attached as Ex. 1).

30. As part of this termination, SCENT acknowledged that it was "willing to engage in mediation to discuss the details surrounding the termination or possible rescission of this termination on mutually agreeable terms." (*Id.*).

31. SCENT hoped that this action, with the above acknowledgement, would cause Dr. Dyce to begin discussing the situation constructively and hoped that Dr. Dyce's actual termination could be avoided. However, Dr. Dyce still refused to substantively discuss the situation. (*See* 3/10/10 e-mail, attached as Ex. 2).

32. As a result of the termination of Dr. Dyce, SCENT LH was able to close on the permanent financing of the new building and pay back the loan it had received from SCENT. The financial health of both SCENT and SCENT LH has been restored

in part, the mechanic's lien on the new building has been extinguished, and all contractors have been paid or are in the process of being paid on a timely basis.

33. Both before and since Dr. Dyce's notice of termination, SCENT has sought an opportunity to speak with and potentially re-hire Dr. Dyce.

34. Despite the potential to be re-hired by SCENT, and despite the fact that his yearly salary was very significant, Dr. Dyce filed for unemployment, which is paid for by South Carolina's taxpayers.

35. On March 21, 2010, Dr. Dyce and Dr. Puchalski met at SCENT's corporate office to watch the televised game and cheer their alma mater, Cornell, in the NCAA tournament after which they engaged in a lengthy discussion of their visions of SCENT in which Dr. Puchalski expected Dr. Dyce would finally enter into constructive discussions regarding a new shareholders' agreement and return to employment with SCENT.

36. Instead, Dr. Dyce still offered no constructive discussion regarding the shareholders' agreement and would not explain his behavior.

37. Within 15 minutes of returning to his home after this meeting, Dr. Puchalski was served with the Complaint in this lawsuit; because the process server told him that she knew he would be at home, it was apparent that Dr. Dyce or his attorney had spoken with the process server immediately after such meeting.

38. Despite these repeated aggressive and obstructionist actions by Dr. Dyce, once Dr. Dyce finally executed a confidentiality agreement, SCENT began providing Dr. Dyce with a great deal of financial information. In addition, SCENT formally made Dr. Dyce an offer of work on August 11, 2010, which Dr. Dyce refused

to accept. (See 10/11/10 Offer of Work Affidavit and related correspondence, attached as Ex. 3).

39. Instead of accepting SCENT's offer and return to his significant salary, Dr. Dyce continued to seek unemployment benefit at great expense to South Carolina taxpayers.

40. Prior to and during the course of the dispute with Dr. Dyce, Dr. Chad Gunnlaugsson was a shareholder-track physician with SCENT. SCENT had not yet offered him the opportunity to purchase shares and he had not yet earned the right to purchase shares.

41. SCENT and Dr. Puchalski communicated with Dr. Gunnlaugsson about the effect of the dispute with Dr. Dyce on his path to becoming a shareholder.

42. SCENT and Dr. Puchalski informed Dr. Gunnlaugsson of their need and desire to resolve the ongoing dispute with Dr. Dyce and to finalize and implement a new Shareholders' Agreement before completing the various steps necessary to approve him as a shareholder. This conversation occurred at a meeting between Dr. Puchalski and Dr. Gunnlaugsson at a Starbucks Coffee Shop on a Saturday morning in January 2010. At this meeting, Dr. Gunnlaugsson apologized for having his legal counsel send a letter in haste, admitted he did so in part because Dr. Dyce had retained counsel, and agreed to be patient while the dispute with Dr. Dyce was resolved. At this meeting, Dr. Gunnlaugsson commented on how he felt that his compensation was more than reasonable for his work and appreciated that his compensation was above and beyond SCENT's contractual obligation to him.

43. SCENT and Dr. Puchalski asked Dr. Gunnlaugsson to be patient and to allow for the resolution of various corporate issues, including the dispute with Dr. Dyce, and reaffirmed their intent to approve Dr. Gunnlaugsson as a shareholder once those corporate issues had been resolved.

44. In exchange for Dr. Gunnlaugsson's patience and cooperation and in reliance on his representations that he accepted and agreed to the plan put forth by SCENT, SCENT continued to partially perform under its oral agreement with Dr. Gunnlaugsson regarding its intent to offer Dr. Gunnlaugsson a shareholder position and to compensate him at or near the level of SCENT's shareholders.

45. SCENT was under no obligations, contractual or otherwise, to increase Dr. Gunnlaugsson's compensation beyond the levels provided for in his employment agreement.

46. Dr. Gunnlaugsson accepted this compensation and made affirmative representations to SCENT and Dr. Puchalski that he agreed with and understood the plan and the timing of that plan presented to him for eventually becoming a SCENT shareholder, which is evidenced by, among other communications, a January 21, 2010 letter from Dr. Gunnlaugsson's counsel that states they did not anticipate "any formal dispute" and that the "look forward to hearing the outcome of the negotiations [SCENT's counsel] mentioned regarding the shareholders' agreement."

47. Dr. Dyce was made aware of the communications with Dr. Gunnlaugsson and his counsel and his frustration at not having yet been approved as a shareholder of SCENT. SCENT communicated to Dr. Dyce the need to expeditiously negotiate the shareholders agreement in anticipation of Dr. Gunnlaugsson's pending

admission as a shareholder to avoid the risk SCENT would lose Dr. Gunnlaugsson or become embroiled in a legal dispute with Dr. Gunnlaugsson and asked Dr. Dyce to schedule a series of meetings during the month of February 2010 to discuss his concerns with the new shareholders agreement and to negotiate a final agreement which was mutually acceptable to SCENT and its shareholders.

48. Rather than participating in the effort to negotiate the new shareholders agreement, Dr. Dyce embarked on a systematic and contrived scheme to obstruct SCENT's business operations and to block any negotiations over the new shareholders agreement. This scheme was evidenced by his actions in refusing to allow the closing on the new SCENT LH building, his failure to approve new capital expenditures for the company, his failure to allow SCENT to change its malpractice carrier to a lower cost provider, and his attendance at a scheduled meeting to discuss the shareholders agreement unprepared and without comments. Dr. Dyce's scheme culminated in his demand to review the complete history of SCENT's financial records, including credit card receipts, without any confidentiality restrictions prior to him engaging in any further discussions about the new shareholders agreement despite his knowledge of the various exigencies facing SCENT and SCENT LH .

49. Dr. Dyce's obstructionist actions and his refusal to negotiate the new shareholders agreement were designed to use Dr. Gunnlaugsson's potential admission as a shareholder in SCENT as a point of leverage to block a new shareholders agreement. Not only did Dr. Dyce's actions preclude any resolution of the new shareholders agreement but the cash flow strain placed on SCENT as a result of Dr. Dyce's obstructionist actions resulted in preventing the normal accumulation of

financial sweeps in SCENT necessary to finish Dr. Gunnlaugsson's financial qualification as a shareholder of SCENT and precipitated the hostile and aggressive actions of Dr. Gunnlaugsson against SCENT that have ensued.

50. Despite Dr. Dyce's obstructionist actions Dr. Puchalski continued to meet and communicate with Dr. Gunnlaugsson on multiple occasions to ensure that he remained in agreement with the plan for eventually becoming a shareholder of SCENT.

51. One of those meetings occurred on March 10, 2010 following the meeting in which SCENT terminated Dr. Dyce's employment. At that meeting, Dr. Puchalski, as an officer of SCENT, and SCENT's corporate counsel met with Dr. Gunnlaugsson to explain certain difficulties facing the company as a result of the dispute with Dr. Dyce and the reasons for his termination.

52. During that March 10 meeting, Dr. Puchalski informed Dr. Gunnlaugsson that SCENT would present him with a Shareholders' Agreement and other information relevant to his ability to become a shareholder within 60 days, or by May 9, 2010.

53. In effect, SCENT asked Dr. Gunnlaugsson to accept a condition on his ability to become a shareholder that required him to wait 60 days before being presented with the Shareholders' Agreement and other information relevant to his opportunity to become a SCENT shareholder.

54. At that March 10 meeting, Dr. Gunnlaugsson made knowing and intentionally false representations to SCENT and Dr. Puchalski that he accepted and understood the requirements being requested of him, and that he would comply with those requirements.

55. During the course of the encounters set forth above, Dr. Gunnlaugsson repeatedly represented to SCENT and Dr. Puchalski that he remained in agreement with the plan laid out for him to become a shareholder of SCENT.

56. In continued reliance on those representations and as consideration for Dr. Gunnlaugsson's agreement to the plan put forth by SCENT and Dr. Puchalski, SCENT continued to compensate him at or near the level of SCENT's shareholders, which was significantly in excess of the terms of Dr. Gunnlaugsson's compensation set forth in his employment agreement.

57. Additionally, in order to provide comfort to Dr. Gunnlaugsson and to show its intent that he eventually be allowed to become a shareholder, SCENT and Dr. Puchalski provided Dr. Gunnlaugsson with a great deal of SCENT's sensitive, confidential information. In or around April 2010, to provide further comfort to Dr. Gunnlaugsson, Dr. Puchalski asked one of SCENT's corporate attorneys to attend a meeting to brief him regarding the dispute with Dr. Dyce, and among other things, SCENT's attempts to resolve the dispute with Dr. Dyce.

58. As part of this meeting with SCENT's corporate attorney, Dr. Gunnlaugsson was informed that:

- (a) SCENT had offered to mediate the dispute with Dr. Dyce multiple times, including Dr. Dyce's return to the practice;
- (b) SCENT had agreed to provide Dr. Dyce with a substantial amount of information pursuant to an agreed upon confidentiality agreement once Dr. Dyce executed it;

- (c) SCENT had offered to have an accounting performed for Dr. Dyce; and
- (d) SCENT had offered Dr. Dyce the opportunity to meet with the company's accountants.

59. At no point did Dr. Gunnlaugsson inform SCENT, its attorneys, or Dr. Puchalski that he was conspiring and working with Dr. Dyce to damage SCENT or that he had established a competing practice. To the contrary:

- (a) Dr. Gunnlaugsson falsely indicated that he did not understand Dr. Dyce's behavior and that Dr. Dyce would not talk to him about the dispute;
- (b) Dr. Gunnlaugsson falsely indicated that he had not spoken to his attorney in several months, and that there were no communications between he and Dr. Dyce regarding this dispute, or among their respective attorneys with the exception of one call made by Dr. Dyce's attorney to Dr. Gunnlaugsson's attorney, which he said was rebuffed; and
- (c) Dr. Gunnlaugsson did not inform SCENT, its attorneys, and Dr. Puchalski that he had taken steps to set up a competing medical practice including the formation and registration of Southeastern Ear Nose Throat Allergy and Sleep Disorders Institute, LLC.

60. Just days after this meeting, by letter dated April 23, 2010 from his attorney, Dr. Gunnlaugsson informed SCENT of his intent to leave the practice and that he was terminating his employment agreement with purported cause effective May 23,

2010. Dr. Gunnlaugsson then filed suit against SCENT and has since opened a competing practice.

61. Through SCENT's informal investigation of this matter and Dr. Gunnlaugsson's separate suit against SCENT, it has become clear that Drs. Dyce and Gunnlaugsson were acting in concert against the interests of SCENT and that Dr. Dyce has breached his fiduciary duty by sharing information, including financial information and corporate governance issues, with Dr. Gunnlaugsson.

62. Although both Drs. Dyce and Gunnlaugsson know full well the importance that SCENT and Dr. Puchalski place on patient care, they have intentionally and maliciously conspired to attempt to trap him in a no-win situation in furtherance of their own personal interests at the expense of Dr. Puchalski and SCENT and without regard for patient care.

63. In addition, Dr. Dyce has begun taking positions with respect to tax-related issues he knows are not accurate in order to provide Dr. Gunnlaugsson with more favorable testimony in his separate matter.

BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)

64. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

65. SCENT and Dr. Dyce entered into the employment agreement and shareholder agreement, as set forth more fully above.

66. Dr. Dyce breached these agreements by, among other things, disclosing confidential information in violation of these agreements, and obstructing the closing of

the loan on SCENT's new office building causing damages to SCENT, SCENT LH and, in turn, the contractors working on SCENT's new building.

67. As a result, SCENT is entitled to damages in an amount to be proven at trial.

BY WAY OF SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

68. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

69. Dr. Dyce's disloyal conduct towards SCENT violated his fiduciary duty, duty of loyalty, and duty of good faith and fair dealing toward SCENT under the common law and statutory law of the State of South Carolina, including but not limited to that found in S.C. Code Ann. § 33-8-20.

70. Dr. Dyce's conduct was the direct and proximate cause of harm to SCENT and SCENT has suffered damages as a result of that harm.

BY WAY OF THIRD COUNTERCLAIM
(Conspiracy)

71. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

72. Drs. Dyce and Gunnlaugsson were physicians and employees of SCENT. Dr. Dyce was also a shareholder of SCENT.

73. As part of a scheme to harm SCENT and wrongfully obtain its confidential information, Dr. Dyce has acted overtly and in concert with others,

BY WAY OF FIFTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

83. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

84. Dr. Dyce's trade practices were unfair and deceptive. His conduct constitutes unfair or deceptive acts or practices in the conduct of trade or commerce as prohibited by Section 39-5-20 of the South Carolina Code.

85. Dr. Dyce's unfair and deceptive practices impact the public generally in that they affect SCENT's ability to serve its patients and SCENT LH's ability to pay back its lenders and contractors.

86. Upon information and belief, Dr. Dyce's unfair and deceptive practices have occurred on other occasions and/or are likely to reoccur without deterrence.

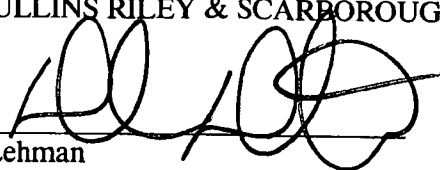
87. As a result of Dr. Dyce's unfair and deceptive practices, willfully committed by him, SCENT and SCENT LH are entitled to recover under the South Carolina Unfair Trade Practices Act three times actual damages, all litigation costs, and attorney's fees.

WHEREFORE, having asserted the counterclaims above, and having asserted the Counterclaims above, SCENT prays that the Court dismiss the Complaint with prejudice, on all counts, and provide the following relief:

- (a) actual, compensatory, consequential and punitive damages;
- (b) judgment and post-judgment interest at lawful rates; and
- (c) attorneys' fees and costs expended in the defense of this action;

(d) such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

James K. Lehman

Email Address: jim.lehman@nelsonmullins.com

Daniel D'Alberto

Email Address: dan.dalberto@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211)

Columbia, SC 29201

(803) 799-2000

Attorneys for Defendant SCENT

October 5, 2010
Columbia, South Carolina

EXHIBIT 1

CONSENT

The undersigned shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. (the "Company") hereby adopts this consent as of the 3rd day of March:

WHEREAS, the undersigned Shareholder is the Managing Shareholder of the Company;

WHEREAS, in contemplation of another Shareholder possibly joining the Company, the Managing Shareholder proposed certain corporate governance changes to be discussed with Dr. Orville Dyce (the "Other Shareholder");

WHEREAS, since that time, instead of discussing these proposed changes in a constructive fashion, the Managing Shareholder believes that the Other Shareholder has acted against the best interests of the Company and has made it clear both personally and through counsel that he will make the operating of the Company more difficult in order to exert leverage regarding his personal negotiations with the Company;

WHEREAS, the Managing Shareholder is concerned about the damage that these actions will have on the Company;

WHEREAS, the Managing Shareholder believes that the Other Shareholder is also preventing the closing of the loan regarding the partially constructed building for the Company by SCENT Land Holdings, LLC (the "Landholding Company") in order to exert leverage regarding his personal negotiations with the Company;

WHEREAS, this has resulted in the filing of a mechanic's lien regarding the building and is damaging the Company's ability to obtain the building and is impacting the Company's reputation;

WHEREAS, the Managing Shareholder is becoming increasingly concerned that the actions of the Other Shareholder will damage the Company;

NOW, THEREFORE, BE IT RESOLVED, that in accordance with Section 3.3.2 of the Shareholders Agreement by and among the Company, the Managing Shareholder and the Other Shareholder and Section 2.3(c) of the Other Shareholder's Employment Agreement dated as of June 1, 2008, the Managing Shareholder hereby terminates the employment of the Other Shareholder without cause, with such termination being effective in sixty (60) days (i.e., May 2, 2010);

FURTHER RESOLVED, that this termination constitutes as the date hereof an Event of Departure as contemplated in Section 4.5 of the Shareholders Agreement;

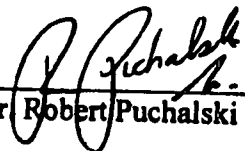
FURTHER RESOLVED, that the Company, the Managing Shareholder and the Other Shareholder shall work closely together to ensure that the termination is as smooth as possible to all parties involved and to ensure that patient care is not impacted;

FURTHER RESOLVED, the Company shall honor its obligations to the Other Shareholder to purchase his shares in accordance with the Shareholders Agreement and to otherwise honor its other obligations under the Shareholders Agreement;

FURTHER RESOLVED, that if the Other Shareholder would like to do so, the Company and the Managing Shareholder are willing to engage in mediation to discuss the details surrounding the termination or a possible rescission of this termination on mutually agreeable terms;

FURTHER RESOLVED, that the Managing Shareholder deeply regrets this decision as the Managing Shareholder greatly values his personal and professional relationship with the Other Shareholder but believes that this action is required for the best interests of the Company in light of the Other Shareholder's sudden and unusual behavior that the Managing Shareholder believes is damaging the Company and the Landholding Company.

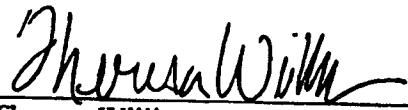
IN WITNESS WHEREOF, the undersigned shareholder has executed this Consent as of the 3rd day of March, 2010.

By: 
Dr. Robert Puchalski

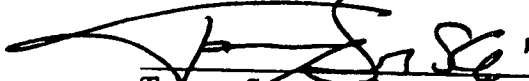
Acknowledgement of Receipt

The undersigned hereby acknowledge receipt of this Consent as of the 3rd day of March, 2010.

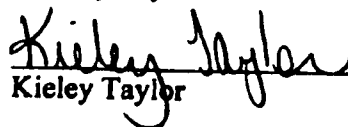
Witness


Theresa Williams

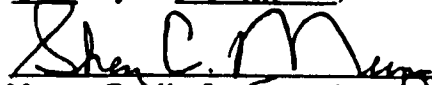
Witness


Tammy Szymanski

Witness


Kieley Taylor

Subscribed and sworn to me this
3rd day of Mar, 2010.


Notary Public for South Carolina
My Commission Expires on 7-10-2013

-Doc# 6152564.1-

EXHIBIT 2

From: Robert Puchalski <RPuchalski@southcarolinaent.com>

To: Dr Dyce <Odyce@southcarolinaent.com>; orville dyce <odyce@yahoo.com>

Sent: Wed, March 10, 2010 7:21:00 PM

Subject: Board Meeting

Orville:

I am very disappointed and surprised that our long relationship has come to this unpleasant point. Quite honestly, I still don't understand how we got here and how so many other people have come between us. I feel that we have always enjoyed a sincere and courteous personal and professional relationship. Although I know you must be thinking very negatively about me, please know that I would like nothing more than to regain this in the future, if possible.

Until your termination, we were in an untenable situation which was severely restraining the practice and clearly placing its good reputation and viability in grave jeopardy. We no longer can seem to agree on anything as simple as paying debts, saving money on medical malpractice, or maintaining confidentiality. Without doubt, this situation has stalled two companies and diverted important time and resources away from ongoing practice initiatives. In particular, I was concerned about ongoing practice operations, construction on the new building, Chad's partnership, and the Ambulatory Surgery Center. I have tried to engage you through meetings, phone conversations,

and emails with no success. I have resorted to begging at times. I don't know why we haven't been able to constructively engage each other to resolve our differences, but I feel confident that I have tried my best to do it.

I have always enjoyed working with you, whether it was as your co-resident, your employer, or your partner. In my opinion, however, recently it seems as though your attorneys are running the practice and controlling the new building from Philadelphia. I believe your attorneys are playing games and their advice to you is damaging the practice in the process. Not only is this unacceptable now, but it has made me realize how important it is to protect the practice from this type of behavior in the future. The past few weeks have further convinced me that we need to make certain changes to make sure what has happened over the past few weeks does not happen again.

I am recommending that we engage a professional mediator to work with us to see if we can talk through the issues that have been raised to see if we can find common ground and quiet resolution. I'm sure that you would agree that we need to either find a way to address the outstanding issues and run the practice effectively or we need to part ways. Either way, I intend to treat you fairly and want to make sure the practice's patients are properly taken care of.

In this regard, although it was very difficult for me personally and professionally, as the managing shareholder, I did not feel like I had any choice but to terminate you from the practice. If the current situation was allowed to continue, I am convinced that there would be no practice left to defend.

Although I took this action last Wednesday, because I just notified you today, the termination will be extended to be effective May 9, 2010 (60 days from today).

As I said before, I personally don't want to quit practicing with you. Therefore, between now and May 9, 2010, I am recommending that we submit to non-binding mediation to see if we can reach an amicable solution that does not require the termination to become effective (in other words, your employment agreement and your status as a shareholder could be reinstated). An amicable resolution will depend upon you honoring your confidentiality obligations to the practice and that you do not engage in any activity that damages the practice.

3/22/2010
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I am sorry and disappointed that it has come to this. Knowing and respecting you, the current situation makes absolutely no sense to me but I had to act in what I believe to be in the best interests of the practice.

The bottom line is this will be resolved in one of two ways - we either will find a way to work together or we will part ways - the choice is yours as to how we will proceed from this point. My recommendation to you is that you consider how much time and money we will spend and the pain we will endure before this gets resolved. In this regard, it will be me, you and the practice that spends the time and money and endures the pain, not your attorneys.

The door towards reconciliation remains completely open on this end. I hope you can put aside the emotion you must be feeling towards me now and walk through it. I will keep the details of our Board meeting confidential in the immediate future until you make a decision.

Robert Puchalski, MD
Managing Shareholder
South Carolina ENT, Allergy & Sleep Medicine, PA
www.SouthCarolinaENT.com



Confidentiality and Disclosure Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. All comments made are strictly those of Robert Puchalski, MD and not necessarily those of South Carolina ENT, Allergy, and Sleep Medicine, PA.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify

3/22/2010
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EXHIBIT 3

CERTIFICATE OF SERVICE

I, Daniel R. D'Alberto, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorney for South Carolina ENT, Allergy do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, and by email to the following address(es):

PLEADINGS:

DEFENDANT SCENT'S MOTION TO AMEND ANSWER

Counsel Served:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee, P.A.
5 Exchange Street
Charleston, SC 29401

Roy F. Laney, Esq.
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205



Daniel R. D'Alberto

October 5, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Jamie Curley,) Civil Action No. 2010-CP-28-00323³²²

Plaintiff,)

vs.)

SCENT Land Holdings LLC, and Dr.)
Robert Puchalski,)

Defendant,)

**DEFENDANT SCENT LAND
HOLDINGS LLC'S MOTION TO
AMEND ANSWER TO ADD
COUNTERCLAIMS**

FILED
2010 OCT -5 PM 4:06
CLERK OF COURT

Pursuant to South Carolina Rules of Civil Procedure 13(e) and (f), Defendant SC ENT Land Holdings LLC ("SCENT LH") hereby moves for this Court for leave to amend its Answer to add certain counterclaims¹ against Plaintiff Jamie Curley ("Mrs. Curley"). SCENT LH did not file these counterclaims with its original answer because it had hoped to avoid protracted litigation in this matter. Furthermore, and as set forth more fully in the attached proposed counterclaims, SCENT LH has become aware of facts and circumstances through its investigation of this and related litigation of new information that supports such counterclaims. SCENT LH requests that this Court allow it to amend its answer to add the counterclaims

ARGUMENT

Mrs. Curley is the wife of Dr. Orville Dyce. Dr. Dyce is the sole plaintiff in a related lawsuit filed contemporaneously with this matter (*see* Kershaw County C/A No. 2010-CP-28-322). Dr. Dyce was an employee and physician with South Carolina ENT, Allergy & Sleep Medicine, P.A. ("SCENT") until March 2010, at which point he was terminated due to the circumstances described in the attached counterclaims. He was also a shareholder of SCENT.

¹ SCENT LH's proposed counterclaims are attached as Ex. A.

Mrs. Curley, as Dr. Dyce's wife, was a member of SCENT LH, an entity separate but related to SCENT that managed the real estate on which several of SCENT's offices are located.

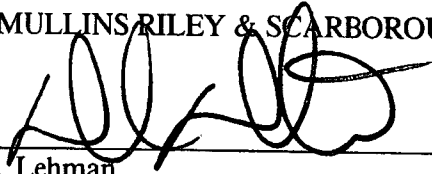
Almost immediately after Dr. Dyce's termination, Mrs. Curley filed this lawsuit against SCENT LH and Dr. Dyce filed his lawsuit against SCENT, both of which seek an accounting and a declaratory judgment that, as a member and a shareholder, respectively, there were entitled to access to books and records of both entities. SCENT and SCENT LH had hoped that the materials they provided pursuant to Dr. Dyce's and Mrs. Curley's requests for an accounting would resolve their concerns regarding the financial status of SCENT and SCENT LH. In order to avoid this litigation, SCENT has even gone so far as to offer Dr. Dyce his old job back. Apparently, however, Dr. Dyce concerns have not been allayed and, despite the fact that SCENT has repeatedly offered him his old job, he and his wife have chosen to continue on with their respective litigation. Thus, because SCENT and SCENT LH have attempted to avoid burdening this Court with this litigation and Dr. Dyce and his wife have refused to alter their position, SCENT LH requests this Court allow it to file the attached counterclaims pursuant to Rule 13(e).

In addition, SCENT and SCENT LH have learned through its investigation of another piece of related litigation that Dr. Dyce is conspiring with a former non-partner physician with SCENT, Dr. Chad Gunnlaugsson. Dr. Gunnlaugsson left SCENT in May 2010 to start his own competing practice and filed a lawsuit at that time to avoid the non-competition clause in his employment contract (*see* Kershaw County C/A No. 2010-CP-28-00475). SCENT's investigation of Dr. Gunnlaugsson's claims has made clear that Drs. Dyce and Gunnlaugsson have been acting in concert against the interests of SCENT and that Dr. Dyce and Mrs. Curley have breached their fiduciary duty by sharing information, including financial information and

corporate governance issues, with Dr. Gunnlaugsson. For instance, Dr. Dyce has recently begun taking positions with respect to tax-related issues he knows are not accurate in order to provide Dr. Gunnlaugsson with more favorable evidence in his separate matter. These new revelations support the filing of SCENT LH's counterclaims pursuant to Rule 13(f).

Furthermore, no parties will be prejudiced by the amendment of SCENT LH's answer to add the attached counterclaims at this point in the litigation; no discovery has been completed (other than SCENT and SCENT LH providing materials to Dr. Dyce pursuant to his request for an accounting) and the case is not on a trial roster. Based on the arguments set forth above, SCENT LH requests that this Court allow it to amend its answer in this case to add the attached counterclaims pursuant to South Carolina Rule of Civil Procedure 13.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

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October 5, 2010
Columbia, South Carolina

6. SCENT LH a separate, but related company used by SCENT to hold the real estate regarding several of its office locations.

7. Dr. Puchalski is the managing shareholder of SCENT.

8. Dr. Puchalski and Dr. Dyce had a longstanding personal and professional relationship dating back to their hospital residencies.

9. Due to this relationship, Dr. Dyce decided to join Dr. Puchalski at SCENT, first as an employee.

10. Dr. Dyce's employment agreement with SCENT contains a non-compete provision.

11. Dr. Dyce eventually became a shareholder of SCENT. Dr. Puchalski and Dr. Dyce each held a 50 percent share of SCENT.

12. Dr. Dyce's wife, Jamie Curley, was a member of SCENT LH.

13. During 2008 and 2009, Dr. Puchalski and Dr. Dyce, as SCENT's shareholders, engaged in discussions relating to the construction of a new building to house SCENT's Camden/Lugoff office.

14. During 2009, SCENT's shareholders approved the construction of a new office to be located on Highway 601 between I-20 and downtown Lugoff. Specifically, both Dr. Puchalski and Dr. Dyce approved of SCENT loaning money to SCENT LH to begin the construction of a new building.

15. Beginning in January 2010, SCENT and Dr. Puchalski became embroiled in a dispute with Dr. Dyce.

16. The dispute with Dr. Dyce apparently concerned SCENT's efforts to negotiate a new Shareholders' Agreement with Dr. Dyce in contemplation of eventually adding a third

shareholder, Dr. Chad Gunnlaugsson, although Dr. Dyce has never provided specific comments on or engaged in any specific or constructive negotiations regarding the proposed new Shareholders' Agreement.

17. Specifically, Dr. Dyce refused to return phone calls, e-mails, or other communications despite the fact that he was a shareholder of SCENT and, as a result, had a fiduciary duty to ensure that he took actions in the best interests of the company and of his fellow shareholders.

18. During the course of this dispute, Dr. Dyce requested a variety of financial and related information from SCENT.

19. SCENT agreed to provide such information to Dr. Dyce provided that he enter into an agreement to maintain the confidentiality of the materials he was requesting.

20. The requested confidentiality agreement was consistent with the confidentiality provision of his employment contract with SCENT and his shareholder agreement.

21. Inexplicably, Dr. Dyce refused to sign the confidentiality agreement.

22. During the course of this dispute, Dr. Dyce began taking actions that created serious difficulties in managing the practice and its real estate affiliate, SCENT LH. Despite having approved initial advances by SCENT to SCENT LH in order to facilitate the construction of SCENT's new Camden/Lugoff office, Dr. Dyce and his wife, both of whose approval was required, refused to approve the closing on the permanent loan financing for SCENT LH at five consecutive loan closings scheduled during January and February 2010.

23. SCENT and Dr. Puchalski expressed concern to Dr. Dyce that his behavior was impacting SCENT's ability to finish construction on the new office building and to enable another physician, Dr. Chad Gunnlaugsson, to become a shareholder of SCENT.

24. As a result of Dr. Dyce's refusal to take part in even one of these closings, SCENT LH was unable to pay the contractors working on the new office in a timely fashion. Numerous subcontractors in the Camden/Lugoff area were not being paid as a result.

25. Furthermore, because SCENT had advanced funds to SCENT LH to provide temporary financing for construction on the new office building, SCENT was unable to make sweep distributions (*i.e.* payments to its shareholders) until SCENT LH obtained permanent financing and repaid its loans to SCENT. SCENT's daily operations were being threatened by an inability to maintain adequate cash flow.

26. On March 1, 2010, the general contractor working on the new building filed a mechanics lien against SCENT LH.

27. As a result of this mechanic's lien and the financial pressures put on both SCENT and SCENT LH as a result of Dr. Dyce's refusal to close, Dr. Puchalski, as the managing shareholder, sent an e-mail to Dr. Dyce on March 1, 2010 literally begging Dr. Dyce to put aside whatever differences he had with Dr. Puchalski and approve the closing so SCENT's loan could be paid back and the contractors could be paid.

28. Dr. Dyce again refused to allow the loan to close.

29. As a result of Dr. Dyce's continued refusal to allow the permanent financing to close, both SCENT and SCENT LH were in financial jeopardy; SCENT could not continue to operate much longer without SCENT LH paying back the loan it owed, and SCENT LH could not finish the building or pay back the loan without Dr. Dyce's approval and signature.

30. In order to avoid significant adverse financial consequences to SCENT and SCENT LH caused by Dr. Dyce's behavior, and to ensure the local contractors would be paid,

SCENT, through its managing shareholder, Dr. Puchalski, provided notice to Dr. Dyce that his employment would be terminated in 60 days. (See 3/3/10 Consent, attached as Ex. 1).

31. As part of this termination, SCENT acknowledged that it was “willing to engage in mediation to discuss the details surrounding the termination or possible rescission of this termination on mutually agreeable terms.” (*Id.*).

32. SCENT hoped that this action, with the above acknowledgement, would cause Dr. Dyce to begin discussing the situation constructively and hoped that Dr. Dyce’s actual termination could be avoided. However, Dr. Dyce still refused to substantively discuss the situation. (See 3/10/10 e-mail, attached as Ex. 2).

33. As a result of the termination of Dr. Dyce, SCENT LH was able to close on the permanent financing of the new building and pay back the loan it had received from SCENT. The financial health of both SCENT and SCENT LH has been restored in part, the mechanic’s lien on the new building has been extinguished, and all contractors have been paid or are in the process of being paid on a timely basis.

34. Both before and since Dr. Dyce’s notice of termination, SCENT has sought an opportunity to speak with and potentially re-hire Dr. Dyce.

35. Despite the potential to be re-hired by SCENT, and despite the fact that his yearly salary was very significant, Dr. Dyce filed for unemployment, which is paid for by South Carolina’s taxpayers.

36. On March 21, 2010, Dr. Dyce and Dr. Puchalski met at SCENT’s corporate office to watch the televised game and cheer their alma mater, Cornell, in the NCAA tournament after which they engaged in a lengthy discussion of their visions of SCENT in

which Dr. Puchalski expected Dr. Dyce would finally enter into constructive discussions regarding a new shareholders' agreement and return to employment with SCENT.

37. Instead, Dr. Dyce still offered no constructive discussion regarding the shareholders' agreement and would not explain his behavior.

38. Within 15 minutes of returning to his home after this meeting, Dr. Puchalski was served with the Complaint in this lawsuit; because the process server told him that she knew he would be at home, it was apparent that Dr. Dyce or his attorney had spoken with the process server immediately after such meeting.

39. Despite these repeated aggressive and obstructionist actions by Dr. Dyce, once Dr. Dyce finally executed a confidentiality agreement, SCENT began providing Dr. Dyce with a great deal of financial information. In addition, SCENT formally made Dr. Dyce an offer of work on August 11, 2010, which Dr. Dyce refused to accept. (*See* 10/11/10 Offer of Work Affidavit and related correspondence, attached as Ex. 3).

40. Instead of accepting SCENT's offer and return to his significant salary, Dr. Dyce continued to seek unemployment benefit at great expense to South Carolina taxpayers.

41. Prior to and during the course of the dispute with Dr. Dyce, Dr. Chad Gunnlaugsson was a shareholder-track physician with SCENT. SCENT had not yet offered him the opportunity to purchase shares and he had not yet earned the right to purchase shares.

42. SCENT and Dr. Puchalski communicated with Dr. Gunnlaugsson about the effect of the dispute with Dr. Dyce on his path to becoming a shareholder.

43. SCENT and Dr. Puchalski informed Dr. Gunnlaugsson of their need and desire to resolve the ongoing dispute with Dr. Dyce and to finalize and implement a new Shareholders' Agreement before completing the various steps necessary to approve him as a

shareholder. This conversation occurred at a meeting between Dr. Puchalski and Dr. Gunnlaugsson at a Starbucks Coffee Shop on a Saturday morning in January 2010. At this meeting, Dr. Gunnlaugsson apologized for having his legal counsel send a letter in haste, admitted he did so in part because Dr. Dyce had retained counsel, and agreed to be patient while the dispute with Dr. Dyce was resolved. At this meeting, Dr. Gunnlaugsson commented on how he felt that his compensation was more than reasonable for his work and appreciated that his compensation was above and beyond SCENT's contractual obligation to him.

44. SCENT and Dr. Puchalski asked Dr. Gunnlaugsson to be patient and to allow for the resolution of various corporate issues, including the dispute with Dr. Dyce, and reaffirmed their intent to approve Dr. Gunnlaugsson as a shareholder once those corporate issues had been resolved.

45. In exchange for Dr. Gunnlaugsson's patience and cooperation and in reliance on his representations that he accepted and agreed to the plan put forth by SCENT, SCENT continued to partially perform under its oral agreement with Dr. Gunnlaugsson regarding its intent to offer Dr. Gunnlaugsson a shareholder position and to compensate him at or near the level of SCENT's shareholders.

46. SCENT was under no obligations, contractual or otherwise, to increase Dr. Gunnlaugsson's compensation beyond the levels provided for in his employment agreement.

47. Dr. Gunnlaugsson accepted this compensation and made affirmative representations to SCENT and Dr. Puchalski that he agreed with and understood the plan and the timing of that plan presented to him for eventually becoming a SCENT shareholder, which is evidenced by, among other communications, a January 21, 2010 letter from Dr. Gunnlaugsson's counsel that states they did not anticipate "any formal dispute" and that the

“look forward to hearing the outcome of the negotiations [SCENT’s counsel] mentioned regarding the shareholders’ agreement.”

48. Dr. Dyce was made aware of the communications with Dr. Gunnlaugsson and his counsel and his frustration at not having yet been approved as a shareholder of SCENT. SCENT communicated to Dr. Dyce the need to expeditiously negotiate the shareholders agreement in anticipation of Dr. Gunnlaugsson’s pending admission as a shareholder to avoid the risk SCENT would lose Dr. Gunnlaugsson or become embroiled in a legal dispute with Dr. Gunnlaugsson and asked Dr. Dyce to schedule a series of meetings during the month of February 2010 to discuss his concerns with the new shareholders agreement and to negotiate a final agreement which was mutually acceptable to SCENT and its shareholders.

49. Rather than participating in the effort to negotiate the new shareholders agreement, Dr. Dyce embarked on a systematic and contrived scheme to obstruct SCENT’s business operations and to block any negotiations over the new shareholders agreement. This scheme was evidenced by his actions in refusing to allow the closing on the new SCENT LH building, his failure to approve new capital expenditures for the company, his failure to allow SCENT to change its malpractice carrier to a lower cost provider, and his attendance at a scheduled meeting to discuss the shareholders agreement unprepared and without comments. Dr. Dyce’s scheme culminated in his demand to review the complete history of SCENT’s financial records, including credit card receipts, without any confidentiality restrictions prior to him engaging in any further discussions about the new shareholders agreement despite his knowledge of the various exigencies facing SCENT and SCENT LH .

50. Dr. Dyce’s obstructionist actions and his refusal to negotiate the new shareholders agreement were designed to use Dr. Gunnlaugsson’s potential admission as a

shareholder in SCENT as a point of leverage to block a new shareholders agreement. Not only did Dr. Dyce's actions preclude any resolution of the new shareholders agreement but the cash flow strain placed on SCENT as a result of Dr. Dyce's obstructionist actions resulted in preventing the normal accumulation of financial sweeps in SCENT necessary to finish Dr. Gunnlaugsson's financial qualification as a shareholder of SCENT and precipitated the hostile and aggressive actions of Dr. Gunnlaugsson against SCENT that have ensued.

51. Despite Dr. Dyce's obstructionist actions, Dr. Puchalski continued to meet and communicate with Dr. Gunnlaugsson on multiple occasions to ensure that he remained in agreement with the plan for eventually becoming a shareholder of SCENT.

52. One of those meetings occurred on March 10, 2010 following the meeting in which SCENT terminated Dr. Dyce's employment. At that meeting, Dr. Puchalski, as an officer of SCENT, and SCENT's corporate counsel met with Dr. Gunnlaugsson to explain certain difficulties facing the company as a result of the dispute with Dr. Dyce and the reasons for his termination.

53. During that March 10 meeting, Dr. Puchalski informed Dr. Gunnlaugsson that SCENT would present him with a Shareholders' Agreement and other information relevant to his ability to become a shareholder within 60 days, or by May 9, 2010.

54. In effect, SCENT asked Dr. Gunnlaugsson to accept a condition on his ability to become a shareholder that required him to wait 60 days before being presented with the Shareholders' Agreement and other information relevant to his opportunity to become a SCENT shareholder.

55. At that March 10 meeting, Dr. Gunnlaugsson made knowing and intentionally false representations to SCENT and Dr. Puchalski that he accepted and understood the requirements being requested of him, and that he would comply with those requirements.

56. During the course of the encounters set forth above, Dr. Gunnlaugsson repeatedly represented to SCENT and Dr. Puchalski that he remained in agreement with the plan laid out for him to become a shareholder of SCENT.

57. In continued reliance on those representations and as consideration for Dr. Gunnlaugsson's agreement to the plan put forth by SCENT and Dr. Puchalski, SCENT continued to compensate him at or near the level of SCENT's shareholders, which was significantly in excess of the terms of Dr. Gunnlaugsson's compensation set forth in his employment agreement.

58. Additionally, in order to provide comfort to Dr. Gunnlaugsson and to show its intent that he eventually be allowed to become a shareholder, SCENT and Dr. Puchalski provided Dr. Gunnlaugsson with a great deal of SCENT's sensitive, confidential information. In or around April 2010, to provide further comfort to Dr. Gunnlaugsson, Dr. Puchalski asked one of SCENT's corporate attorneys to attend a meeting to brief him regarding the dispute with Dr. Dyce, and among other things, SCENT's attempts to resolve the dispute with Dr. Dyce.

59. As part of this meeting with SCENT's corporate attorney, Dr. Gunnlaugsson was informed that:

- (a) SCENT had offered to mediate the dispute with Dr. Dyce multiple times, including Dr. Dyce's return to the practice;

- (b) SCENT had agreed to provide Dr. Dyce with a substantial amount of information pursuant to an agreed upon confidentiality agreement once Dr. Dyce executed it;
- (c) SCENT had offered to have an accounting performed for Dr. Dyce; and
- (d) SCENT had offered Dr. Dyce the opportunity to meet with the company's accountants.

60. At no point did Dr. Gunnlaugsson inform SCENT, its attorneys, or Dr. Puchalski that he was conspiring and working with Dr. Dyce to damage SCENT or that he had established a competing practice. To the contrary:

- (a) Dr. Gunnlaugsson falsely indicated that he did not understand Dr. Dyce's behavior and that Dr. Dyce would not talk to him about the dispute;
- (b) Dr. Gunnlaugsson falsely indicated that he had not spoken to his attorney in several months, and that there were no communications between he and Dr. Dyce regarding this dispute, or among their respective attorneys with the exception of one call made by Dr. Dyce's attorney to Dr. Gunnlaugsson's attorney, which he said was rebuffed; and
- (c) Dr. Gunnlaugsson did not inform SCENT, its attorneys, and Dr. Puchalski that he had taken steps to set up a competing medical practice including the formation and registration of Southeastern Ear Nose Throat Allergy and Sleep Disorders Institute, LLC.

61. Just days after this meeting, by letter dated April 23, 2010 from his attorney, Dr. Gunnlaugsson informed SCENT of his intent to leave the practice and that he was

terminating his employment agreement with purported cause effective May 23, 2010. Dr. Gunnlaugsson then filed suit against SCENT and has since opened a competing practice.

62. Through SCENT's informal investigation of this matter and Dr. Gunnlaugsson's separate suit against SCENT, it has become clear that Drs. Dyce and Gunnlaugsson were acting in concert against the interests of SCENT and that Dr. Dyce has breached his fiduciary duty by sharing information, including financial information and corporate governance issues, with Dr. Gunnlaugsson.

63. Although both Drs. Dyce and Gunnlaugsson know full well the importance that SCENT and Dr. Puchalski place on patient care, they have intentionally and maliciously conspired to attempt to trap him in a no-win situation in furtherance of their own personal interests at the expense of Dr. Puchalski and SCENT and without regard for patient care.

64. In addition, Dr. Dyce has begun taking positions with respect to tax-related issues he knows are not accurate in order to provide Dr. Gunnlaugsson with more favorable testimony in his separate matter.

BY WAY OF FIRST COUNTERCLAIM
(Breach of Fiduciary Duty)

65. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

66. Mrs. Curley's disloyal conduct towards SCENT LH violated her fiduciary duty, duty of loyalty, and duty of good faith and fair dealing toward SCENT LH under the common law and statutory law of the State of South Carolina, including but not limited to that found in S.C. Code Ann. § 33-8-20.

67. Mrs. Curley's conduct was the direct and proximate cause of harm to SCENT LH and SCENT LH has suffered damages as a result of that harm.

BY WAY OF SECOND COUNTERCLAIM
(Conspiracy)

68. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

69. Drs. Dyce and Gunnlaugsson were physicians and employees of SCENT. Dr. Dyce was also a shareholder of SCENT and Mrs. Curley was a member of SCENT LH.

70. As part of a scheme to harm SCENT and SCENT LH and wrongfully obtain their confidential information, Dr. Dyce and Mrs. Curley have acted overtly and in concert with others, including, Dr. Gunnlaugsson, with an intent to harm and cause injury to SCENT and SCENT LH by means of:

- (a) Making inappropriate and unlawful demands for confidential and proprietary corporate information;
- (b) Falsely stating that SCENT and SCENT LH would not provide requested information;
- (c) Threatening to report SCENT and Dr. Robert Puchalski to the South Carolina Board of Medical Examiners, the American Medical Association, and other authorities following termination of their respective employments with SCENT in order to gain an advantage in litigation and negotiations regarding their departure from SCENT;

- (d) Orchestrating multiple failures of the real estate closing on SCENT's new building in Lugoff in an attempt to weaken the practice, and which resulted in a third party placing a mechanic's lien upon that building;
- (e) Making knowing and intentionally false statements to SCENT and Dr. Puchalski about their intentions with respect to Dr. Gunnlaugsson becoming a shareholder with SCENT;
- (f) Inducing SCENT and Dr. Puchalski to increase and continue to provide elevated levels of compensation based on intentional misrepresentations and falsehoods; and
- (g) Obtaining confidential and proprietary information from SCENT and SCENT LH under false pretenses and based on knowing and intentionally false statements.

71. Dr. Dyce's and Mrs. Curley's overt acts described above caused SCENT and SCENT LH special damages that they would not otherwise have suffered but for the conspiracy, including, but not limited to, the diminution of market value for remaining SCENT stockholders, loss of dividends, damage to business reputation, loss of corporate opportunities, and damage to corporate good will.

BY WAY OF THIRD COUNTERCLAIM
(Interference with a Contractual Relationship)

72. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

73. As set forth more fully above, SCENT had an employment contract with Dr. Gunnlaugsson.

74. SCENT LH had an agreement to pay back the loan made by SCENT.

75. SCENT LH had agreements with various contractors relating to their work on SCENT's new office building.

76. Dr. Dyce and Mrs. Curley had knowledge of these contracts.

77. Dr. Dyce and Mrs. Curley intentionally breached or sought the breach of these contracts by failing to agree to the permanent financing on SCENT's new office building sought by SCENT LH and by conspiring with Dr. Gunnlaugsson to injure SCENT's practice.

78. Dr. Dyce's and Mrs. Curley's actions in this regard were not justified.

79. SCENT and SCENT LH suffered damages as a result.

BY WAY OF FOURTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

80. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

81. Dr. Dyce's and Mrs. Curley's trade practices were unfair and deceptive. Their conduct constitutes unfair or deceptive acts or practices in the conduct of trade or commerce as prohibited by Section 39-5-20 of the South Carolina Code.

82. Dr. Dyce's and Mrs. Curley's unfair and deceptive practices impact the public generally in that they affect SCENT's ability to serve its patients and SCENT LH's ability to pay back its lenders and contractors.

83. Upon information and belief, Dr. Dyce's and Mrs. Curley's unfair and deceptive practices have occurred on other occasions and/or are continuing to reoccur without deterrence.

84. As a result of Dr. Dyce's and Mrs. Curley's unfair and deceptive practices, willfully committed by them, SCENT and SCENT LH are entitled to recover under the South Carolina Unfair Trade Practices Act three times actual damages, all litigation costs, and attorney's fees.

WHEREFORE, having asserted the counterclaims above, and having asserted the Counterclaims above, SCENT prays that the Court dismiss the Complaint with prejudice, on all counts, and provide the following relief:

- (a) actual, compensatory, consequential and punitive damages;
- (b) judgment and post-judgment interest at lawful rates; and
- (c) attorneys' fees and costs expended in the defense of this action;
- (d) such other and further relief as the Court may deem just and proper.

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Attorneys for Defendant SCENT

October 5, 2010

Columbia, South Carolina

EXHIBIT 1

CONSENT

The undersigned shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. (the "Company") hereby adopts this consent as of the 3rd day of March:

WHEREAS, the undersigned Shareholder is the Managing Shareholder of the Company;

WHEREAS, in contemplation of another Shareholder possibly joining the Company, the Managing Shareholder proposed certain corporate governance changes to be discussed with Dr. Orville Dyce (the "Other Shareholder");

WHEREAS, since that time, instead of discussing these proposed changes in a constructive fashion, the Managing Shareholder believes that the Other Shareholder has acted against the best interests of the Company and has made it clear both personally and through counsel that he will make the operating of the Company more difficult in order to exert leverage regarding his personal negotiations with the Company;

WHEREAS, the Managing Shareholder is concerned about the damage that these actions will have on the Company;

WHEREAS, the Managing Shareholder believes that the Other Shareholder is also preventing the closing of the loan regarding the partially constructed building for the Company by SCENT Land Holdings, LLC (the "Landholding Company") in order to exert leverage regarding his personal negotiations with the Company;

WHEREAS, this has resulted in the filing of a mechanic's lien regarding the building and is damaging the Company's ability to obtain the building and is impacting the Company's reputation;

WHEREAS, the Managing Shareholder is becoming increasingly concerned that the actions of the Other Shareholder will damage the Company;

NOW, THEREFORE, BE IT RESOLVED, that in accordance with Section 3.3.2 of the Shareholders Agreement by and among the Company, the Managing Shareholder and the Other Shareholder and Section 2.3(c) of the Other Shareholder's Employment Agreement dated as of June 1, 2008, the Managing Shareholder hereby terminates the employment of the Other Shareholder without cause, with such termination being effective in sixty (60) days (i.e., May 2, 2010);

FURTHER RESOLVED, that this termination constitutes as the date hereof an Event of Departure as contemplated in Section 4.5 of the Shareholders Agreement;

FURTHER RESOLVED, that the Company, the Managing Shareholder and the Other Shareholder shall work closely together to ensure that the termination is as smooth as possible to all parties involved and to ensure that patient care is not impacted;

FURTHER RESOLVED, the Company shall honor its obligations to the Other Shareholder to purchase his shares in accordance with the Shareholders Agreement and to otherwise honor its other obligations under the Shareholders Agreement;

FURTHER RESOLVED, that if the Other Shareholder would like to do so, the Company and the Managing Shareholder are willing to engage in mediation to discuss the details surrounding the termination or a possible rescission of this termination on mutually agreeable terms;

FURTHER RESOLVED, that the Managing Shareholder deeply regrets this decision as the Managing Shareholder greatly values his personal and professional relationship with the Other Shareholder but believes that this action is required for the best interests of the Company in light of the Other Shareholder's sudden and unusual behavior that the Managing Shareholder believes is damaging the Company and the Landholding Company.

IN WITNESS WHEREOF, the undersigned shareholder has executed this Consent as of the 3rd day of March, 2010.

By:


Dr. Robert Puchalski

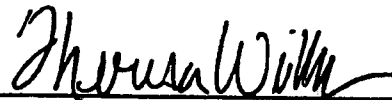
Acknowledgement of Receipt

The undersigned hereby acknowledge receipt of this Consent as of the 3rd day of March, 2010.

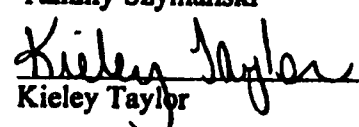
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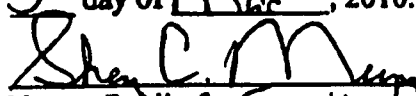
Witness


Theresa Williams


Tammy Skymanski


Kieley Taylor

Subscribed and sworn to me this
3rd day of Mar, 2010.


Notary Public for South Carolina
My Commission Expires on 7-10-2013

-Doc# 6152564.1-

EXHIBIT 2

From: Robert Puchalski <RPuchalski@southcarolinaent.com>

To: Dr Dyce <Odyce@southcarolinaent.com>; orville dyce <odyce@yahoo.com>

Sent: Wed, March 10, 2010 7:21:00 PM

Subject: Board Meeting

Orville:

I am very disappointed and surprised that our long relationship has come to this unpleasant point. Quite honestly, I still don't understand how we got here and how so many other people have come between us. I feel that we have always enjoyed a sincere and courteous personal and professional relationship. Although I know you must be thinking very negatively about me, please know that I would like nothing more than to regain this in the future, if possible.

Until your termination, we were in an untenable situation which was severely restraining the practice and clearly placing its good reputation and viability in grave jeopardy. We no longer can seem to agree on anything as simple as paying debts, saving money on medical malpractice, or maintaining confidentiality. Without doubt, this situation has stalled two companies and diverted important time and resources away from ongoing practice initiatives. In particular, I was concerned about ongoing practice operations, construction on the new building, Chad's partnership, and the Ambulatory Surgery Center. I have tried to engage you through meetings, phone conversations,

and emails with no success. I have resorted to begging at times. I don't know why we haven't been able to constructively engage each other to resolve our differences, but I feel confident that I have tried my best to do it.

I have always enjoyed working with you, whether it was as your co-resident, your employer, or your partner. In my opinion, however, recently it seems as though your attorneys are running the practice and controlling the new building from Philadelphia. I believe your attorneys are playing games and their advice to you is damaging the practice in the process. Not only is this unacceptable now, but it has made me realize how important it is to protect the practice from this type of behavior in the future. The past few weeks have further convinced me that we need to make certain changes to make sure what has happened over the past few weeks does not happen again.

I am recommending that we engage a professional mediator to work with us to see if we can talk through the issues that have been raised to see if we can find common ground and quiet resolution. I'm sure that you would agree that we need to either find a way to address the outstanding issues and run the practice effectively or we need to part ways. Either way, I intend to treat you fairly and want to make sure the practice's patients are properly taken care of.

In this regard, although it was very difficult for me personally and professionally, as the managing shareholder, I did not feel like I had any choice but to terminate you from the practice. If the current situation was allowed to continue, I am convinced that there would be no practice left to defend.

Although I took this action last Wednesday, because I just notified you today, the termination will be extended to be effective May 9, 2010 (60 days from today).

As I said before, I personally don't want to quit practicing with you. Therefore, between now and May 9, 2010, I am recommending that we submit to non-binding mediation to see if we can reach an amicable solution that does not require the termination to become effective (in other words, your employment agreement and your status as a shareholder could be reinstated). An amicable resolution will depend upon you honoring your confidentiality obligations to the practice and that you do not engage in any activity that damages the practice.

3/22/2010
17/0

I am sorry and disappointed that it has come to this. Knowing and respecting you, the current situation makes absolutely no sense to me but I had to act in what I believe to be in the best interests of the practice.

The bottom line is this will be resolved in one of two ways - we either will find a way to work together or we will part ways - the choice is yours as to how we will proceed from this point. My recommendation to you is that you consider how much time and money we will spend and the pain we will endure before this gets resolved. In this regard, it will be me, you and the practice that spends the time and money and endures the pain, not your attorneys.

The door towards reconciliation remains completely open on this end. I hope you can put aside the emotion you must be feeling towards me now and walk through it. I will keep the details of our Board meeting confidential in the immediate future until you make a decision.

Robert Puchalski, MD
Managing Shareholder
South Carolina ENT, Allergy & Sleep Medicine, PA
www.SouthCarolinaENT.com



Confidentiality and Disclosure Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. All comments made are strictly those of Robert Puchalski, MD and not necessarily those of South Carolina ENT, Allergy, and Sleep Medicine, PA.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify

3/22/2010

171

EXHIBIT 3

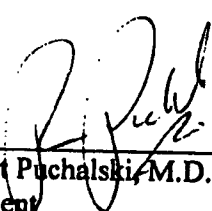
OFFER OF WORK AFFIDAVIT

Personally appeared before me, Robert Puchalski, M.D., who, being duly sworn, says he is employed by South Carolina ENT, Allergy & Sleep Medicine, P.A., 1165 Highway 1 S, Suite 300, Lugoff, SC 29078, as President, and is authorized to make this affidavit.

That on the 11th day of August, 2010, he made a written offer of work by registered/certified mail to Orville H. Dyce, M.D, 083-64-2427, 401 Woodland Drive, Hartsville, SC 29550 that confirmed a previous offer of work. That this offer of work was for work as a Physician with South Carolina ENT, Allergy & Sleep Medicine, P.A., 1165 Highway 1 S, Suite 300, Lugoff, SC 29078, with pay and hours commiserate with his previous pay and hours. A copy of this offer letter is attached.

The nature of the work offered was at-will.

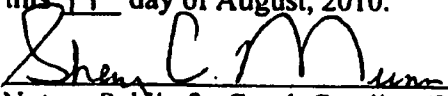
Reason given by claimant for refusal to accept offer of work (if known): Not known



Robert Puchalski, M.D.
President
South Carolina ENT, Allergy & Sleep Medicine, P.A.

SWORN to and subscribed before me

this 11th day of August, 2010.



Notary Public for South Carolina (L.S.)

My Commission Expires: 7-13-2011

-44835-8535-5782 v 1-

Orville H. Dyce, M.D.
401 Woodland Drive
Hartsville, SC 29550

Dear Orville:

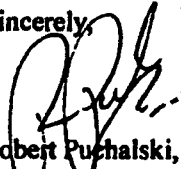
As previously discussed, and in accordance with Regulation 47-23, Offers of Work, of the South Carolina Code of Regulations, this letter confirms the offer by South Carolina ENT, Allergy and Sleep Medicine, P.A. ("SCENT"), to employ you as a physician on an at-will basis as follows:

1. You would be an at-will employee of SCENT, working as a physician for SCENT.
2. You would be paid commiserate with what you were being paid prior to your previous termination.
3. Your hours and other conditions of employment, such as call, would be commiserate with what they were prior to your previous termination, subject to our mutually agreeing upon any modifications requested by you.
4. You would begin work as soon as possible. You and I would discuss the specific details of your return to the practice. I will be glad to discuss with you reports and other processes we can implement to ensure you are receiving any requested information and having appropriate input.
5. The parties mutually agree that your being re-employed as an at-will employee will have no impact, and will not be used by either party to try and impact, the consequences of your previous termination of employment on your status as a shareholder. These are issues that we can address after you return to work.

Orville, SCENT would very much like for you to return to work and believe that your talent and skills are far too valuable for you to be collecting unemployment benefits. SCENT and I are very hopeful that you will accept this offer of employment.

If you would like to accept this offer, please sign below where indicated, and we can discuss the specific details of your return to the practice. This offer of employment will expire at the end of the day on August 31, 2010.

Sincerely,



Robert Puchalski, M.D.
President

Accepted and agreed:

Orville H. Dyce, M.D.

CERTIFICATE OF SERVICE

I, Daniel R. D'Alberto, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorney for SCENT Land Holdings, LLC do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, and by email to the following address(es):

PLEADINGS:

DEFENDANT SCENT LAND HOLDINGS, LLC'S MOTION TO AMEND ANSWER

Counsel Served:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee, P.A.
5 Exchange Street
Charleston, SC 29401

Roy F. Laney, Esq.
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205

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2010 OCT -5 PM 4:06
CLERK OF COURT
S.C.


Daniel R. D'Alberto

October 5, 2010

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ORVILLE DYCE,

Plaintiff,

v.

SOUTH CAROLINA ENT, ALLERGY &
SLEEP MEDICINE, P.A.,
AND ROBERT PUCHALSKI,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 10-CP-28-223

AMENDED SUMMONS

(Non-Jury)

(Declaratory Judgment)

(Accounting)

(Damages Pursuant to S.C. Code Ann. § 33-18-

410(a)(9))

(Breach of 2008 Shareholders' Agreement)

(Breach of Contract Accompanied by a
Fraudulent Act)

(Breach of Fiduciary Duty)

Wage Statute

S. C. Code. Ann. § 41-10-10 et. seq.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscriber, Morris A. Ellison, Esquire, at his office at 5 Exchange Street, Charleston, South Carolina 29401, within thirty (30) days after service hereof, exclusive of the day of said service; and if you fail to answer the said Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

WOMBLE CARLYLE SANDRIDGE & RICE


Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

October 17, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ORVILLE DYCE,

Plaintiff,

v.

SOUTH CAROLINA ENT, ALLERGY &
SLEEP MEDICINE, P.A.,
AND ROBERT PUCHALSKI,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 10-CP-20323

) **AMENDED COMPLAINT**

) (Non-Jury)

) (Declaratory Judgment)

) (Accounting)

) (Damages Pursuant to S.C. Code Ann. § 33-18-
) 410(a)(9))

) (Breach of 2008 Shareholders' Agreement)

) (Breach of Contract Accompanied by a
) Fraudulent Act)

) (Breach of Fiduciary Duty)

) Wage Statute

) S. C. Code. Ann. § 41-10-10 et. seq.)

Plaintiff, Orville Dyce, (the "**Plaintiff**"), by and through his undersigned attorneys,
respectfully alleges and says as follows:

1. Plaintiff is a citizen and resident of Darlington County, South Carolina.
2. Defendant, South Carolina ENT, Allergy & Sleep Medicine, P.A., ("**SCENT**" or the "**Corporation**"), is a statutory close corporation organized and existing under the laws of the State of South Carolina with its principal place of business is in Kershaw County, South Carolina.
3. Defendant Robert Puchalski ("**Puchalski**" or the "**President**") is a citizen and resident of Kershaw County, South Carolina.

FACTS

4. The Articles of Incorporation for SCENT were filed on November 5, 2004 and amended on June 10, 2008.

5. The principal purpose of SCENT is to render services in connection with the practice of otolaryngology.

WCSR 6701740v5 10/17/2011

6. On or about March 1, 2007, Plaintiff became a shareholder of SCENT.
7. On or about August 31, 2007, Plaintiff, Puchalski and SCENT entered into a Shareholders' Agreement (the "**2007 Shareholders' Agreement**"), a copy of which is attached hereto and incorporated here in by reference as **Exhibit "A"**.
8. On or about July 16, 2008, Plaintiff, Puchalski and SCENT entered into another Shareholders' Agreement (the "**2008 Shareholders' Agreement**"), a copy of which is attached hereto and incorporated here in by reference as **Exhibit "B"**.
9. Pursuant to the terms of Section 8.1 of the 2008 Shareholders' Agreement "[a]ll other agreements dated prior to the date of this Agreement are hereby superseded in their entirety by the terms and conditions of this Agreement. . ."
10. Plaintiff and SCENT entered into an Employment Agreement effective as of June 1, 2008 (the "**Employment Agreement**").
11. Puchalski is, and, at all times relevant hereto was, the Managing Shareholder of SCENT. Pursuant to the terms of the 2008 Shareholders' Agreement, Puchalski as the Managing Shareholder, also occupied the office of the President of SCENT.
12. Puchalski is, and at all time relevant hereto was, also the Treasurer of SCENT.
13. Article III, Section 3.4.4 of the 2008 Shareholders' Agreement charges Puchalski, as the President and Managing Shareholder of SCENT, with, among other things, supervising and controlling all of the business affairs of SCENT.
14. Article III, Section 3.4.7 of the 2008 Shareholders' Agreement, charges Puchalski as the Treasurer of SCENT, with, among other things, "(a) hav[ing] charge and custody of and be[ing] responsible for all funds and security of [SCENT]; (b) receiv[ing] and giv[ing] receipts

of moneys due and payable to [SCENT] from any source whatsoever and deposit[ing] all such moneys in the name of [SCENT] in such banks, trust companies or other depositories as shall be selected by the Shareholders; and (c) in general perform[ing] all of the duties incident to the office of Treasurer . . .”

15. Plaintiff is informed and believes Puchalski, as President and Treasurer of SCENT, is in control of, and has sole access to, SCENT’s books and records.

16. On numerous occasions in December 2009 and 2010, Plaintiff, personally and through his counsel, notified Puchalski and/or Puchalski’s counsel, both orally and in writing, that Plaintiff requested access to, and copies of, SCENT’s corporate information, including, without limitation, financial information and other documents concerning the Corporation.

17. At all time relevant hereto, Plaintiff’s demands for documents were made in good faith and for a proper purpose. At the time of making his demands, Plaintiff described with reasonable particularity his purpose for requesting the records and the records he desired to inspect. The requested records were necessary to and directly connected to Plaintiff’s purposes.

18. Although Defendants have produced some documents requested by the Plaintiff, some of the documents to which Plaintiff is entitled have not been produced.

19. Plaintiff is informed and believes that the Defendant Puchalski committed illegal, oppressive, fraudulent and unfairly prejudicial acts including, without limitation, misappropriating SCENT assets and charging personal expenses to SCENT.

20. On or about May 9, 2010, Defendant Pulchalski terminated Plaintiff’s employment with SCENT.

21. Section 4.4 of the 2008 Shareholders' Agreement entitled "Compulsory Redemption of Stock Upon Termination of Employment," provides, in pertinent part:

If a Shareholder's Employment Agreement is terminated: (i) by the Corporation pursuant to Section 2.2 of the Shareholder's Employment Agreement; (ii) by the Shareholder pursuant to Paragraph 2.3 of the Shareholder's Employment Agreement. . . the Corporation shall purchase such Departing Shareholder's Shares in the Corporation in exchange for payment as provided in Section 4.5, 4.6 and 4.7 of this Agreement.

22. Upon Dyce's termination, Defendants were required to purchase Dyce's shares in SCENT pursuant to the terms and conditions of the 2008 Shareholders' Agreement.

23. In direct contravention to the 2008 Shareholders' Agreement, despite Dyce's demand that Defendants purchase his shares in SCENT, Defendants failed to purchase Dyce's shares in SCENT.

24. On numerous occasions, Plaintiff, through his counsel, demanded SCENT's counsel both orally and in writing, that Defendants purchase Plaintiff's shares in SCENT as of May 9, 2010 in accordance with the terms and provisions of the 2008 Shareholders' Agreement.

25. Despite such demands, Defendants have refused and continue to refuse to purchase the Plaintiff's shares in SCENT.

26. Plaintiff has not been able to determine the amount of payment due to him under the formula set forth in Section 4.4 of the 2008 Shareholders' Agreement because Defendant Puchalski has not provided Plaintiff complete access to SCENT's books and records and has not provided him all of the requested documents.

27. As a result of the Defendants' actions set forth above, Plaintiff has been forced to institute this action to seek judicial assistance to enforce his rights.

FOR A FIRST CAUSE OF ACTION AS TO THE DEFENDANTS
(Declaratory Judgment)

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 28 above as if set forth fully herein.

29. Plaintiff brings this cause of action pursuant to the terms of the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. seq., seeking a declaration of rights, duties and other legal relations by and among the Plaintiff and the Defendants under the South Carolina Business Corporation Act, S.C. Code Ann. § 33-1-101, et. seq. and the 2008 Shareholders' Agreement.

30. S.C. Code Ann. § 33-16-102 & 103 provides that a shareholder of a corporation has a right to inspect, review and copy certain corporate records.

31. Defendants have violated the South Carolina Business Corporation Act, S.C. Code Ann. S.C. Code Ann. § 33-16-102 & 103 & 200, by failing to provide Plaintiff with SCENT information and documents which he requested and to which he is entitled.

32. Defendants' conduct in refusing to provide the information requested is illegal, oppressive, fraudulent and unfairly prejudicial to the Plaintiff and as such constitutes a violation of S.C. Code Ann. § 33-18-400(a)(1).

33. In refusing to provide the information requested, the Defendants have acted arbitrarily, vexatiously and in bad faith.

34. Pursuant to S.C. Code Ann. § 33-18-410(a)(1), Plaintiff is entitled to an order requiring the Defendants to produce the requested documents.

35. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

FOR A SECOND CAUSE OF ACTION AS TO THE DEFENDANTS
(Accounting)

36. Plaintiff repeats and realleges the allegations of paragraphs 1 through 36 above as if set forth fully herein.

37. Puchalski has engaged in a series of wrongful, illegal, oppressive, fraudulent and unfairly prejudicial conduct that includes, but is not limited to: (i) mismanaging corporate affairs; (ii) misappropriating SCENT's assets; (iii) charging personal expenses to SCENT; and, (iv) refusing to provide Plaintiff with SCENT's books and records, which Plaintiff has requested, to which he is entitled and which are necessary to reveal the full nature and extent of Puchalski's wrongdoing and as such constitutes a violation of S.C. Code Ann. § 33-18-400(a)(1).

38. Puchalski, as President, Manager and Treasurer of SCENT, is accountable to the Plaintiff for his conduct relating to SCENT.

39. The facts and circumstances alleged in this Amended Complaint render it fair and equitable for Defendants to account to Plaintiff for all financial activities of SCENT since the formation of SCENT pursuant to S.C Code Ann. § 33-18-410(a) (1) & (5). Plaintiff is entitled to an accounting that includes, but is not limited to, all direct or indirect payments, distributions or other types of compensation made in any form to or for the benefit of the directors, officers, and shareholders of SCENT.

40. Plaintiff and his counsel, both orally and in writing, have repeatedly demanded that Plaintiff have access to SCENT books and records, and Defendants have failed to produce all of the requested books and records of SCENT.

41. Defendants have acted arbitrarily, vexatiously and in bad faith as shown by their actions set forth more fully above.

42. Pursuant to S.C. Code Ann. §§ 33-18-410(a)(1) & (5), Plaintiff is entitled to an order of judgment against Defendants for an accounting.

43. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

FOR A THIRD CAUSE OF ACTION AS TO THE DEFENDANTS
(Damages Pursuant to S.C. Code Ann. § 33-18-410(a)(9))

44. Plaintiff repeats and realleges the allegations of paragraphs 1 through 44 above as if set forth fully herein.

45. Puchalski's has engaged in a series of wrongful, illegal, oppressive, fraudulent and unfairly prejudicial conduct as described above and his acts are in violation of S.C. Code Ann. § 33-18-400(a)(1).

46. Plaintiff is entitled to reimbursement from Defendants for all funds, monies, assets and property wrongfully taken by Puchalski which is duly owed and belongs to Plaintiff.

47. Defendants have acted arbitrarily, vexatiously and in bad faith as shown by their conduct set forth above.

48. Pursuant to S.C. Code Ann. § 33-18-410(a)(9), Plaintiff is entitled to judgment against Defendants for damages.

49. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

FOR A FOURTH CAUSE OF ACTION AS TO THE DEFENDANTS
(Breach of 2008 Shareholders' Agreement)

50. Plaintiff repeats and realleges the allegations of paragraphs 1 through 50 above as if set forth fully herein.

51. Defendants breached the 2008 Shareholders' Agreement by, without limitation, failing to purchase Dyce's shares in SCENT in exchange for payment as of May 9, 2010 in direct contravention to the mandates of Section 4.4 of the 2008 Shareholders' Agreement entitled "Compulsory Redemption of Stock Upon Termination of Employment."

52. As a direct and proximate result of the Defendants' breach, the Plaintiff has suffered substantial losses all in amounts to be determined by the trier of fact.

53. Plaintiff is entitled to judgment against the Defendants for the damages he incurred plus his attorneys' fees and costs pursuant to the terms of the 2008 Shareholders' Agreement.

FOR A FIFTH CAUSE OF ACTION AS TO THE DEFENDANTS
(Breach of Contract Accompanied by a Fraudulent Act)

54. Plaintiff repeats and realleges the allegations of paragraphs 1 through 54 above as if set forth fully herein.

55. Defendants' breach of the 2008 Shareholders by their wrongful failure to pay Plaintiff the amounts owed to him under the terms and provisions Section 4.4 of the 2008 Shareholders' Agreement was accompanied by Defendant Puchalski's fraudulent act in, without limitation, failing to provide Plaintiff complete and accurate SCENT financial information to preclude Plaintiff from calculating the amounts owed to him under the terms and provisions of the 2008 Shareholders' Agreement.

56. As a direct and proximate result of Puchalski's breach of the 2008 Shareholders' Agreement accompanied by his fraudulent act, Plaintiff has suffered actual damages.

57. Accordingly, Plaintiff is entitled to judgment against Defendants and the recovery of Plaintiff's actual damages, punitive damages, and such other relieve that the Court shall deem appropriate.

FOR A SIXTH CAUSE OF ACTION AS TO THE DEFENDANT PUCHALSKI
(Breach of Fiduciary Duty)

58. Plaintiff repeats and realleges the allegations of paragraphs 1 through 58 above as if set forth fully herein.

59. At all times relevant hereto, the Defendant Pulchalski, as Manger, President, and Treasurer of SCENT owed the highest fiduciary duties of loyalty, honesty and care to the Plaintiff.

60. Upon information and belief, during the time that the Plaintiff was a Shareholder of SCENT, Defendant Pulchalski breached his fiduciary duties to the Plaintiff by, without limitation, wrongfully (i) mismanaging corporate affairs; (ii) misappropriating SCENT's assets; (iii) charging personal expenses to SCENT; and, (iv) failing to redeem the Plaintiff's stock in SCENT upon his termination.

61. Defendant Pulchalski breached his fiduciary duties of loyalty, honesty and care owed to the Plaintiff.

62. As a direct result of Defendant Pulchalski's breach of his fiduciary duties to the Plaintiff, the Plaintiff is entitled to judgment against Defendants for actual and punitive damages in amounts to be determined by the trier of fact.

FOR A SEVENTH CAUSE OF ACTION AS TO THE DEFENDANTS
(Violation of S.C. Payment of Wage Statute S.C. Code Ann. § 41-10-10, et. seq.)

63. Plaintiff repeats and realleges the allegations of paragraphs 1 through 63 above as if set forth fully herein.

64. Upon information and belief, at the time of Plaintiff's purported termination, he was owed wages, as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et. seq.

65. Defendant Pulchalski, as an officer and agent of SCENT, knowingly permitted SCENT to violate the Act and is therefore individually liable under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10, et. seq. along with Defendant SCENT.

66. Defendants actions in not paying Plaintiff all wages due to him at the time of his termination was intentional, wrongful and in bad faith in violation of S.C. Code Ann. § 41-10-80.

67. Plaintiff is entitled to payment of all wages owed, plus treble damages and attorneys' fees, and all other relief available under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10, et. seq.

WHEREFORE, Plaintiff requests that this Court order the following relief:

(A) That this Court inquire into the matters and things hereinabove alleged and that this Court determine the rights of the parties hereto;

(B) As to First Cause of Action, judgment that Defendants shall provide the Plaintiff access to and the right to copy all South Carolina ENT, Allergy & Sleep Medicine, P.A. requested books and records and award Plaintiff his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

(C) As to the Second Cause of Action, judgment that the Defendants, South Carolina ENT, Allergy & Sleep Medicine, P.A., and Robert Puchalski, be directed to fully account for the disposition of the funds, monies, assets and property of South Carolina ENT, Allergy & Sleep Medicine, P.A., and his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

(D) As to the Third Cause of Action, judgment for Plaintiff for his actual damages and his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

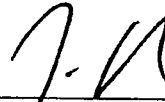
(E) As to the Fourth Cause of Action, judgment for Plaintiff for his actual damages, costs and attorneys' fees pursuant to the 2008 Shareholders' Agreement;

(F) As to the Fifth and Sixth Causes of Action judgment for Plaintiff for his actual damages, punitive damages, costs and attorneys' fees;

(G) As an Seventh Cause of Action, judgment for Plaintiff for his actual damages, treble damages, attorneys fees, costs and all other remedies allowed under S.C. Code § 41-10-10, et. seq.; and,

(H) That Plaintiff receives such other and further relief as this Court deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE



Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

October 17, 2011
Charleston, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on the 17th day of October, 2011, I served a copy of the *Amended Summons and Amended Complaint* upon counsel of record by sending a copy of the same via regular mail in an envelope with the correct postage prepaid addressed to:

Vincent A. Sheheen, Esq.
Savage Royall & Sheheen, LLP
P.O. Drawer 10
1111 Church Street
Camden, SC 29020

Roy F. Laney, Esq.
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205

FILED FOR RECORD
2011 OCT 21 PM 1:13
CLERK OF COURT
KERSHAW COUNTY, S.C.

Carol Casey
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

STATE OF SOUTH CAROLINA)
) SHAREHOLDER'S AGREEMENT
COUNTY OF KERSHAW)

This Agreement is entered into this 31st day of August, 2007, by and between Robert Puchalski, M.D. and Orville Dyce, M.D. as the shareholders of South Carolina Ear, Nose, Throat & Facial Plastic Surgery, Inc.

WITNESSETH:

1. NAME: The name of this Corporation is South Carolina Ear, Nose, Throat & Facial Plastic Surgery, Inc., which is a Statutory Close Corporation, organized and existing under the laws of the State of South Carolina and incorporated on November 5, 2004.

2. MANAGEMENT: The management of the Corporation shall be with the consent of all shareholders. At its annual meeting each year in the Fall, the shareholders shall elect a President, Vice-President, Secretary and Treasurer. The shareholders shall also designate, by proper resolution, a "designated director" pursuant to S.C. Code Section 33-18-210(o)(5) for the purposes of signing corporate documents that may be required in the usual and regular course of business. The term "managing shareholder" shall also refer to the President of the Corporation.

3. MEETINGS: The Corporation shall not be required to elect a board of directors but shall hold an annual meeting. A meeting of the shareholders may be called at any time by an officer or shareholder, upon ten (10) days written notice to each shareholder. Notice of such meetings may be waived in writing by each shareholder.

- 1 -



DYCE/SCENT 1

4. VOTING: Each shareholder shall have one (1) vote per share of stock owned in the Corporation. Properly executed proxies may be voted on any matter to come before the Corporation.

5. DUTIES, AUTHORITY, LIMITATIONS & COMPENSATION: The duties, authority, limitations and compensation of officers and employees shall be determined by the majority vote of the shareholders.

6. STOCK: Stock Certificates are to be issued in return for value received by the Corporation, upon the signature of the President and Secretary. The shares of stock in this Corporation may not voluntarily or involuntarily be transferred except as provided in South Carolina Law or as modified by the parties' agreement entitled "Stock Purchase Agreement" dated 31st day of August, 2007.

7. LOANS TO AND FROM SHAREHOLDERS: No shareholder shall have any obligation to make contributions to the Corporation other than those as mutually agreed upon. Any shareholder that makes a loan to the Corporation shall do so in writing with such loan not effective unless authorized by the President of the Corporation.

8. SHAREHOLDER GUARANTEES OF CORPORATION OBLIGATIONS: If required, shareholders of the Corporation shall execute whatever guarantees are necessary to secure the obligations of the Corporation upon a majority vote of the shareholders.

9. ALLOCATIONS OF PROFITS AND LOSSES: The shareholders shall be entitled to an allocation of the Corporation's profits and losses, to allocations of the Corporation's assets and to a distribution of such profits and assets as can be agreed upon by a majority vote of the shareholders. In any case, the profits of the Corporation will be

distributed on an annual basis unless the shareholders agree by majority vote not to distribute such profits.

10. HIRING AND FIRING OF EMPLOYEES OF THE CORPORATION: The shareholders agree the managing shareholder shall not hire or fire any employee of the Corporation at the director level or above, physician extenders, physicians or practice manager without consultation with all shareholders and by agreement of the majority of the shareholders. The managing shareholder may hire or terminate any other employee of the Corporation without consultation with other shareholders.

11. CAPITAL EXPENDITURES: The managing shareholder shall not be entitled to expend any of the cash or assets of the Corporation or incur any debt above five thousand and no/100 (\$5,000.00) dollars without consultation with all shareholders and a majority agreement of those shareholders.

12. FEES PROPERTY OF THE CORPORATION: The shareholders agree that all monies or fees earned by them in the course of the practice of their profession as employees of the Corporation with the exception of medical directorships individually entered into by shareholders or for any fees earned for speaking engagements, shall be the sole and exclusive property of the Corporation.

13. NO DUTY TO RECORD DECISIONS: The managing shareholder shall have no duty to record in writing or otherwise any decision of the managing shareholder and the managing shareholder's failure to make such record shall not impair the validity of such decision.

14. DISSOLUTION OF THE CORPORATION: Dissolution of the Corporation may occur upon majority vote of the outstanding shares of the Corporation. Upon a determination by the majority of the shareholders to dissolve the Corporation, all shareholders shall cooperate in the winding up of the affairs of the Corporation and liquidation and distribution of the proceeds of the sale or disposition of the assets of the Corporation to creditors and then to shareholders in accordance with their respective ownership in the Corporation. The managing shareholder shall cause to be filed a certificate of dissolution with the Secretary of State upon the completion of the winding up of the affairs of the Corporation. The certificate of dissolution shall set forth the effective date of the cancellation of the Corporation's termination.

15. ENTIRE AGREEMENT: This agreement shall contain the complete agreement between the parties concerning its subject matter and replaces all earlier agreements between the shareholders, whether written or oral, concerning the subject matter of this agreement.

16. AMENDMENTS: No amendment to this agreement shall be valid unless set forth in writing and signed by a majority of the shareholders.

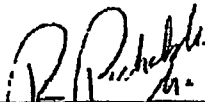
17. NOTICES: All notices to this agreement shall be in writing and sent by fax or mailed to the parties at the respective address which is set forth in this agreement.

18. GOVERNING LAW: This agreement shall be governed exclusively by the laws of the State of South Carolina. Venue for any action brought pursuant to this agreement or the articles of incorporation shall be in Kershaw County, South Carolina.

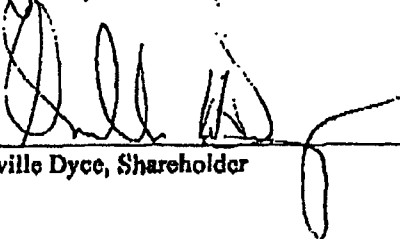
IN WITNESS WHEREOF, we have hereunder set our Hands and Seals this 31st
day of August, 2007.

In the presence of:





Robert Puchalski, Shareholder



Orville Dyce, Shareholder

Amended Shareholders August.wpd

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE ANN. § 15-48-10, et seq.

SHAREHOLDERS' AGREEMENT

BY AND AMONG

SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A.

AND

ITS

SHAREHOLDERS

1207429
-Doc# 5989473.10-



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"Bankruptcy" shall mean, with respect to any Person, that such Person has: (i) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian or the like, of his property; (ii) admitted in writing his inability to pay his debts generally as they become due; (iii) made a general assignment for the benefit of his creditors; (iv) been adjudicated a bankrupt or insolvent; (v) commenced a voluntary case under the federal bankruptcy laws of the United States of America; (vi) filed a voluntary petition or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law; or (vii) filed an answer admitting the material allegation of a petition filed against him in any bankruptcy or insolvency proceeding. For the purpose of any provision contained in this Agreement requiring reference to the date on which a bankruptcy has occurred, a bankruptcy shall be deemed to have occurred upon the commencement of the first to occur of any one of the foregoing enumerated events.

"Bylaws" means the Corporation's Bylaws, as in effect on the date hereof, as amended, supplemented or modified from time to time, in accordance with its provisions.

"Code" shall mean the Federal Internal Revenue Code of 1986, as the same may be amended from time to time.

"Common Stock" shall have the meaning set forth in the recitals.

"Corporation" shall have the meaning set forth in the preamble.

"Departing Shareholder" shall mean a Shareholder who is Transferring Shares in accordance with any provision of this Agreement, including by virtue of a permitted sale, or as a result of death, disqualification, termination of employment or Permanent Disability. Where applicable, Departing Shareholder shall also mean the personal representative of a deceased Shareholder.

"Departure Event" is any event described in Section 4.2, 4.3 and 4.4.

"Disability" is the inability of Shareholder to perform the usual and customary duties of a physician employed in a full-time medical practice, as such term is defined in any Disability income insurance policy that the Corporation or Shareholder has obtained with respect to such Shareholder.

"Effective Date" shall have the meaning set forth in the preamble.

"Employment Agreement" is the agreement between a Shareholder and Corporation establishing the employment obligation of the shareholder.

"Equal Percentage" means, with respect to any Shareholder as of any date, the result (expressed as a percentage) obtained by dividing the number of Shares held by the Shareholder by the number of Shares of Common Stock then issued and outstanding.

"Involuntary Transferee" shall have the meaning set forth in Section 4.2.

"Managing Shareholder" shall mean the President of the Corporation.

"Note" shall have the meaning set forth in Section 4.7.

"Permanent Disability" occurs when the insurance carrier providing Disability Insurance to the Shareholder has determined that the Shareholder has a total disability.

"Person" shall mean an individual or a corporation, association, partnership, joint venture, organization, business, trust, or any other entity or organization, including a government or any subdivision or agency thereof.

"Purchase Price" means that amount paid a Departing Shareholder as set forth in Section 4.5 and paid in accordance with Sections 4.6 and 4.7.

"Qualified Person" shall mean an individual who is licensed to practice medicine in the State of South Carolina in the area of Otolaryngology surgery.

"Remaining Shareholders" are those Shareholders retaining Shares in Corporation after the Transfer of Shares, disqualification, termination, Disability or death of a Shareholder.

"Retirement Notice" shall have the meaning set forth under the term Approved Retirement.

"Shareholder" or "Shareholders" shall have the meaning set forth in the preamble.

"Shares" means any Common Stock purchased or otherwise acquired by any Shareholder or any equity securities issued or issuable directly or indirectly with respect to the Common Stock.

"Transfer" shall have the meaning set forth in Section 4.1.

"Transferred Shares" shall have the meaning set forth in Section 4.2.

ARTICLE III

MANAGEMENT AND CONTROL; CAPITAL CONTRIBUTIONS

Section 3.1 General. The business and affairs of the Corporation shall be managed, controlled and operated in accordance with its Articles of Incorporation and this Agreement, as the same may be amended from time to time, except that the Articles of Incorporation shall not be amended in any manner that would conflict with, or be inconsistent with, the provisions of this Agreement.

Section 3.2 Corporation Shall Have No Board of Directors and the Powers of a Board of Directors Shall be Exercised by the Shareholders. As the Articles of Incorporation have dispensed with the Board of Directors pursuant to S.C. Code Ann. § 33-18-210, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the

Corporation shall be managed under the direction of, the Shareholders. The Shareholders shall hold an annual meeting on or around Labor Day each year at which the officers of the Corporation shall be elected for terms that will commence on January 1 of the succeeding year. A special meeting of the Shareholders may be called at any time by any Shareholder upon ten (10) days written notice to each Shareholder. Notice of a meeting may be waived in writing by a Shareholder.

Section 3.3 Voting Requirements. Except as otherwise provided in this Section, each outstanding Share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of the Shareholders. In the event of a tie in the voting on any matter requiring a majority vote, the Managing Shareholder shall break the tie by casting a second vote to decide the matter.

Section 3.3.1 Supermajority Voting Requirements. Notwithstanding any other provision of this Agreement, the Shareholders of the Corporation shall approve the following actions of the Corporation by affirmative vote of greater than a sixty-seven percent (67%) vote of the Shareholders:

- (i) Merger, consolidation, joint venture, dissolution or liquidation of the Corporation;
- (ii) Establishment of a new practice site for the Corporation's medical practice; and
- (iii) Creation of any subsidiary organization or affiliation of the Corporation with any other entity for the purpose of the joint conduct of business or other programs whether in the form of participation in a corporation (either through the holding of capital stock or by membership), partnership, joint venture, co-tenancy, limited liability company, limited liability partnership or other form of ownership or control.

Section 3.3.2 Unanimous Voting Requirements. The following actions of the Corporation require unanimous consent of the Shareholders of the Corporation:

- (i) Amendments to the Articles of Incorporation or this Agreement;
- (ii) Requirement of loans or contribution of capital from Shareholders;
- (iii) The admission of a shareholder in the Corporation or acceptance of an offer of Transfer of Shares, including, but not limited to, preliminary offers or discussions with any person regarding admission as a shareholder; and
- (iv) Termination of a Shareholder's Employment Agreement without cause provided that no Shareholder shall be entitled to vote for or against his or her termination and any Shares of a Shareholder who is subject to a vote for termination shall not be counted in determining whether the vote is unanimous. The foregoing sentence shall be construed as express

authority to terminate a Shareholder's Employment Agreement in accordance with Section 2.3(c) of the Shareholder's Employment Agreement.

Section 3.3.3 Informal Action by Shareholders. Any action required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by all of the Shareholders entitled to vote with respect to the subject matter thereof and are delivered to the Corporation for inclusion in the minute book. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Section 3.4 Officers. The officers of the Corporation shall consist of a President, Vice President, Secretary and Treasurer. The President may also be referred to as the "Managing Shareholder" of the Corporation. No Shareholder shall be eligible to serve as a Managing Shareholder until such person has been a Shareholder for three (3) complete years.

Section 3.4.1 Number. The officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be appointed by the Shareholders. Such other officers and assistant officers as may be deemed necessary, including any Vice Presidents, may be appointed by the Shareholders. If specifically authorized by the Shareholders, an officer may appoint one or more assistant officers. The same individual may simultaneously hold more than one office in the Corporation.

Section 3.4.2 Appointment and Term of Office. Except as provided otherwise in this Agreement, the officers of the Corporation shall be appointed by the Shareholders for a term of one (1) year. (The designation of a specified term grants to the officer no contract rights and the Shareholders can remove the officer at any time prior to the termination of such term). Once elected, an officer shall serve until their successor is appointed or until they resign, die, or until they are removed in the manner provided in §3.3 of this Article III.

Section 3.4.3 Removal. Except as provided otherwise in this Agreement, the President may be removed by the Shareholders at any time, with or without cause, upon the affirmative vote of Shareholders holding at least two-thirds (2/3) of the issued and outstanding Shares. The other officers may be removed at any time, with or without cause, upon recommendation by the President and the affirmative vote of Shareholders holding at least a majority of the issued and outstanding Shares. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer shall not of itself create contract rights.

Section 3.4.4 President. The President shall be the principal executive officer of the Corporation and, subject to the control of the Shareholders, shall in general supervise and control all of the business and affairs of the Corporation. He shall have direct responsibility for all employees and shall determine staffing levels and assign work descriptions and duties for all employees of the Corporation. He shall, when present, preside at all meetings of the Shareholders. He may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Shareholders, certificates for Shares and deeds, mortgages, bonds, contracts, or other instruments which the Shareholders have authorized to be executed, except in

perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Shareholders.

Section 3.4.9 Salaries. The salaries of the officers shall be fixed from time to time by the Shareholders.

Section 3.5 Shareholder Guarantee. The Shareholders agree to execute any guarantee necessary to secure the obligations of the Corporation as approved by a majority of the Shareholders.

Section 3.6 Capital Contributions. Additional Capital Contributions must be approved by the unanimous consent of all Shareholders as provided in Section 3.3.2.(ii). None of the Shareholders shall at any time be required to contribute a larger sum than the Shareholder's Equal Percentage of the total amount of any capital contribution. This paragraph shall not apply to a Shareholder's initial purchase of stock in the Corporation.

Section 3.7 Confidentiality. The Shareholders shall not disclose any information relating to the Corporation regarding the Corporation's operations, records, patients, or procedures, to any persons other than employees of the Corporation, federal and state regulatory agencies, third-party reimbursement agencies, the Corporation's accountants, lawyers, consultants and other professional advisors, without the prior written consent of the Corporation or, as the case may be, an enforceable subpoena, or the final order of a court of competent jurisdiction. Each Shareholder shall use information related to the business of the Corporation to advance the Corporation's best interests, and not to benefit their personal interest. All forms, templates, systems (including billing systems) are the property of the Corporation and shall not be used apart from the Corporation by a Shareholder or Departing Shareholder without the written consent of the Corporation. This provision shall survive the termination of this Agreement or the termination of a Shareholder's Employment Agreement. This confidentiality clause is not intended to restrict or limit any confidentiality clause contained in a Shareholder's Employment Agreement. Accordingly, any separate confidentiality clause contained in a Shareholder's Employment Agreement will be separately enforceable in addition to the terms contained in this Agreement.

Section 3.8 Banking. Corporation's banking arrangements with any banking institution shall provide that deposits may be withdrawn only by check, wire transfer or other similar instruments and valid only when signed by the Managing Shareholder or other Person authorized (by appropriate corporate resolutions) by the Corporation.

Section 3.9 Founding Shareholder Protection Provisions. The following provisions shall apply to Robert Puchalski during the term of his employment with the Corporation:

- (i) The Shareholders agree to vote their Shares each year to elect Robert Puchalski as the Managing Shareholder through the end of the calendar year 2014. Thereafter, the Managing Shareholder may only be removed from office "for cause" by the unanimous vote of all Shares excluding the Shares owned by the Managing Shareholder.

- (ii) If Robert Puchalski's Employment Agreement is terminated without cause, as provided in Section 2.3(c) of his Employment Agreement, then simultaneously with the termination, the Employment Agreement shall be deemed amended to provide:
 - (a) Section 3.10 of the Employment Agreement shall not be applicable to prohibit or otherwise restrict Robert Puchalski from discussing and hiring Stephanie Tetterton, Robert Puchalski's current physician assistant, or any other employee of the Corporation hired prior to March 31, 2005;
 - (b) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall allow Robert Puchalski to conduct a medical practice at one (1) location in Kershaw or Richland County, South Carolina, with such location determined in his sole discretion, without any restrictions imposed by application of Section 3.9 or the Covenant Not to Compete referenced therein; and
 - (c) Section 3.7 of the Employment Agreement shall be amended to allow Robert Puchalski to retain copies of all medical records of patients treated by him while an owner of the Corporation.
- (iv) If Robert Puchalski's Employment Agreement is terminated without cause, as provided in Section 2.3(c) of his Employment Agreement, then simultaneously with the termination, Section 3.7 of this Agreement shall be deemed amended to provide that Robert Puchalski shall be entitled to use any forms or systems of the Corporation in place prior to March 31, 2005.
- (v) Robert Puchalski shall retain Stephanie Tetterton, or her replacement, as his physician assistant while he is employed by the Group.
- (vi) Notwithstanding anything in this Agreement or Robert Puchalski's Employment Agreement to the contrary, in the event of a purchase of all of Robert Puchalski's Shares by the Corporation, for any reason, the purchase price shall be 100% of the Purchase Price and the 50% reduction in Section 4.5 shall not be applicable.

Section 3.10 East Campus Protection Provision. If any Shareholder practicing primarily at the Hartsville, South Carolina, (the "Hartsville site") and the Cheraw, South Carolina (the "Chesterfield site"), practice sites is terminated without cause as provided in Section 2.3(c) of such Physician's Employment Agreement and the Hartsville site is closed either within 18 months prior or 18 months subsequent to the termination, then such Employment Agreement shall be deemed amended upon the later of the date of termination of the Employment Agreement or date of the closing of the Hartsville site to provide:

- (a) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall be void as to any restrictions within Darlington or Chesterfield Counties, South Carolina.
- (b) Section 3.10 of such Shareholder's Employment Agreement shall be amended to remove any restrictions from hiring Corporation employees whose jobs required they perform a majority of their services at the Hartsville site or the Chesterfield site.
- (c) Section 3.7 of such Shareholder's Employment Agreement shall be amended to provide that such Shareholder shall be entitled to retain copies of medical records of patients treated by such Shareholders at the Hartsville site or the Chesterfield site.

For purposes of this Section 3.10, an office site will be deemed to be "closed" upon the earlier of the time it: (i) is operating for three (3) consecutive calendar months providing less than fifty percent (50%) of the level of services to patients that it customarily provides, or (ii) when it physically closes its doors for business on a permanent basis.

Section 3.11 Richland County Campus Protection Services. If any Shareholder practicing primarily at the Richland County, South Carolina, practice site (the "Richland site") is terminated without cause as provided in Section 2.3(c) of such Physician's Employment Agreement and the Richland site is closed either within 18 months prior or 18 months subsequent to the termination, then such Employment Agreement shall be deemed amended upon the later of the date of termination of the Employment Agreement or date of the closing of the Richland site to provide:

- (a) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall be void as to any restrictions within Richland County, South Carolina.
- (b) Section 3.10 of such Shareholder's Employment Agreement shall be amended to remove any restrictions from hiring Corporation employees whose jobs required they perform a majority of their services at the Richland site.
- (c) Section 3.7 of such Shareholder's Employment Agreement shall be amended to provide that such Shareholder shall be entitled to retain copies of medical records of patients treated by such Shareholders at the Richland site.

For purposes of this Section 3.11, an office site will be deemed to be "closed" upon the earlier of the time it: (i) is operating for three (3) consecutive calendar months providing less than fifty percent (50%) of the level of services to patients that it customarily provides, or (ii) when it physically closes its doors for business on a permanent basis.

Section 3.12 Managing Shareholder Protection Provision. The Managing Shareholder shall have at least two (2) extra half days each week during normal business hours to perform

administrative duties of the practice in lieu of providing patient services. For purposes of the Managing Shareholder's Employment Agreement, the extra half days referenced above shall be counted as annual leave and credited to the Managing Shareholder's Total Production in the manner described in Section 4.2(c) of the Employment Agreement.

Section 3.13 Personnel. The Managing Shareholder shall have the right to hire and terminate any employee of the Corporation except that the hiring or termination of a physician, physician extender, or office manager shall require the vote of a majority of the Shareholders. The duties, authority, limitations and compensation of officers and employees shall be determined by the majority vote of Shareholders.

Section 3.14 Distributions. Each year all compensation, including bonuses, shall be paid to the Shareholders in their capacity as employees and all operating expenses of the Corporation shall be paid prior to any distribution of profits of the Corporation. Subject to available cash flow, after the payment of all compensation and operating expenses, the Corporation shall make the following distributions to the Shareholders:

- (a) Every two weeks, Physician shall receive a distribution in such amount as recommended by the Managing Shareholder, based on available cash flow, from time to time and approved by a majority of the Shareholders (the "Biweekly Distribution"); and
- (b) On a monthly basis, Physician shall receive an amount established by the Managing Shareholder as a month-end distribution (the "Sweep Distribution").

Section 3.15 Expenditures. The Managing Shareholder shall not make any disbursements of cash or assets of the Corporation or incur any debt on behalf of the Corporation in excess of Ten Thousand and 00/100 (\$10,000) dollars without consultation and agreement by a majority of the Shareholders with the exception of recurring ordinary and necessary expenses of the Corporation which may be disbursed without consultation and agreement by the Shareholders.

Section 3.16 Loans To and From Shareholders. No Shareholder shall have any obligation to make contributions to the Corporation other than those as mutually agreed upon. Any Shareholder that makes a loan to the Corporation shall do so in writing with such loan not being effective unless authorized in writing by the Managing Shareholder.

ARTICLE IV

RESTRICTIONS ON TRANSFER OF SHARES

Section 4.1 General. No Shareholder may sell, assign, transfer, grant, give away, hypothecate, pledge or in any manner dispose of or encumber ("Transfer") any Common Stock whether presently owned or hereafter acquired, except as specifically set forth in this Article IV. No Transfer of Common Stock shall be valid or recognized in the books and records of the Corporation without first obtaining the written consent of the Corporation and the other Shareholders or, in the absence of such written consent, without first complying with the terms

and conditions of this Agreement. No Transfer of any Common stock pursuant to this Agreement shall be valid or recognized on the books and records of the Corporation as a Transfer of the interest in the Corporation unless such transferee is a Qualified Person who first becomes a party to this Agreement and evidences his or her consent to, and approval of, the terms and provisions hereof by execution of this Agreement. If any Common Stock is transferred in accordance with this Article IV, the Employment Agreement of such Shareholder shall terminate effective upon such transfer.

Section 4.2 Involuntary Transfers or Transfers According to Judicial Process. Any Person (the "Involuntary Transferee") who becomes the holder of any Shares or possessor of any certificates representing Shares (the "Transferred Shares") by virtue of any judicial process, attachment, bankruptcy, receivership, execution, insolvency proceeding and competency proceeding, judicial sale or divorce decree (a "Departure Event") shall immediately offer all such Shares to the Corporation whenever requested by the Corporation to do so. The Corporation shall have the obligation to purchase the Transferred Shares, which right shall be exercised by written notice given to the Involuntary Transferee within 30 days after the Shares are presented to the Corporation for registration in the Involuntary Transferee's name. None of such Shares will be entitled to any vote nor will any dividend or other distribution be paid, allowed or made upon any of such Shares for so long as such Involuntary Transferee fails to comply with such request. Corporation shall pay such holder of any Shares or possessor of such certificates representing Shares pursuant to this Section in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement. The Shareholder's salary and bonus set forth under such Shareholder's Employment Agreement and the distributions due the Shareholder pursuant to this Agreement will be reduced and the reduction applied to the Purchase Price set forth in Section 4.5, by such amounts as determined in the Corporation's sole discretion, until the Purchase Price is paid.

Section 4.2.1 Transfer Upon Shareholder Disqualification. In the event that a Shareholder is no longer authorized to practice medicine in South Carolina in the area of Otolaryngology, other than for a period lasting no longer than five months, (a "Departure Event"), then the Corporation shall have the obligation to purchase the Departing Shareholder's Shares. The Corporation shall pay such holder of any Shares in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3 Transfer Upon Death or Permanent Disability of Shareholder. In the event of the death or Permanent Disability (each, a "Departure Event") of a Shareholder, the Corporation or the Remaining Shareholders shall purchase, according to their Equal Percentages, and the Departing Shareholder agrees to sell, all Shares owned by the Departing Shareholder in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3.1 Simultaneous Death. If all of the Shareholders shall die simultaneously or shall die within thirty (30) days of one another, then there shall be no obligation by any party herein to purchase the Shares of any Shareholder in the Corporation, unless a sale shall have taken place prior to the first death, pursuant to this Agreement. As long as no such prior sale shall have occurred, the Departing Shareholder's interest in the proceeds of the liquidation of the Corporation and the proceeds of any insurance policies owned pursuant to Article V of this Agreement shall be delivered to the estate of such deceased Shareholder.

Section 4.4 Compulsory Redemption of Stock Upon Termination of Employment. If a Shareholder's Employment Agreement is terminated: (i) by the Corporation pursuant to Section 2.2. of the Shareholder's Employment Agreement, (ii) by the Shareholder pursuant to Paragraph 2.3(a) of the Shareholder's Employment Agreement, or (iii) because the Shareholder elects not to renew his Employment Agreement upon the expiration of its term (each a "Departure Event"), the Corporation shall purchase such Departing Shareholder's Shares in the Corporation in exchange for the payment as provided in Sections 4.5, 4.6, and 4.7 of this Agreement. Nothing in this Section shall affect a Shareholder's right to arbitrate a decision of the Corporation to terminate his Employment Agreement.

Section 4.4.1 Modification of Employment Agreement by Corporation. If the Corporation elects not to extend the term of a Shareholder's Employment Agreement by giving notice to the Shareholder in accordance with such agreements, then the Corporation must offer a new Employment Agreement to all Shareholders on substantially identical terms.

Section 4.5 Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall pay the Departing Shareholder a purchase price ("Purchase Price") for the Shares in an amount equal to: (A) one-fourth of the total collected revenue of the group for the twelve whole calendar months preceding the Departure Event divided by the number of Shareholders of the Corporation including the Departing Shareholder plus (B) one-third of the sum of the accounts receivable of the Corporation, booked in accordance with the Corporation's normal accounting methods, and the cash (to include cash equivalents and marketable securities) of the Corporation divided by the number of Shareholders of the Corporation including the Departing Shareholder, and minus (C) any amount, if any, owed by the Departing Shareholder as of the effective date of the Termination of Employment under Section 4.6.4 of this Agreement. The Departing Shareholder also agrees that he shall sell his interest in SCENT Land Holdings, LLC at the price specified in that company's operating agreement at the same time the Shareholder's Shares are redeemed pursuant to this Agreement. Provided, however, the Purchase Price shall be reduced by fifty percent (50%) if (i) the term of Physician's employment did not consist of at least thirty-six (36) whole calendar months, (ii) Physician elects to terminate the Employment Agreement without cause pursuant to Section 2.3(d) of the Employment Agreement and Physician fails to give the Group the twelve (12) whole calendar months written notice requested by that provision, or (iii) Physician is terminated pursuant to Sections 2.2(c)-(h) or Section 2.3(a). For clarity, any termination pursuant to Section 2.2(a)(death), Section 2.2(b)(disability), Section 2.2(i)(change in law), Section 2.3(a)(a material breach by the Corporation), Section 2.3(b)(mutual agreement), or Section 2.3(c)(by the group without cause) or Section 2.3(d)(by Physician without cause with twelve months notice) shall be subject to payment for Physician's Shares at the Purchase Price. The Corporation and the Departing Shareholder may agree that such payments may be made in cash or as a distribution of corporate assets in kind to satisfy the Corporation's obligations. Notwithstanding anything in this Agreement to the contrary, a Departing Shareholder shall not be entitled to any distribution from the Corporation nor be entitled to vote the Shares subsequent to the Event of Departure.

Section 4.6 Method and Schedule of Payment of Purchase Price.

Section 4.6.1 Payment of Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall commence payment of the Purchase Price as defined in

Section 4.5 above to the Departing Shareholder, within sixty (60) days after the following applicable date: (i) effective date of the Departing Shareholder's Termination Date; (ii) the effective date that a Shareholder is deemed to have a "Permanent Disability"; (iii) the effective date that a Shareholder is disqualified from being a shareholder in the Corporation; (iv) the date of receipt of notice of the qualification of the personal representative of the estate of a Departing Shareholder; or (v) the date of notice to the Involuntary Transferee that the Corporation will purchase the Transferred Shares. To the extent permitted by applicable law, the Purchase Price shall be paid to the Departing Shareholder in sixty (60) equal monthly installments as evidenced by a promissory note. Notwithstanding the above, any life insurance proceeds or any Disability "buy-out" insurance proceeds received from such insurance policies on the Shareholder shall be paid as provided for in Article V of this Agreement.

Section 4.6.2 Closing of Sale of Shares. Upon the payment of the first installment of the Purchase Price as provided above in this Article IV, the Departing Shareholder shall endorse all of the Shares to be sold and deliver such Shares to an escrow agent appointed by the Corporation together with: (i) the appropriate amount of federal and state documentary stamps affixed thereto; and, if applicable; (ii) the appropriate tax waiver from the Estate Tax Division of the South Carolina Department of Revenue; and (iii) a certificate of discharged property from lien of federal estate tax. The Shares shall be held by the escrow agent until such time as the Purchase Price for the Shares has been fully paid. Upon payment in full of the Purchase Price, the escrow agent shall deliver the Shares together with all endorsements to the Remaining Shareholders or the Corporation, as applicable. Title to the Shares shall be deemed to have passed to the Remaining Shareholders upon the payment of the first installment of the Purchase Price.

Section 4.6.3 Shareholder Representations. The Departing Shareholder shall deliver at the closing and as a condition of sale, the following written representations: (i) that he or she is the owner and holder of record of such Shares being sold, that such Shares are free and clear of any and all liens, security interests, pledges, judgments or other encumbrances of any kind, and that the Departing Shareholder has full power to sell the Shares being sold; (ii) that the Departing Shareholder has not entered into on behalf of the Corporation, any agreement, commitment or understanding binding upon the Corporation except for transactions in the normal course of business, in amounts, quantities and nature which are normal and reasonable in relation to the normal and reasonable requirements of the Corporation's businesses as have been previously conducted and which have been fully recorded on the books and records of the Corporation or fully disclosed to the Shareholders of the Corporation; (iii) that the Departing Shareholder has not incurred any debt or other charges for which the Corporation may be liable except for normal and reasonable charges in connection with the business of the Corporation and that Departing Shareholder has surrendered to the Corporation all credit cards issued to the Corporation in the Departing Shareholder's possession.

Section 4.6.4 Setoff. Any damages resulting from the breach of any of the foregoing representations or a breach of Section 3.6 shall be applied against the balance of the Purchase Price in the same manner as if there were a prepayment of the Purchase Price. The intent of this provision is to provide for a reduction in the Purchase Price as a result of such a breach. Additionally, any damages owed to the Corporation by the Departing Shareholder under an Employment Agreement between the Corporation and the Departing Shareholder shall be

setoff against the Purchase Price. To the extent such adjustment or amount required to be paid shall exceed the balance due on the Purchase Price, the Departing Shareholder shall make prompt payment of such excess to the Corporation or the Remaining Shareholders.

Section 4.7 Promissory Note. The Remaining Shareholders or the Corporation, as the case may be, shall execute a promissory note (hereinafter referred to as "Note") for all payments due pursuant to Article IV of this Agreement. Such Note shall be negotiable and bear interest at the adjusted prime rate plus one percent (1%). The Note shall become due and payable at the option of the holder immediately upon the occurrence of the following events:

- (i) Default in the payment of any installment. Default shall occur following a thirty (30) day grace period after written notice of nonpayment is given to the defaulting party. If payment is not made within the thirty (30) day grace period, the Payee shall be in Default;
- (ii) Sale of substantially all of the Corporation's assets;
- (iii) Dissolution and liquidation of the Corporation; or
- (iv) Bankruptcy of the Corporation.

Section 4.7.1 Default. If the payor of the Note shall default in paying any installment of the Purchase Price, then all remaining installments shall be accelerated. In the event of the liquidation or dissolution of the Corporation, the Departing Shareholder shall be paid the balance of the Purchase Price remaining unpaid out of the proceeds of such liquidation or dissolution.

Section 4.8 Legend on Shares. The certificates for the Shares shall, in addition to any notice thereon required by the Articles of Incorporation or Bylaws of the Corporation, or the Securities Act and other applicable securities laws, bear the following notice conspicuously marked on the face or back thereof:

The securities evidenced hereby are subject to the terms of a Shareholders' Agreement among the Company and the shareholders of the Company. A copy of the Shareholders' Agreement is on file at the office of the Company and is available upon request. The Shareholders' Agreement provides, among other things, for restrictions on the sale, transfer, pledge, hypothecation or other disposition of the securities represented by this Certificate. Any attempted sale, transfer, pledge, hypothecation or other disposition of the securities represented by this Certificate not in compliance with the terms and conditions of the Shareholders' Agreement shall be void and of no force and effect.

Section 4.9 Effect of Waiver. Any failure of the Corporation to exercise any option to purchase given under this Agreement and any waiver by the Corporation of any rights hereunder as to any Transfer will not, as to any future Transfer of the Shares (either voluntary or by operation of law), discharge the Shares from any of the restrictions herein contained.

ARTICLE V

COVENANTS REGARDING SUBCHAPTER S

Section 5.1 Revocation. If the Shareholders shall determine to revoke the Corporation's Subchapter S election, each Shareholder agrees that he or she shall execute all documents and take such further action as may be necessary or advisable to effectuate such revocation.

Section 5.2 Maintain S Status. Except as provided in Section 5.1 above, the Corporation and each Shareholder covenant and agree not to do any act or fail to do any act, the commission or omission of which would cause the termination of the Subchapter S election of the Corporation. In the event of the violation of any provision of this Section 5.2 by the Corporation or any Shareholder, the Shareholder who authorizes or causes the violation, whether in his or her capacity as a Shareholder, officer, employee or agent for the Corporation or otherwise, shall be liable to the Corporation and to the other Shareholder(s) for any damages, liabilities, or costs resulting directly or indirectly therefrom, including, without limitation, any additional federal or state income tax, penalties and interest incurred by the Corporation and the other Shareholder(s); provided, however, that no Shareholder shall be so liable if such Shareholder acted in the good faith belief and upon the advice of tax counsel that termination of the election would not be caused thereby. In the event of an inadvertent termination of the Corporation's Subchapter S election, the Corporation and each Shareholder shall take whatever actions are necessary under Section 1362(f) of the Code and the Regulations thereunder to request a determination of inadvertent termination from the Commissioner of Internal Revenue allowing the Corporation to be treated as continuing to be an S corporation, and if a waiver of the terminating event is not granted, to request consent for an early reelection of Subchapter S status under Section 1362(g) of the Code and the Regulations thereunder.

Section 5.3 Dividend Distributions. Each Shareholder and the Corporation acknowledge that the Corporation shall use its best efforts to make pro rata (based on the total Shares owned by each Shareholder) distributions of money with respect to the Shares in an amount at least sufficient to pay the federal and state income taxes on the income that passes through to the Shareholders from the Corporation under Section 1366 of the Code for each taxable year, net of any tax benefits produced by losses, deductions and credits that pass through under Section 1366 of the Code. The Corporation shall use its best efforts to make such distributions on a quarterly basis during each taxable year and in any event no later than ninety (90) days following the end of each taxable year. The Managing Shareholder, after consultation and reasonable input from the Shareholders', shall make the final decision as to the amount of each distribution with respect to the Shares. For purposes of this Section 5.3 a distribution shall be treated as made with respect to a particular taxable year of the Corporation if (A) it is made during the taxable year and not designated by the Corporation as made with respect to another taxable year or (B) it is specifically designated by the Corporation as made with respect to that particular taxable year. The foregoing distribution requirement set forth in this Section 5.3 is subject, however, to (Y) the reasonably required needs of the Corporation as determined by the Managing Shareholder to maintain sufficient funds for working capital and business needs so as not to impair the ability of the Corporation to continue its business operations, and (Z) any applicable restrictions contained in loan documents with the Corporation's creditors.

Section 5.4 Withholding. The Corporation is authorized to withhold from amounts to be distributed to any Shareholder hereunder any amount required to be withheld by any provision of the Code, Treasury Regulations or other applicable law, and to pay such amounts to the Internal Revenue Service ("IRS") or other appropriate taxing authority in accordance with the Code, Treasury Regulations or other applicable law. In addition to such withholding from distributions, the Corporation is authorized to remit to the IRS or other appropriate taxing authority any amounts due as a result of the allocation of taxable income to any Shareholder. Any amounts paid over to the IRS or other appropriate taxing authority with respect to this Section to a Shareholder pursuant to this Section shall be treated for all purposes hereunder as a distribution made to the Shareholder with respect to whom such withholding or remittance was made.

Section 5.5 Code Section 1377(a)(2) Election. If a Shareholder makes a Transfer of his or her Shares pursuant to this Agreement while the Corporation is an S corporation, and such Transfer results in the complete termination of the interest in the Corporation of such Shareholder, and if either the selling Shareholder or the purchaser requests, then all of the Shareholders and the Corporation agree to take appropriate action to make an effective election under Section 1377(a)(2) of the Code and the Regulations thereunder to treat the taxable year of the Transfer as if it consisted of two taxable years, the first of which ended on the effective date of the Transfer. For purposes of this election, Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year in which the Transfer occurs.

Section 5.6 Closing of Corporate Books. In the event the Corporation's Subchapter S status terminates during the course of a taxable year for any reason whatsoever, and if any Shareholder so requests, then all of the Shareholders shall take appropriate action to make an effective election under Section 1362(e)(3) of the Code and the Regulations thereunder to close the Corporation's books on the date immediately preceding the date on which the termination of Subchapter S status occurs. For purposes of this election, the term Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year ending on the date of termination of the Corporation's Subchapter S status and all Persons who are or were Shareholders in the Corporation on the first day following the termination of the Corporation's Subchapter S status.

Section 5.7 South Carolina S Corporation Status. Each Shareholder agrees to file a South Carolina income tax return and pay South Carolina income tax on his or her proportionate share of the Corporation's taxable income for each taxable year of the Corporation that he or she is a Shareholder and the Corporation is an S corporation, and to execute such consents as are necessary to assure that the Corporation's Subchapter S election will be effective for South Carolina income tax purposes.

Section 5.8 President as Attorney-in-Fact for Elections. If any document evidencing a Shareholder's consent or other action is required for filing or for other purposes under the provisions of the Code or otherwise in order to effectuate the matters set forth in Article V and any Shareholder is unable or otherwise fails to execute such document in a timely manner, then such Shareholder hereby appoints the President of the Corporation, as from time to time elected, as his agent and attorney-in-fact for the purpose of executing any such document and taking all such further action as may be necessary or advisable to effectuate such consent or other action. The Corporation shall

indemnify, defend and hold harmless the President of the Corporation from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as result of acting under such power of attorney.

Section 5.9 Tax Matters Person. The Managing Shareholder is hereby designated as the tax matters person of the Corporation. The tax matters person may resign at any time by giving written notice to the Corporation and each of the other Shareholders, and the tax matters person may be removed at any time by unanimous consent of all of the other Shareholders. Upon the resignation or removal of the tax matters person, a new tax matters person, who must be a Shareholder, shall be elected by holders of a majority of the Shares, which majority shall be determined by excluding the Shares of a removed tax matters person. The Corporation shall indemnify, defend and hold harmless the tax matters person from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as a result of acting as tax matters person.

ARTICLE VII

INSURANCE

Section 6.1 Life Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain insurance on the life of each of the Shareholders.

Section 6.2 Disability Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain Disability "buy-out" insurance on each of the Shareholders.

Section 6.3 Excess Insurance Proceeds. To the extent any insurance proceeds are in excess of the amount due a Shareholder under Section 4.5, such excess shall not affect the purchase price under Section 4.5. Any excess proceeds from a policy purchased by the Corporation or a Shareholder shall be retained by the Corporation or Shareholder, as the case may be.

Section 6.4 Shareholders' Right to Purchase Insurance Policies. In the event that a Shareholder Transfers his Shares, or upon dissolution or liquidation of the Corporation before the death or Permanent Disability of such Shareholder, the insured Shareholder shall have the right to purchase such life insurance and Disability insurance policies purchased by the Corporation that are subject to this Agreement for a purchase price equal to the amount of:

- (i) the cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions; plus
- (ii) the pro rata portion of any premium paid prior to the date which covers a period extending beyond the date of the transaction; plus
- (iii) any dividend or dividend accumulations; and less

- (iv) any policy loan plus interest then due.

The rights granted in this Section 6.4 shall lapse and expire unless the Transferring Shareholder notifies the Corporation in writing within thirty (30) days of the effective date of the Transfer of Departing Shareholder's Shares of his desire to purchase all or some of the Disability or life insurance contracts maintained pursuant to this Article V. Any policy or policies not purchased within such thirty (30) day period may be disposed of by the Corporation in its discretion and the Departing Shareholder agrees to execute and deliver such instruments as may be required by the Corporation to dispose of such policies. If such an insurance policy is transferred to a Departing Shareholder, the Corporation shall execute and deliver to the Departing Shareholder, such instruments as are necessary and proper to transfer full and complete title to such policies.

ARTICLE VII

TERM AND TERMINATION

The term of this Agreement shall begin on the Effective Date and terminate upon the occurrence of any of the following: (i) the bankruptcy of the Corporation or (ii) a written agreement to terminate this Agreement executed by Shareholders of not less than one hundred percent (100%) of the Common Stock subject to this Agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Prior Agreements. All other agreements dated prior to the date of this Agreement are hereby superseded in their entirety by the terms and conditions of this Agreement; provided however, that this Agreement shall not be deemed to supersede the terms and conditions of the Employment Agreements executed simultaneously with this Agreement. Any inconsistency or ambiguity with the terms of this Agreement and the terms of the Employment Agreements shall be construed and interpreted in accordance with the terms of this Agreement.

Section 8.2 Patient Records. The Corporation owns all patient records and charts. The records of patients of a Departing Shareholder shall remain with the Corporation. In the event of dissolution of Corporation, the patient records shall be provided to the Shareholder who primarily treated the patient. Notwithstanding the above, upon written authorization of a patient, the patient's records shall be provided to such Departing Shareholder (or former Shareholder if a liquidation or dissolution has occurred) who shall bear the cost of such photocopying.

Section 8.3 Shareholder's Personal Property. Each of the Shareholder's personal property at the Practice location is listed in Schedule B hereto which shall remain each Shareholder's property and may be removed from the Practice location at any time by the owning Shareholder. Any amendments to the inventory list in this Schedule B must be approved by all of the Shareholders:

Section 8.4 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery, and in the case where delivery is made by any established and reputable next day delivery service, delivery shall be deemed to occur on the day after delivery to such delivery service, or on the fifth day following mailing by registered or certified mail, return receipt requested, postage prepaid, addressed at such Shareholder's address as set forth on Schedule A attached hereto or at such other address as such Shareholder shall designate by written notice to the Corporation and the other Shareholders; or if to the Corporation, at 1165 Highway 1 South, Suite 300, Lugoff, South Carolina, or at such other address as the Corporation shall have furnished to the Shareholder in writing.

Section 8.5 Construction. The Shareholders hereby agree and consent to take or cause to be taken all actions necessary to implement the intents and purposes of this Agreement, including, but not limited to, to vote their Common Stock to amend the Articles of Incorporation or the Bylaws in such manner as may be necessary to implement the provisions of this Agreement, and further agree not to vote their Common Stock at any time so as to amend the Articles of Incorporation in a manner inconsistent with or in contravention of this Agreement.

Section 8.6 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, taken together, shall constitute and be one and the same instrument.

Section 8.7 Successor and Assigns. This Agreement shall be binding upon the parties hereto, their heirs, legal representatives, successors and permitted assigns.

Section 8.8 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter.

Section 8.9 Remedies. The parties acknowledge that remedies at law for breach of covenants contained in this Agreement may be inadequate and that the Corporation may be entitled to injunctive or to such other equitable relief as a court may deem appropriate for a breach of such covenants. If such covenants are at any time adjudged invalid to any extent by any court of competent jurisdiction, such covenants shall be deemed modified to the extent necessary to render any or all of them enforceable.

Section 8.10 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Camden, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

Section 8.11 Amendment. This Agreement may not be amended or supplemented except in writing, executed by holders of not less than one hundred (100%) percent of the Common Stock subject to this Agreement.

Section 8.12 Severability. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provisions hereof, all of which provisions are hereby declared severable.

Section 8.13 Choice of Law. This Agreement is to be governed by and construed in accordance with the laws of the State of South Carolina.

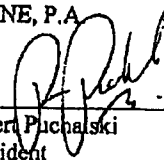
Section 8.14 Descriptive Headings and Section References. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Provided, however, any reference in this Agreement to a particular Section shall also include all subsections thereto unless explicitly referenced otherwise (e.g., a reference to Section 4.2 shall also include Section 4.2.1, 4.2.2, etc.).

Section 8.15 Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 8.16 Applicability of Agreement. Unless otherwise provided by this Agreement, each provision of this Agreement shall apply to all of the Shares owned by each Shareholder, whether presently owned or hereafter acquired.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

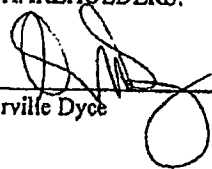
SOUTH CAROLINA ENT, ALLERGY & SLEEP
MEDICINE, P.A.

By: 

Robert Puchalski

Its: President

SHAREHOLDERS:


Orville Dyce

SCHEDULE A

SHAREHOLDERS AND NUMBER OF SHARES

<u>Name and Address of Shareholder</u>	<u>Number of Shares</u>
Robert Puchalski	50,000
Orville Dyce	50,000

-Doc# 5989473.9-

DYCE/SCENT 30

SCHEDULE B
PERSONAL PROPERTY

Doc# 1989473.9-

) IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 2010-CP-28-322

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AMENDED COMPLAINT

(Non-Jury)

(Judicial Dissolution of SCENT Land
Holdings, LLC)

(Judicial Supervision of the Winding Up of
SCENT Land Holdings, LLC)

Plaintiff Jamie Curley (the "**Plaintiff**") by and through her undersigned attorneys,

respectfully alleges and says as follows:

1. Plaintiff is a citizen and resident of Darlington County, South Carolina.
2. Defendant SCENT Land Holdings, LLC, (the “**Company**”), is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business is in Kershaw County, South Carolina.
3. Plaintiff is informed and believes that Defendants Robert Puchalski (“**Puchalski**” or “**Manager**”) and Amy Puchalski (“**Mrs. Puchalski**”) are citizens and residents of Kershaw County, South Carolina.
4. Plaintiff and Mrs. Puchalski were at all times relevant hereto members of the Company (the “**Members**”).

FACTS

5. The Members and Puchalski entered into an Operating Agreement of SCENT Land Holdings, LLC on or about September 30, 2009 (the “**Operating Agreement**”).

6. The principal purpose of the Company is, among other things, to own real estate in South Carolina.

7. The Company is a manager-managed limited liability company.

8. Puchalski is, and at all times relevant hereto was, the Manager of the Company.

9. Plaintiff is informed and believes Puchalski, as Manager of the Company, is in control of the Company's records.

10. Plaintiff's husband, Dr. Orville Dyce ("Dyce"), and Puchalski were partners in South Carolina ENT, Allergy Sleep Medicine, P.A. ("SCENT") from March 1, 2007 until May 9, 2010.

11. SCENT Land owns the buildings and real property where SCENT performs its services.

12. On or about May 9, 2010, Puchalski terminated Dr. Dyce's employment with SCENT.

13. In December 2009 and in 2010, prior to Dyce's termination, Puchalski denied Dr. Dyce access to SCENT's corporate information, including, without limitation, financial information and other documents concerning SCENT despite repeated demands, both orally and writing, for same.

14. Plaintiff is informed and believes that the Defendant Puchalski committed oppressive, fraudulent and prejudicial acts including, without limitation, misappropriating SCENT assets, funds and resources and charging personal expenses to SCENT, which has harmed Dr. Dyce and has deteriorated the relationship between the Members of SCENT Land.

15. The Members cannot operate the business of SCENT Land.

16. The Members are deadlocked and cannot carry on the Company's business.

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANTS
(Judicial Dissolution of SCENT Land Holdings, LLC)

17. Plaintiff repeats and realleges the allegations of paragraphs 1 through 16 above as if set forth fully herein.

18. On September 15, 2008, Defendant Puchalski filed articles of organization for the Company with the South Carolina Secretary of State's Office (the "**Articles of Organization**").

19. The Company is, and at all times relevant hereto, was operating as a limited liability company under the Act.

20. Pursuant to Section 16.2(b) of the Operating Agreement, the Company shall be dissolved by, without limitation, "issuance of an order of dissolution by a court. . ."

21. Section § 33-44-801(4)(c) of the Act provides for the dissolution of a limited liability company if "it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement."

22. S.C. Code Ann. § 33-44-801(4)(e) further provides that a limited liability company may be dissolved if the "mangers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner."

23. It is not reasonably practicable to carry on the Company's business in conformity with the Articles of Organization or the Operating Agreement because (i) the Members are deadlocked and cannot carry on the Company's business; and, (ii) Defendants have acted, and are acting, and will continue to act in a manner that is unlawful, oppressive, fraudulent and unfairly prejudicial to the Plaintiff by, among other things, mismanaging funds.

24. Pursuant to S.C. Code Ann. § 33-44-801(4)(c) & (e), the Plaintiff is entitled to an order dissolving the Company.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANTS
(Judicial Supervision of the Winding Up of SCENT Land Holdings, LLC)

25. Plaintiff repeats and realleges the allegations of paragraphs 1 through 24 above as if set forth fully herein.

26. Section 33-44-803(a) of the Act provides that “[a]fter dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company’s business, but on application of any member, member’s legal representative, or transferee, the circuit court, for good cause shown, may order judicial supervision of the winding up.”

27. Plaintiff is informed and believes that good cause exists for this Court to order judicial supervision of the winding up of the Company as demonstrated by the actions of Puchalski described more fully above.

28. Pursuant to S.C. Code Ann. § 33-44-803, Plaintiff is entitled to an order of judgment against Defendants requiring judicial supervision of the winding up of the Company plus such other relief as the Court may deem just and proper.

WHEREFORE, Plaintiff requests that this Court order the following relief:

(A) That this Court inquire into the matters and things hereinabove alleged and that this Court determine the rights of the parties hereto;

(B) As to the First Cause of Action, that Defendant SCENT Land Holdings, LLC be immediately judicially dissolved pursuant to S.C. Code Ann. § 33-44-801(4)(c) & (e);

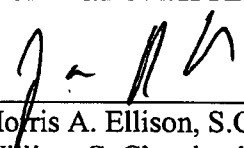
(C) As to the Second Cause of Action, that the Court wind up SCENT Land Holdings LLC's affairs under judicial supervision as soon as is reasonably practicable pursuant to S.C. Code Ann. § 33-44-803;

(D) That the Court determine the bona fide creditors of SCENT Land Holdings, LLC and their respective rights;

(E) That the Court appoint a receiver for SCENT Land Holdings, LLC; and,

(F) That Court award Plaintiff such other and further relief that it deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE



Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

October 13, 2011
Charleston, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on the 17th day of October, 2011, I served a copy of the *Amended Summons and Amended Complaint* upon counsel of record by sending a copy of the same via regular mail in an envelope with the correct postage prepaid addressed to:

Vincent A. Sheheen, Esq.
Savage Royall & Sheheen, LLP
P.O. Drawer 10
1111 Church Street
Camden, SC 29020

Roy F. Laney, Esq.
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205

FILED FOR RECORD
2011 OCT 21 AM 11:29
CLERK OF COURT
Kershaw County, S.C.

Carol Casey
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323
)

Plaintiff,)
)

vs.)

South Carolina ENT, Allergy & Sleep
Medicine, P.A., and Robert Puchalski,)

SCENT.)

**ANSWER TO AMENDED
COMPLAINT AND
COUNTERCLAIMS**

FILED
NOV - 8 PM 12:00
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendant South Carolina ENT, Allergy & Sleep Medicine, P.A. ("SCENT"),
through its undersigned counsel, Answers the Complaint of Plaintiff Orville Dyce as
follows:

FOR A FIRST DEFENSE

1. Upon information and belief, SCENT admits the allegations in paragraph 1 of the Complaint.
2. SCENT admits the allegations of paragraph 2 of the Complaint.
3. SCENT admits that Dr. Puchalski is a citizen and resident of Kershaw County South Carolina.
4. SCENT admits the allegations of paragraph 4 and notes that other amendments have occurred.
5. SCENT admits so much of the allegations of paragraph 5 as allege that SCENT is in the business of providing otolaryngological services. SCENT denies any and all remaining allegations of paragraph 5.
6. SCENT denies the allegations of paragraph 6.

7. SCENT responds to the allegations of paragraph 7 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any further allegations of paragraph..

8. SCENT responds to the allegations of paragraphs 8 and 9 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 8 of the Complaint that are inconsistent with the Shareholders' Agreement.

9. As to paragraph 10, SCENT admits the parties entered into an employment agreement and craves reference to that Agreement for its terms and denies any terms not contained within it.

10 SCENT responds to the allegations of paragraph 11, 12, 13, 14 and 15 and admits so much of the allegations as allege that Dr. Puchalski has certain rights, duties, and responsibilities in his capacity as Managing Shareholder of SCENT. SCENT denies any and all remaining allegations of these paragraphs and alleges that Plaintiff, while a Shareholder had input and a vote in determining the direction of the business and access to information. SCENT specifically denies any and all allegations of these paragraphs that are inconsistent with the Shareholders' Agreement.

11. SCENT admits so much of the allegations of paragraphs 16 and 17 of the Complaint as allege that Plaintiff had at various times made requests for SCENT corporate information, however, Plaintiff has failed to make a request for SCENT corporate information that complied with applicable statutory and common law in South Carolina and his contractual obligations. SCENT specifically denies the allegations of paragraph 16 and 17 of the Complaint insofar as they imply that Plaintiff's requests

for SCENT corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. Defendant also alleges that Defendant shared information with Plaintiff on multiple occasions throughout the years. Plaintiff was not operating in good faith during this time period but was attempting to damage the Defendant for his own gain. SCENT denies any and all remaining allegations of paragraph 16 and 17 of the Complaint.

12. Defendant denies paragraphs 18, 19, and 20.
13. SCENT responds to the allegations of paragraph 21 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. SCENT specifically denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the Shareholders' Agreement.
14. SCENT denies the remaining allegations of the Complaint and states that any recitations of legal authorities does not require a response as they are not factual allegations but simply statements of law.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

15. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against SCENT.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

16. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

17. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in

accordance with the Shareholders' Agreement and applicable statutory law, Plaintiff failed to satisfy all conditions precedent to SCENT's performances under the Shareholders' Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. SCENT was, therefore, relieved of any obligations to perform and was entitled to withhold performance. Furthermore, Plaintiff has been provided with all information requested and this claim is moot.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

18. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

19. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly, consented to the complained of actions of SCENT and are barred by his conduct.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

20. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)

21. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
22. SCENT and Dr. Dyce entered into the employment agreements and shareholder agreements.
23. Dr. Dyce breached these agreements by, among other things, disclosing confidential information in violation of these agreements, obstructing normal operations, and obstructing the closing of the loan on SCENT's new office building causing

damages to SCENT, SCENT LH and, in turn, the contractors working on SCENT's new building.

24. In addition, Dr. Dyce is in breach of the non-competition provision of his employment agreement by working in conjunction with Carolina Pines Regional Medical Center to open and operate his new practice in Hartsville. Finally, he is violating the non-solicitation provision of his agreement by soliciting patients of SCENT to move their medical care to his new practice causing severe damages.

25. As a result, SCENT is entitled to damages in an amount to be proven at trial.

BY WAY OF SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

26. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

27. Dr. Dyce's disloyal and obstructive conduct towards SCENT violated his fiduciary duty, duty of loyalty, and duty of good faith and fair dealing toward SCENT under the common law and statutory law of the State of South Carolina, including but not limited to that found in S.C. Code Ann. § 33-44-409, as more fully set forth above.

28. Dr. Dyce's conduct was the direct and proximate cause of harm to SCENT and SCENT has suffered damages as a result of that harm.

BY WAY OF THIRD COUNTERCLAIM
(Conspiracy)

29. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

30. Drs. Dyce and Gunnlaugsson were physicians and employees of SCENT. Dr. Dyce was also a shareholder of SCENT.

31. As part of a scheme to harm SCENT and wrongfully obtain its confidential information, Dr. Dyce has acted overtly and in concert with others, including, Dr. Gunnlaugsson, with an intent to harm and cause injury to SCENT by means of:

- a. Making inappropriate and unlawful demands for confidential and proprietary corporate information;
- b. Falsely stating that SCENT would not provide requested information;
- c. Threatening to report SCENT and Dr. Robert Puchalski to the South Carolina Board of Medical Examiners, the American Medical Association, and other authorities following termination of their respective employments with SCENT in order to gain an advantage in litigation and negotiations regarding their departure from SCENT;
- d. Orchestrating multiple failures of the real estate closing on SCENT's new building in Lugoff in an attempt to weaken the practice, and which resulted in a third party placing a mechanic's lien upon that building;
- e. Making knowing and intentionally false statements to SCENT and Dr. Puchalski about their intentions with respect to Dr. Gunnlaugsson becoming a shareholder with SCENT;
- f. Inducing SCENT and Dr. Puchalski to increase and continue to provide elevated levels of compensation based on intentional misrepresentations and falsehoods; and

g. Obtaining confidential and proprietary information from SCENT under false pretenses and based on knowing and intentionally false statements.

32. Dr. Dyce's overt acts described above caused SCENT special damages that it would not otherwise have suffered but for the conspiracy, including but not limited to the diminution of market value for remaining SCENT stockholders, loss of dividends, damage to business reputation, loss of corporate opportunities, and damage to corporate good will.

BY WAY OF FOURTH COUNTERCLAIM
(Interference with a Contractual Relationship)

33. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

34. As set forth more fully above, SCENT had an employment contract with Dr. Gunnlaugsson.

35. SCENT LH had an agreement to pay back the loan made by SCENT.

36. SCENT LH had agreements with various contractors relating to their work on SCENT's new office building.

37. Dr. Dyce had knowledge of these contracts.

38. Dr. Dyce intentionally breached or sought the breach of these contracts by failing to agree to the permanent financing on SCENT's new office building and by conspiring with Dr. Gunnlaugsson to injure SCENT's practice.

39. Dr. Dyce's actions in this regard were not justified.

40. SCENT suffered damages as a result.

BY WAY OF FIFTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

41. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
42. Dr. Dyce's trade practices were unfair and deceptive. His conduct constitutes unfair or deceptive acts or practices in the conduct of trade or commerce as prohibited by Section 39-5-20 of the South Carolina Code.
43. Dr. Dyce's unfair and deceptive practices impact the public generally in that they affect SCENT's ability to serve its patients and SCENT LH's ability to pay back its lenders and contractors.
44. Upon information and belief, Dr. Dyce's unfair and deceptive practices have occurred on other occasions and/or are likely to reoccur without deterrence.
45. As a result of Dr. Dyce's unfair and deceptive practices, willfully committed by him, SCENT and SCENT LH are entitled to recover under the South Carolina Unfair Trade Practices Act three times actual damages, all litigation costs, and attorney's fees.

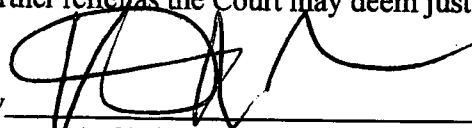
BY WAY OF SIXTH COUNTERCLAIM
(Defamation- Libel and Slander per se)

46. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
47. Upon information and belief, Plaintiff has in writing and orally defamed Defendants in their practice, character, business, reputation, and persons.

48. Plaintiff, in written and oral form, published communications concerning the Defendants that had a defamatory meaning, were published to others with malice, were false, and resulted in both presumed and special damages to Defendants.

WHEREFORE, having fully answered the Complaint of Plaintiff Orville Dyce, and having asserted the affirmative defenses and counterclaims above, SCENT prays that the Complaint be dismissed with prejudice on all counts and that SCENT be provided with the following relief:

- (a) actual, compensatory, and consequential damages;
- (b) judgment and post-judgment interest at lawful rates;
- (c) attorneys' fees and costs expended in the defense of this action; and
- (d) such other and further relief as the Court may deem just and proper.


By _____
Vincent A. Sheheen
Savage, Royall & Sheheen LLP
P.O. Drawer 10
Camden, S.C. 29020
(803)432-4391

November 7, 2010

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Jamie Curley,

2010-CP-28-0032²

Plaintiff,

vs.

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIMS

SCENT Land Holdings, LLC, and
Robert Puchalski,
Defendants.

FILED FOR RECORD
NOV - 8 PM 12:00
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO: Morris A. Ellison et al, Attorneys for Plaintiff:

Defendant SCENT, Land Holdings, LLC ("SCENT"), through its undersigned counsel,
Answers the Amended Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, SCENT admits the allegations in paragraphs 1, 2, 3 and 4 of the Complaint.
2. SCENT states that membership document speaks for itself and denies any further allegations paragraph 4.
3. SCENT admits that a purpose of SCENT is to, among other things, own real estate, but denies any further allegations or implications of paragraph 6.
4. SCENT states that the management documents speak for themselves and denies other allegations of paragraph 7.
5. SCENT admits that Dr. Puchalski was the managing shareholder and denies any further allegations of paragraph 8.

6. SCENT denies paragraph 9.
7. SCENT denies paragraph 10.
8. SCENT denies paragraph 11.
9. SCENT denies the remaining allegations of the Amended Complaint

and states that any recitation of legal authorities does not require a response as they are not factual allegations but simply statements of law.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

10. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against SCENT.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

11. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

12. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

13. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly, consented to the complained of actions of SCENT and are barred by his conduct.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

14. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

BY WAY OF FIRST COUNTERCLAIM
(Breach of Fiduciary Duty)

15. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

16. Mrs. Curley's disloyal conduct towards SCENT LH violated her fiduciary duty, duty of loyalty, and duty of good faith and fair dealing toward SCENT LH under the common law and statutory law of the State of South Carolina, including but not limited to that found in S.C. Code Ann. § 33-8-20.

17. Mrs. Curley's conduct was the direct and proximate cause of harm to SCENT LH and SCENT LH has suffered damages as a result of that harm.

BY WAY OF SECOND COUNTERCLAIM
(Conspiracy)

18. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

19. Drs. Dyce and Gunnlaugsson were physicians and employees of SCENT. Dr. Dyce was also a shareholder of SCENT and Mrs. Curley was a member of SCENT LH.

20. As part of a scheme to harm SCENT and SCENT LH and wrongfully obtain their confidential information, Dr. Dyce and Mrs. Curley have acted overtly and in concert with others, including, Dr. Gunnlaugsson, with an intent to harm and cause injury to SCENT and SCENT LH by means of:

(a) Making inappropriate and unlawful demands for confidential and proprietary corporate information;

(b) Falsely stating that SCENT and SCENT LH would not

provide requested information;

(c) Threatening to report SCENT and Dr. Robert Puchalski to the South Carolina Board of Medical Examiners, the American Medical Association, and other authorities following termination of their respective employments with SCENT in order to gain an advantage in litigation and negotiations regarding their departure from SCENT;

(d) Orchestrating multiple failures of the real estate closing on SCENT's new building in Lugoff in an attempt to weaken the practice, and which resulted in a third party placing a mechanic's lien upon that building;

(e) Making knowing and intentionally false statements to SCENT and Dr. Puchalski about their intentions with respect to Dr. Gunnlaugsson becoming a shareholder with SCENT;

(f) Inducing SCENT and Dr. Puchalski to increase and continue to provide elevated levels of compensation based on intentional misrepresentations and falsehoods; and

(g) Obtaining confidential and proprietary information from SCENT and SCENT LH under false pretenses and based on knowing and intentionally false statements.

(h) Conspiring to improperly and illegally compete and damage the business of SCENT and South Carolina ENT, Allergy and Sleep Medicine, PA.

21. Dr. Dyce's and Mrs. Curley's overt acts described above caused SCENT and SCENT LH special damages that they would not otherwise have suffered but for the conspiracy, including, but not limited to, the diminution of market value for remaining SCENT stockholders, loss of

dividends, damage to business reputation, loss of corporate opportunities, and damage to corporate good will.

BY WAY OF THIRD COUNTERCLAIM
(Interference with a Contractual Relationship)

22. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

23. As set forth more fully above, SCENT had an employment contract with Dr. Gunnlaugsson.

24. SCENT LH had an agreement to pay back the loan made by SCENT.

25. SCENT LH had agreements with various contractors relating to their work on SCENT's new office building.

26. Dr. Dyce and Mrs. Curley had knowledge of these contracts.

27. Dr. Dyce and Mrs. Curley intentionally breached or sought the breach of these contracts by failing to agree to the permanent financing on SCENT's new office building sought by SCENT LH and by conspiring with Dr. Gunnlaugsson to injure SCENT's practice.

28. Dr. Dyce's and Mrs. Curley's actions in this regard were not justified.

29. SCENT and SCENT LH suffered damages as a result.

BY WAY OF FOURTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

30. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

31. Dr. Dyce's and Mrs. Curley's trade practices were unfair and deceptive. Their

conduct constitutes unfair or deceptive acts or practices in the conduct of trade or commerce as prohibited by Section 39-5-20 of the South Carolina Code.

32. Dr. Dyce's and Mrs. Curley's unfair and deceptive practices impact the public generally in that they affect SCENT's ability to serve its patients and SCENT LH's ability to pay back its lenders and contractors.

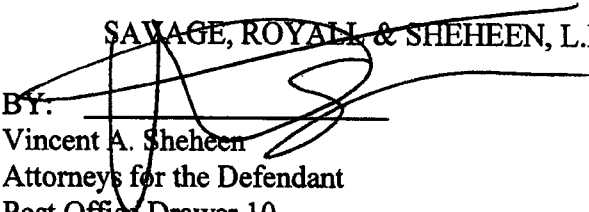
33. Upon information and belief, Dr. Dyce's and Mrs. Curley's unfair and deceptive practices have occurred on other occasions and/or are continuing to reoccur without deterrence.

34. As a result of Dr. Dyce's and Mrs. Curley's unfair and deceptive practices, willfully committed by them, SCENT and SCENT LH are entitled to recover under the South Carolina Unfair Trade Practices Act three times actual damages, all litigation costs, and attorney's fees.

WHEREFORE, having asserted the counterclaims above, and having asserted the Counterclaims above, SCENT prays that the Court dismiss the Complaint with prejudice, on all counts, and provide the following relief:

- (a) actual, compensatory, consequential and punitive damages;
- (b) judgment and post-judgment interest at lawful rates; and
- © attorneys' fees and costs expended in the defense of this action;
- (d) such other and further relief as the Court may deem just and proper.

SAVAGE, ROYALL & SHEHEEN, L.L.P.

BY: 
Vincent A. Sheheen
Attorneys for the Defendant
Post Office Drawer 10
Camden SC 29021

November 7, 2011

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323
)

Plaintiff,)
)

vs.)

**ANSWER TO AMENDED
COMPLAINT**

South Carolina ENT, Allergy & Sleep)
Medicine, P.A., and Robert Puchalski,)
)

Defendants.)
)

Defendant Robert Puchalski ("Puchalski"), through his undersigned counsel,
Answers the Amended Complaint of Plaintiff Orville Dyce as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, Defendant Puchalski admits the allegations in paragraph 1 of the Amended Complaint.
2. Defendant Puchalski admits the allegations of paragraph 2 of the Amended Complaint.
3. Defendant Puchalski admits the allegations in paragraph 3 of the Amended Complaint.
4. Defendant Puchalski admits the allegations of paragraph 4 of the Amended Complaint and notes that other amendments have occurred.
5. Defendant Puchalski admits so much of the allegations of paragraph 5 as allege that Defendant Puchalski is in the business of providing otolaryngological services. Defendant Puchalski denies any and all remaining allegations of paragraph 5.
6. Defendant Puchalski denies the allegations of paragraph 6.

7. Defendant Puchalski responds to the allegations of paragraph 7 of the Amended Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 7 of the Amended Complaint that are inconsistent with the Shareholders' Agreement and also denies any and all further allegations of paragraph 7 of the Amended Complaint.

8. Defendant Puchalski responds to the allegations of paragraphs 8 and 9 of the Amended Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraphs 8 and 9 of the Amended Complaint that are inconsistent with the Shareholders' Agreement.

9. Defendant Puchalski responds to the allegations of paragraph 10 of the Amended Complaint by admitting that the parties entered into an employment agreement stating that the Agreement speaks for itself, and Defendant Puchalski craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 10 of the Amended Complaint that are inconsistent with the Agreement.

10. Defendant Puchalski responds to the allegations of paragraph 11, 12, 13, 14 and 15 and admits so much of the allegations as allege that Dr. Puchalski has certain rights, duties, and responsibilities in his capacity as Managing Shareholder, President and Treasurer of South Carolina ENT, Allergy and Sleep Medicine, P.A., ("SCENT"). Defendant Puchalski denies any and all remaining allegations of these paragraphs and alleges that Plaintiff, while a Shareholder had input and a vote in determining the direction of the business and access to information. Defendant Puchalski specifically

denies any and all allegations of these paragraphs that are inconsistent with the Shareholders' Agreement.

11. Defendant Puchalski admits so much of the allegations of paragraphs 16 and 17 of the Complaint as allege that Plaintiff had at various times made requests for SCENT corporate information, however, Plaintiff has failed to make a request for SCENT corporate information that complied with applicable statutory and common law in South Carolina and his contractual obligations. Defendant Puchalski specifically denies the allegations of paragraph 16 and 17 of the Complaint insofar as they imply that Plaintiff's requests for SCENT corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. Defendant also alleges that Plaintiff was not operating in good faith during this time period but was attempting to damage the Defendant SCENT for his own gain. Defendant Puchalski denies any and all remaining allegations of paragraph 16 and 17 of the Complaint.

12. Defendant Puchalski denies paragraphs 18, 19, and 20.

13. Defendant Puchalski responds to the allegations of paragraph 21 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and craves reference to that document. Defendant Puchalski specifically denies any and all allegations of paragraph 21 of the Complaint that are inconsistent with the Shareholders' Agreement.

14. Defendant Puchalski denies the remaining allegations of the Complaint except to the extent that any allegation references the Shareholders' Agreement in which case the Defendant would state that the Shareholders' Agreement speaks for itself, and craves reference to that document. Defendant Puchalski specifically denies any and all

remaining allegations of the Complaint that are inconsistent with the Shareholders' Agreement. Defendant Puchalski states that any recitations of legal authorities do not require a response as they are not factual allegations but simply statements of law but to the extent a response would be deemed to allege any liability on this Defendant those allegations are denied.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

15. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against Defendant Puchalski.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

16. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

17. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in accordance with the Shareholders' Agreement and applicable statutory law, Plaintiff failed to satisfy all conditions precedent to SCENT's performances under the Shareholders' Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. SCENT and Defendant Puchalski were, therefore, relieved of any obligations to perform and was entitled to withhold performance. Furthermore, Plaintiff has been provided with all information requested and this claim is moot.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

18. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

19. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly consented to the complained of actions of SCENT and are barred by his conduct.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

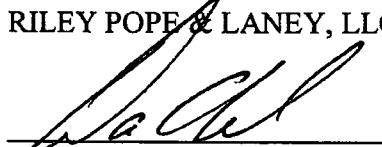
20. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

21. Defendant Puchalski is not a proper party to this suit.

WHEREFORE, having fully answered the Amended Complaint and having asserted the affirmative defenses above, Defendants Puchalski pray that the Amended Complaint be dismissed with prejudice on all counts and such other and further relief as the court deems just and proper under the circumstances.

RILEY POPE & LANEY, LLC



Roy F. Laney
Nikole H. Boland
Damon C. Wlodarczyk
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendant Puchalski

Columbia, South Carolina
November 8, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Orville Dyce,) Civil Action No. 2010-CP-28-323

Plaintiff,)

vs.)

South Carolina ENT, Allergy & Sleep
Medicine, P.A., and Robert Puchalski,)

Defendant.)

CERTIFICATE OF SERVICE

2011 NOV 14 AM 10:08
KERSHAW COUNTY, S.C.

This is to certify that I, Paula P. Ash, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the **Answer to the Amended Complaint** in the above-captioned matter via United States mail, first-class postage prepaid, to the following individuals:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee PA
5 Exchange Street
Charleston, SC 29401

Vincent A. Sheheen, Esq.
Savage Royall & Sheheen
PO Drawer 10
Camden, SC 29020

Paula P. Ash
Paula P. Ash

Columbia, South Carolina

November 9, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Jamie Curley,)

Plaintiff,)

vs.)

SCENT Land Holdings, LLC, Amy
Puchalski and Robert Puchalski,)

Defendants.)

Civil Action No. 2010-CP-28-322

**ANSWER TO AMENDED
COMPLAINT**

FILED
CLERK OF COURT
KERSHAW COUNTY, S.C.
2011 NOV 14 AM 9:53
79-10-000-00000

Defendant Robert Puchalski and Amy Puchalski ("Puchalski"), through his undersigned counsel, Answers the Amended Complaint of Plaintiff Orville Dyce as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. That there is insufficiency of process as to the Defendant Amy Puchalski and, therefore, this case should be dismissed as to that Defendant.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

1. That there his insufficiency of service of process and, therefore, this court lacks *in personum* jurisdiction over the Defendant Amy Puchalski and this case should be dismissed as to that Defendant.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

1. Upon information and belief, Defendants Puchalski admit the allegations in paragraphs 1, 2, 3 and 4 of the Complaint.

2. Defendants Puchalski state that membership document speaks for itself and deny any further allegations paragraph 4.

3. Defendants Puchalski admit that a purpose of SCENT is to, among other things, own real estate, but deny any further allegations or implications of paragraph 6.

4. Defendants Puchalski state that the management documents speak for themselves and deny other allegations of paragraph 7.

5. Defendants Puchalski admit that Dr. Puchalski was the managing shareholder and deny any further allegations of paragraph 8.

6. Defendants Puchalski deny paragraph 9.

7. Defendants Puchalski deny paragraph 10.

8. Defendants Puchalski deny paragraph 11.

9. Defendants Puchalski deny the remaining allegations of the Amended Complaint except to the extent that any allegation is a recitation of legal authorities which does not require a response as they are not factual allegations but simply statements of law.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

1. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against SCENT.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

1. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

1. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

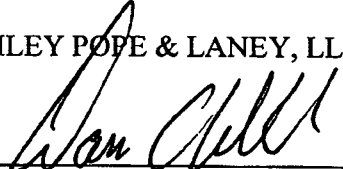
1. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly consented to the complained of actions of SCENT and are barred by his conduct.

FOR A EIGHTH DEFENSE TO ALL CAUSES OF ACTION

1. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

WHEREFORE, having fully answered the Amended Complaint and having asserted the affirmative defenses above, Defendants Puchalski pray that the Amended Complaint be dismissed with prejudice on all counts and such other and further relief as the court deems just and proper under the circumstances.

RILEY POPE & LANEY, LLC



Roy F. Laney

Nikole H. Boland

Damon C. Wlodarczyk

Post Office Box 11412

Columbia, South Carolina 29211

Telephone (803) 799-9993

Facsimile (803) 239-1414

Attorneys for Defendants Puchalski

Columbia, South Carolina

November 8, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Jamie Curley,

Plaintiff,

vs.

SCENT Land Holdings, LLC, Amy
Puchalski and Robert Puchalski,

Defendants.)

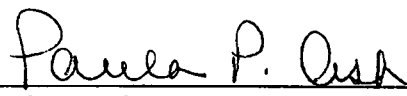
Civil Action No. 2010-CP-28-322

CERTIFICATE OF SERVICE

This is to certify that I, Paula P. Ash, an employee with the law firm of Riley
Pope & Laney, LLC, have this day caused to be served upon the person named below the
Answer to the Amended Complaint in the above-captioned matter via United States
mail, first-class postage prepaid, to the following individuals:

Morris A. Ellison, Esq.
Buist Moore Smythe McGee PA
5 Exchange Street
Charleston, SC 29401

Vincent A. Sheheen, Esq.
Savage Royall & Sheheen
PO Drawer 10
Camden, SC 29020


Paula P. Ash

Columbia, South Carolina

November 9, 2011

FILED FOR RECORD
2011 NOV 14 AM 9:53
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ORVILLE DYCE,

Plaintiff,

v.

SOUTH CAROLINA ENT, ALLERGY &

SLEEP MEDICINE, P.A.,

AMY PUCHALSKI AND ROBERT

PUCHALSKI,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 10-CP-28-323

FIRST AMENDED SUMMONS

(Non-Jury)

(Declaratory Judgment)

(Accounting)

(Damages Pursuant to S.C. Code Ann. § 33-18-

410(a)(9))

(Breach of 2008 Shareholders' Agreement)

(Breach of Contract Accompanied by a

Fraudulent Act)

(Breach of Fiduciary Duty)

Wage Statute

S. C. Code. Ann. § 41-10-10 et. seq.

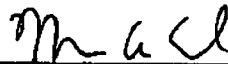
(Conversion)

(Constructive Trust)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscriber, Morris A. Ellison, Esquire, at his office at 5 Exchange Street, Charleston, South Carolina 29401, within fifteen (15) days after service hereof, exclusive of the day of said service; and if you fail to answer the said Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

WOMBLE CARLYLE SANDRIDGE & RICE



Morris A. Ellison, S.C. Bar No. 1881

William C. Cleveland, S.C. Bar No. 1284

Jana B. Baker, S.C. Bar No. 72487

5 Exchange Street

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

ATTORNEYS FOR PLAINTIFF

May 9, 2012
Charleston, South Carolina

WCSR 7201333v1

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ORVILLE DYCE,

Plaintiff,

v.

SOUTH CAROLINA ENT, ALLERGY &
SLEEP MEDICINE, P.A., AMY
PUCHALSKI AND ROBERT PUCHALSKI,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 10-CP-28-323

FIRST AMENDED COMPLAINT

(Non-Jury)

(Declaratory Judgment)

(Accounting)

(Damages Pursuant to S.C. Code Ann. § 33-18-410(a)(9))

(Breach of 2008 Shareholders' Agreement)

(Breach of Contract Accompanied by a
Fraudulent Act)

(Breach of Fiduciary Duty)

Wage Statute

S. C. Code. Ann. § 41-10-10 et. seq.)

(Conversion)

(Constructive Trust)

FILED FOR RECORD
2010 NOV 10 AM 11:19

Plaintiff, Orville Dyce, (the "**Plaintiff**"), by and through his undersigned attorneys, respectfully alleges and says as follows:

1. Plaintiff is a citizen and resident of Darlington County, South Carolina.
2. Defendant, South Carolina ENT, Allergy & Sleep Medicine, P.A., ("**SCENT**" or the "**Corporation**"), is a statutory close corporation organized and existing under the laws of the State of South Carolina with its principal place of business is in Kershaw County, South Carolina.
3. Defendant Robert Puchalski ("**Puchalski**" or the "**President**") is a citizen and resident of Kershaw County, South Carolina.
4. Defendant Amy Puchalski ("**Mrs. Puchalski**") is a citizen and resident of Kershaw County, South Carolina.

FACTS

5. The Articles of Incorporation for SCENT were filed on November 5, 2004 and amended on June 10, 2008.

6. The principal purpose of SCENT is to render services in connection with the practice of otolaryngology.

7. On or about March 1, 2007, Plaintiff became a shareholder of SCENT.

8. On or about August 31, 2007, Plaintiff, Puchalski and SCENT entered into a Shareholders' Agreement (the "2007 Shareholders' Agreement"), a copy of which is attached hereto and incorporated here in by reference as Exhibit "A".

9. On or about July 16, 2008, Plaintiff, Puchalski and SCENT entered into another Shareholders' Agreement (the "2008 Shareholders' Agreement"), a copy of which is attached hereto and incorporated here in by reference as Exhibit "B".

10. Pursuant to the terms of Section 8.1 of the 2008 Shareholders' Agreement "[a]ll other agreements dated prior to the date of this Agreement are hereby superseded in their entirety by the terms and conditions of this Agreement. . ."

11. Plaintiff and SCENT entered into an Employment Agreement effective as of June 1, 2008 (the "Employment Agreement").

12. Puchalski is, and, at all times relevant hereto was, the Managing Shareholder of SCENT. Pursuant to the terms of the 2008 Shareholders' Agreement, Puchalski as the Managing Shareholder, also occupied the office of the President of SCENT.

13. Puchalski is, and at all time relevant hereto was, also the Treasurer of SCENT.

14. Article III, Section 3.4.4 of the 2008 Shareholders' Agreement charges Puchalski, as the President and Managing Shareholder of SCENT, with, among other things, supervising and controlling all of the business affairs of SCENT.

15. Article III, Section 3.4.7 of the 2008 Shareholders' Agreement, charges Puchalski as the Treasurer of SCENT, with, among other things, "(a) hav[ing] charge and custody of and be[ing] responsible for all funds and security of [SCENT]; (b) receiv[ing] and giv[ing] receipts of moneys due and payable to [SCENT] from any source whatsoever and deposit[ing] all such moneys in the name of [SCENT] in such banks, trust companies or other depositories as shall be selected by the Shareholders; and (c) in general perform[ing] all of the duties incident to the office of Treasurer . . ."

16. Plaintiff is informed and believes Puchalski, as President and Treasurer of SCENT, is in control of, and has sole access to, SCENT's books and records.

17. On numerous occasions in December 2009 and 2010, Plaintiff, personally and through his counsel, notified Puchalski and/or Puchalski's counsel, both orally and in writing, that Plaintiff requested access to, and copies of, SCENT's corporate information, including, without limitation, financial information and other documents concerning the Corporation.

18. At all time relevant hereto, Plaintiff's demands for documents were made in good faith and for a proper purpose. At the time of making his demands, Plaintiff described with reasonable particularity his purpose for requesting the records and the records he desired to inspect. The requested records were necessary to and directly connected to Plaintiff's purposes.

19. Although Defendants have produced some documents requested by the Plaintiff, some of the documents to which Plaintiff is entitled have not been produced.

20. Plaintiff is informed and believes that the Defendant Puchalski committed illegal, oppressive, fraudulent and unfairly prejudicial acts including, without limitation, misappropriating SCENT assets to himself and/or Defendant Amy Puchalski or to others on their behalf without approval of Plaintiff and charging personal expenses to SCENT.

21. On or about May 9, 2010, Defendant Pulchalski terminated Plaintiff's employment with SCENT.

22. Section 4.4 of the 2008 Shareholders' Agreement entitled "Compulsory Redemption of Stock Upon Termination of Employment," provides, in pertinent part:

If a Shareholder's Employment Agreement is terminated: (i) by the Corporation pursuant to Section 2.2 of the Shareholder's Employment Agreement; (ii) by the Shareholder pursuant to Paragraph 2.3 of the Shareholder's Employment Agreement. . . the Corporation shall purchase such Departing Shareholder's Shares in the Corporation in exchange for payment as provided in Section 4.5, 4.6 and 4.7 of this Agreement.

23. Upon Dyce's termination, Defendants were required to purchase Dyce's shares in SCENT pursuant to the terms and conditions of the 2008 Shareholders' Agreement.

24. In direct contravention to the 2008 Shareholders' Agreement, despite Dyce's demand that Defendants purchase his shares in SCENT, Defendants failed to purchase Dyce's shares in SCENT.

25. On numerous occasions, Plaintiff, through his counsel, demanded SCENT's counsel both orally and in writing, that Defendants purchase Plaintiff's shares in SCENT as of May 9, 2010 in accordance with the terms and provisions of the 2008 Shareholders' Agreement.

26. Despite such demands, Defendants have refused and continue to refuse to purchase the Plaintiff's shares in SCENT.

27. Plaintiff has not been able to determine the amount of payment due to him under the formula set forth in Section 4.4 of the 2008 Shareholders' Agreement because Defendant Puchalski has not provided Plaintiff complete access to SCENT's books and records and has not provided him all of the requested documents.

28. Defendant Puchalski is, and, at all times relevant hereto was, married to Amy Puchalski.

29. Plaintiff is informed and believes that at all times relevant hereto Amy Puchalski was never employed at SCENT and was never a shareholder of SCENT.

30. Plaintiff is informed and believes that Defendant Puchalski violated, without limitation, the terms of the 2008 Shareholders' Agreement and/or Employment Agreement by misappropriating and/or misdirecting SCENT funds to Defendant Mrs. Puchalski by, without limitation: (i) paying Mrs. Puchalski Variable Compensation (as defined in the Employment Agreement) though she was not an employee of SCENT and not entitled to same; and, (ii) making distributions to Mrs. Puchalski though she was not a shareholder of SCENT and not entitled to same (collectively, "Compensation").

31. Plaintiff is informed and believed that the Compensation belonged to SCENT and/or the other shareholders of SCENT and not Defendant Mrs. Puchalski.

32. Plaintiff is informed and believed that Defendant Mrs. Puchalski received the Compensation despite the fact that she knew the Compensation belonged to SCENT and its shareholders and not to her.

33. Mrs. Puchalski knowingly and intentionally accepted such Compensation.

34. As a result of the Defendants' actions set forth above, Plaintiff has been forced to institute this action to seek judicial assistance to enforce his rights.

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANTS SCENT AND PUCHALSKI
(Declaratory Judgment)

35. Plaintiff repeats and realleges the allegations of paragraphs 1 through 34 above as if set forth fully herein.

36. Plaintiff brings this cause of action pursuant to the terms of the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. seq., seeking a declaration of rights, duties and other legal relations by and among the Plaintiff and Defendants SCENT and Puchalski under the South Carolina Business Corporation Act, S.C. Code Ann. § 33-1-101, et. seq. and the 2008 Shareholders' Agreement.

37. S.C. Code Ann. § 33-16-102 & 103 provides that a shareholder of a corporation has a right to inspect, review and copy certain corporate records.

38. Defendants SCENT and Puchalski have violated the South Carolina Business Corporation Act, S.C. Code Ann. S.C. Code Ann. § 33-16-102 & 103 & 200, by failing to provide Plaintiff with SCENT information and documents which he requested and to which he is entitled.

39. The conduct of Defendants SCENT and Puchalski in refusing to provide the information requested is illegal, oppressive, fraudulent and unfairly prejudicial to the Plaintiff and as such constitutes a violation of S.C. Code Ann. § 33-18-400(a)(1).

40. In refusing to provide the information requested, Defendants SCENT and Puchalski have acted arbitrarily, vexatiously and in bad faith.

41. Pursuant to S.C. Code Ann. § 33-18-410(a)(1), Plaintiff is entitled to an order requiring Defendants SCENT and Puchalski to produce the requested documents.

42. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANTS SCENT AND
PUCHALSKI
(Accounting)

43. Plaintiff repeats and realleges the allegations of paragraphs 1 through 42 above as if set forth fully herein.

44. Puchalski has engaged in a series of wrongful, illegal, oppressive, fraudulent and unfairly prejudicial conduct that includes, but is not limited to: (i) mismanaging corporate affairs; (ii) misappropriating SCENT's assets; (iii) charging personal expenses to SCENT; and, (iv) refusing to provide Plaintiff with SCENT's books and records, which Plaintiff has requested, to which he is entitled and which are necessary to reveal the full nature and extent of Puchalski's wrongdoing and as such constitutes a violation of S.C. Code Ann. § 33-18-400(a)(1).

45. Puchalski, as President, Manager and Treasurer of SCENT, is accountable to the Plaintiff for his conduct relating to SCENT.

46. The facts and circumstances alleged in this Amended Complaint render it fair and equitable for Defendants SCENT and Puchalski to account to Plaintiff for all financial activities of SCENT since the formation of SCENT pursuant to S.C Code Ann. § 33-18-410(a) (1) & (5). Plaintiff is entitled to an accounting that includes, but is not limited to, all direct or indirect payments, distributions or other types of compensation made in any form to or for the benefit of the directors, officers, and shareholders of SCENT.

47. Plaintiff and his counsel, both orally and in writing, have repeatedly demanded that Plaintiff have access to SCENT books and records, and Defendants SCENT and Puchalski have failed to produce all of the requested books and records of SCENT.

48. Defendants SCENT and Puchalski have acted arbitrarily, vexatiously and in bad faith as shown by their actions set forth more fully above.

49. Pursuant to S.C. Code Ann. §§ 33-18-410(a)(1) & (5), Plaintiff is entitled to an order of judgment against Defendants SCENT and Puchalski for an accounting.

50. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANTS SCENT AND PUCHALSKI
(Damages Pursuant to S.C. Code Ann. § 33-18-410(a)(9))

51. Plaintiff repeats and realleges the allegations of paragraphs 1 through 50 above as if set forth fully herein.

52. Defendant Puchalski has engaged in a series of wrongful, illegal, oppressive, fraudulent and unfairly prejudicial conduct as described above and his acts are in violation of S.C. Code Ann. § 33-18-400(a)(1).

53. Plaintiff is entitled to reimbursement from Defendants SCENT and Puchalski for all funds, monies, assets and property wrongfully taken by Puchalski which is duly owed and belongs to Plaintiff.

54. Defendants SCENT and Puchalski have acted arbitrarily, vexatiously and in bad faith as shown by their conduct set forth above.

55. Pursuant to S.C. Code Ann. § 33-18-410(a)(9), Plaintiff is entitled to judgment against Defendants SCENT and Puchalski for damages.

56. Pursuant to S.C. Code Ann. § 33-18-410(b), Plaintiff is entitled to recover his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein.

**FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANTS SCENT AND
PUCHALSKI**
(Breach of 2008 Shareholders' Agreement)

57. Plaintiff repeats and realleges the allegations of paragraphs 1 through 56 above as if set forth fully herein.

58. Defendants SCENT and Puchalski breached the 2008 Shareholders' Agreement by, without limitation, failing to purchase Dyce's shares in SCENT in exchange for payment as of May 9, 2010 in direct contravention to the mandates of Section 4.4 of the 2008 Shareholders' Agreement entitled "Compulsory Redemption of Stock Upon Termination of Employment."

59. As a direct and proximate result of the breach by Defendants SCENT and Puchalski, Plaintiff has suffered substantial losses all in amounts to be determined by the trier of fact.

60. Plaintiff is entitled to judgment against the Defendants SCENT and Puchalski for the damages he incurred plus his attorneys' fees and costs pursuant to the terms of the 2008 Shareholders' Agreement.

**FOR A FIFTH CAUSE OF ACTION AS TO DEFENDANTS
SCENT AND PUCHALSKI**
(Breach of Contract Accompanied by a Fraudulent Act)

61. Plaintiff repeats and realleges the allegations of paragraphs 1 through 60 above as if set forth fully herein.

62. The breach of the 2008 Shareholders by Defendants SCENT and Puchalski in wrongfully failing to pay Plaintiff the amounts owed to him under the terms and provisions

Section 4.4 of the 2008 Shareholders' Agreement was accompanied by Defendant Puchalski's fraudulent act in, without limitation, failing to provide Plaintiff complete and accurate SCENT financial information to preclude Plaintiff from calculating the amounts owed to him under the terms and provisions of the 2008 Shareholders' Agreement.

63. As a direct and proximate result of Puchalski's breach of the 2008 Shareholders' Agreement accompanied by his fraudulent act, Plaintiff has suffered actual damages.

64. Accordingly, Plaintiff is entitled to judgment against Defendants SCENT and Puchalski and the recovery of Plaintiff's actual damages, punitive damages, and such other relieve that the Court shall deem appropriate.

FOR A SIXTH CAUSE OF ACTION AS TO DEFENDANT PUCHALSKI
(Breach of Fiduciary Duty)

65. Plaintiff repeats and realleges the allegations of paragraphs 1 through 64 above as if set forth fully herein.

66. At all times relevant hereto, Defendant Pulchalski, as Manger, President, and Treasurer of SCENT owed the highest fiduciary duties of loyalty, honesty and care to Plaintiff.

67. Upon information and belief, during the time that the Plaintiff was a Shareholder of SCENT, Defendant Pulchalski breached his fiduciary duties to the Plaintiff by, without limitation, wrongfully (i) mismanaging corporate affairs; (ii) misappropriating SCENT's assets; (iii) charging personal expenses to SCENT; and, (iv) failing to redeem the Plaintiff's stock in SCENT upon his termination.

68. Defendant Pulchalski breached his fiduciary duties of loyalty, honesty and care owed to the Plaintiff.

69. As a direct result of Defendant Pulchalski's breach of his fiduciary duties to the Plaintiff, Plaintiff is entitled to judgment against Defendants SCENT and Puchalski for actual and punitive damages in amounts to be determined by the trier of fact.

**FOR A SEVENTH CAUSE OF ACTION AS TO DEFENDANTS SCENT AND
PUCHALSKI**

(Violation of S.C. Payment of Wage Statute S.C. Code Ann. § 41-10-10, et. seq.)

70. Plaintiff repeats and realleges the allegations of paragraphs 1 through 69 above as if set forth fully herein.

71. Upon information and belief, at the time of Plaintiff's purported termination, he was owed wages, as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et. seq. (the "**Wage Payment Act**").

72. Defendant Pulchalski, as an officer and agent of SCENT, knowingly permitted SCENT to violate the Wage Payment Act and is therefore individually liable under the Wage Payment Act, S.C. Code § 41-10-10, et. seq. along with Defendant SCENT.

73. The actions by Defendants SCENT and Puchalski in not paying Plaintiff all wages due to him at the time of his termination was intentional, wrongful and in bad faith in violation of S.C. Code Ann. § 41-10-80.

74. Plaintiff is entitled to payment of all wages owed, plus treble damages and attorneys' fees, and all other relief available under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10, et. seq.

**FOR AN EIGHTH CAUSE OF ACTION AS TO DEFENDANTS PUCHALSKI AND MRS.
PUCHALSKI
(Conversion)**

75. Plaintiff repeats and realleges the allegations of paragraphs 1 through 74 above as if set forth fully herein.

76. Plaintiff as an employee and shareholder of SCENT had a right and interest to Distributions (as defined in the 2008 Shareholders' Agreement), Compensation (as defined in the Employment Agreement) and Variable Compensation (collectively, "**SCENT Compensation**") that belonged to him.

77. Defendants Puchalski and Mrs. Puchalski converted, without limitation, SCENT Compensation to their own use without Plaintiff's permission.

78. Upon information and belief, Defendants Puchalski and Mrs. Puchalski continue to possess and have custody of SCENT Compensation owed to Plaintiff under the terms of the 2008 Shareholders' Agreement and the Employment Agreement. A portion of SCENT Compensation rightfully belongs to Plaintiff, and Plaintiff has the right to possession of his pro rata share of SCENT Compensation.

79. The actions of Defendants Puchalski and Mrs. Puchalski were willful, wanton, without right, justifiable cause, or the consent of Plaintiff, and calculated to cause damage to Plaintiff. As a direct and proximate result of the actions of Defendants Puchalski and Mrs. Puchalski, Plaintiff has been damaged in an amount to be determined by the trier of fact.

80. Plaintiff's pro rata share of SCENT Compensation was converted by Defendants Puchalski and Mrs. Puchalski recklessly, maliciously, and with conscious indifference. Such acts entitle Plaintiff to an award of punitive damages.

81. As a direct result of Defendants Puchalski and Mrs. Puchalski, Plaintiff is entitled to judgment against Defendants Puchalski and Mrs. Puchalski for actual and punitive damages in amounts to be determined by the trier of fact for converting SCENT funds without Plaintiff's consent.

FOR A NINTH CAUSE OF ACTION AS TO DEFENDANTS PUCHALSKI AND MRS.
PUCHALSKI
(Constructive Trust)

82. Plaintiff repeats and realleges the allegations of paragraphs 1 through 81 above as if set forth fully herein.

83. Plaintiff reposed trust and confidence in Defendant Puchalski as a fellow shareholder to manage SCENT affairs properly, including, without limitation, SCENT Compensation.

84. Plaintiff is informed and believes that at Defendant Puchalski's direction and with Mrs. Puchalski's knowledge and consent, SCENT or its employees and/or agents diverted SCENT funds, a portion of which belonged to Plaintiff, to Mrs. Puchalski.

85. Plaintiff is informed and believes that Mrs. Puchalski did not perform any work on SCENT's behalf, was never an employee of SCENT nor had an ownership interest in SCENT, and was not entitled to any SCENT Compensation.

86. Plaintiff is informed and believes that SCENT Compensation was diverted to Mrs. Puchalski or other third part(ies) without Plaintiff's knowledge and/or consent.

87. Plaintiff is informed and believes that Defendant Mrs. Puchalski received SCENT Compensation and negotiated certain SCENT checks with knowledge that she was not entitled to receive and retain such funds.

88. Defendant Puchalski abused his confidential relationship with Plaintiff by using and expending a portion of SCENT's Compensation in favor of and for the benefit of Mrs. Puchalski.

89. Plaintiff is informed and believes that a constructive trust should be imposed on SCENT Compensation and any other of SCENT funds taken by Defendants Puchalski and Mrs. Puchalski in favor of Mrs. Puckalski or another third party that wrongfully received SCENT funds or SCENT Compensation.

WHEREFORE, Plaintiff requests that this Court order the following relief:

(A) That this Court inquire into the matters and things hereinabove alleged and that this Court determine the rights of the parties hereto;

(B) As to First Cause of Action, judgment that Defendants SCENT and Puchalski shall provide Plaintiff access to and the right to copy all South Carolina ENT, Allergy & Sleep Medicine, P.A. requested books and records and award Plaintiff his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

(C) As to the Second Cause of Action, judgment that the Defendants, South Carolina ENT, Allergy & Sleep Medicine, P.A., and Robert Puchalski, be directed to fully account for the disposition of the funds, monies, assets and property of South Carolina ENT, Allergy & Sleep Medicine, P.A., and his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

(D) As to the Third Cause of Action, judgment against Defendants Puchalski and SCENT for Plaintiff for his actual damages and his attorneys' fees plus the costs of appraisers and other experts engaged to his rights herein pursuant to S.C. Code Ann. § 33-18-410(b);

(E) As to the Fourth Cause of Action, judgment against Defendants Puchalski and SCENT for Plaintiff for his actual damages, costs and attorneys' fees pursuant to the 2008 Shareholders' Agreement;

(F) As to the Fifth, Sixth and Seventh Causes of Action judgment against Defendants SCENT and Puchalski for Plaintiff for his actual damages, punitive damages, costs and attorneys' fees;

(G) As an Seventh Cause of Action, judgment against Defendants SCENT and Puchalski for Plaintiff for his actual damages, treble damages, attorneys fees, costs and all other remedies allowed under S.C. Code § 41-10-10, et. seq.;

(H) As to the Eighth Cause of Action, judgment against Defendants Puchalski and Mrs. Puchalski for Plaintiff for actual and punitive damages;

(I) As to the Ninth Cause of Action, judgment against Defendants Puchalski and Mrs. Puchalski in favor of Plaintiff imposing a Constructive Trust over all funds removed and received by Defendant Amy Puchalski in and from SCENT; and,

(J) Plaintiff receives such other and further relief as this Court deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE

M A C

Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
5 Exchange Street
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ATTORNEYS FOR PLAINTIFF

May 9, 2012
Charleston, South Carolina



STATE OF SOUTH CAROLINA)
) SHAREHOLDER'S AGREEMENT
COUNTY OF KERSHAW)

This Agreement is entered into this 31st day of August, 2007, by and between Robert Puchalski, M.D. and Orville Dyce, M.D. as the shareholders of South Carolina Ear, Nose, Throat & Facial Plastic Surgery, Inc.

WITNESSETH:

1. **NAME:** The name of this Corporation is South Carolina Ear, Nose, Throat & Facial Plastic Surgery, Inc., which is a Statutory Close Corporation, organized and existing under the laws of the State of South Carolina and incorporated on November 5, 2004.

2. **MANAGEMENT:** The management of the Corporation shall be with the consent of all shareholders. At its annual meeting each year in the Fall, the shareholders shall elect a President, Vice-President, Secretary and Treasurer. The shareholders shall also designate, by proper resolution, a "designated director" pursuant to S.C. Code Section 33-18-210(c)(5) for the purposes of signing corporate documents that may be required in the usual and regular course of business. The term "managing shareholder" shall also refer to the President of the Corporation.

3. **MEETINGS:** The Corporation shall not be required to elect a board of directors but shall hold an annual meeting. A meeting of the shareholders may be called at any time by an officer or shareholder, upon ten (10) days written notice to each shareholder. Notice of such meetings may be waived in writing by each shareholder.

4. VOTING: Each shareholder shall have one (1) vote per share of stock owned in the Corporation. Properly executed proxies may be voted on any matter to come before the Corporation.

5. DUTIES, AUTHORITY, LIMITATIONS & COMPENSATION: The duties, authority, limitations and compensation of officers and employees shall be determined by the majority vote of the shareholders.

6. STOCK: Stock Certificates are to be issued in return for value received by the Corporation, upon the signature of the President and Secretary. The shares of stock in this Corporation may not voluntarily or involuntarily be transferred except as provided in South Carolina Law or as modified by the parties' agreement entitled "Stock Purchase Agreement" dated 31st day of August, 2007.

7. LOANS TO AND FROM SHAREHOLDERS: No shareholder shall have any obligation to make contributions to the Corporation other than those as mutually agreed upon. Any shareholder that makes a loan to the Corporation shall do so in writing with such loan not effective unless authorized by the President of the Corporation.

8. SHAREHOLDER GUARANTEES OF CORPORATION OBLIGATIONS: If required, shareholders of the Corporation shall execute whatever guarantees are necessary to secure the obligations of the Corporation upon a majority vote of the shareholders.

9. ALLOCATIONS OF PROFITS AND LOSSES: The shareholders shall be entitled to an allocation of the Corporation's profits and losses, to allocations of the Corporation's assets and to a distribution of such profits and assets as can be agreed upon by a majority vote of the shareholders. In any case, the profits of the Corporation will be

distributed on an annual basis unless the shareholders agree by majority vote not to distribute such profits.

10. HIRING AND FIRING OF EMPLOYEES OF THE CORPORATION: The shareholders agree the managing shareholder shall not hire or fire any employee of the Corporation at the director level or above, physician extenders, physicians or practice manager without consultation with all shareholders and by agreement of the majority of the shareholders. The managing shareholder may hire or terminate any other employee of the Corporation without consultation with other shareholders.

11. CAPITAL EXPENDITURES: The managing shareholder shall not be entitled to expend any of the cash or assets of the Corporation or incur any debt above five thousand and no/100 (\$5,000.00) dollars without consultation with all shareholders and a majority agreement of those shareholders.

12. FEES PROPERTY OF THE CORPORATION: The shareholders agree that all monies or fees earned by them in the course of the practice of their profession as employees of the Corporation with the exception of medical directorships individually entered into by shareholders or for any fees earned for speaking engagements, shall be the sole and exclusive property of the Corporation.

13. NO DUTY TO RECORD DECISIONS: The managing shareholder shall have no duty to record in writing or otherwise any decision of the managing shareholder and the managing shareholder's failure to make such record shall not impair the validity of such decision.

14. DISSOLUTION OF THE CORPORATION: Dissolution of the Corporation may occur upon majority vote of the outstanding shares of the Corporation. Upon a determination by the majority of the shareholders to dissolve the Corporation, all shareholders shall cooperate in the winding up of the affairs of the Corporation and liquidation and distribution of the proceeds of the sale or disposition of the assets of the Corporation to creditors and then to shareholders in accordance with their respective ownership in the Corporation. The managing shareholder shall cause to be filed a certificate of dissolution with the Secretary of State upon the completion of the winding up of the affairs of the Corporation. The certificate of dissolution shall set forth the effective date of the cancellation of the Corporation's termination.

15. ENTIRE AGREEMENT: This agreement shall contain the complete agreement between the parties concerning its subject matter and replaces all earlier agreements between the shareholders, whether written or oral, concerning the subject matter of this agreement.

16. AMENDMENTS: No amendment to this agreement shall be valid unless set forth in writing and signed by a majority of the shareholders.

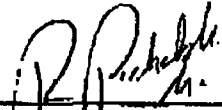
17. NOTICES: All notices to this agreement shall be in writing and sent by fax or mailed to the parties at the respective address which is set forth in this agreement.

18. GOVERNING LAW: This agreement shall be governed exclusively by the laws of the State of South Carolina. Venue for any action brought pursuant to this agreement or the articles of incorporation shall be in Kershaw County, South Carolina.

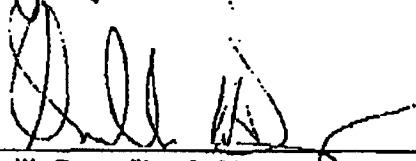
IN WITNESS WHEREOF, we have hereunder set our Hands and Seals this 31st
day of August, 2007.

In the presence of:





Robert Puchalski, Shareholder



Orville Dyce, Shareholder

Amended Shareholders August.wpd

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE ANN. § 15-48-10, et seq.

SHAREHOLDERS' AGREEMENT

BY AND AMONG

SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A.

AND

ITS

SHAREHOLDERS

-Doc# 5981477.10-

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**THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE ANN. § 15-48-10, et seq.**

SHAREHOLDERS' AGREEMENT

This Shareholders' Agreement ("Agreement"), effective as of July 16, 2008 ("Effective Date") is entered into by and among South Carolina ENT, Allergy & Sleep Medicine, P.A. (the "Corporation"), and each of the persons listed on Schedule A hereto (such persons and their respective successors and assigns are hereinafter referred to collectively as the "Shareholders" and individually as a "Shareholder").

RECITALS

1. The authorized capital stock of the Corporation consists of Five Hundred Thousand (\$00,000) shares of common stock (hereinafter referred to as "Common Stock");
2. As of the Effective Date of this Agreement, the Corporation has issued and outstanding One Hundred Thousand (100,000) shares of Common Stock in the amounts and to the Shareholders identified on Schedule A;
3. The Corporation was organized as a Statutory Close Corporation; and
4. The Shareholders desire to set forth certain understandings regarding their ownership of the Common Stock and to impose certain restrictions upon the Transfer of their Common Stock in the Corporation.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

RECITALS

Section 1.1 Recitals. The above recitals are true and correct and incorporated herein.

ARTICLE II

DEFINITIONS

Section 2.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Agreement" means this Agreement (together with Exhibits), as amended, supplemented, modified or waived from time to time, in accordance with its provisions.

"Articles of Incorporation" means the Corporation's Articles of Incorporation, as amended from time to time, in accordance with its provisions.

"Bankruptcy" shall mean, with respect to any Person, that such Person has: (i) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian or the like, of his property; (ii) admitted in writing his inability to pay his debts generally as they become due; (iii) made a general assignment for the benefit of his creditors, (iv) been adjudicated a bankrupt or insolvent; (v) commenced a voluntary case under the federal bankruptcy laws of the United States of America; (vi) filed a voluntary petition or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law; or (vii) filed an answer admitting the material allegation of a petition filed against him in any bankruptcy or insolvency proceeding. For the purpose of any provision contained in this Agreement requiring reference to the date on which a bankruptcy has occurred, a bankruptcy shall be deemed to have occurred upon the commencement of the first to occur of any one of the foregoing enumerated events.

"Bylaws" means the Corporation's Bylaws, as in effect on the date hereof, as amended, supplemented or modified from time to time, in accordance with its provisions.

"Code" shall mean the Federal Internal Revenue Code of 1986, as the same may be amended from time to time.

"Common Stock" shall have the meaning set forth in the recitals.

"Corporation" shall have the meaning set forth in the preamble.

"Departing Shareholder" shall mean a Shareholder who is Transferring Shares in accordance with any provision of this Agreement, including by virtue of a permitted sale, or as a result of death, disqualification, termination of employment or Permanent Disability. Where applicable, Departing Shareholder shall also mean the personal representative of a deceased Shareholder.

"Departure Event" is any event described in Section 4.2, 4.3 and 4.4.

"Disability" is the inability of Shareholder to perform the usual and customary duties of a physician employed in a full-time medical practice, as such term is defined in any Disability income insurance policy that the Corporation or Shareholder has obtained with respect to such Shareholder.

"Effective Date" shall have the meaning set forth in the preamble.

"Employment Agreement" is the agreement between a Shareholder and Corporation establishing the employment obligation of the shareholder.

"Equal Percentage" means, with respect to any Shareholder as of any date, the result (expressed as a percentage) obtained by dividing the number of Shares held by the Shareholder by the number of Shares of Common Stock then issued and outstanding.

"Involuntary Transferee" shall have the meaning set forth in Section 4.2.

"Managing Shareholder" shall mean the President of the Corporation.

"Note" shall have the meaning set forth in Section 4.7.

"Permanent Disability" occurs when the insurance carrier providing Disability Insurance to the Shareholder has determined that the Shareholder has a total disability.

"Person" shall mean an individual or a corporation, association, partnership, joint venture, organization, business, trust, or any other entity or organization, including a government or any subdivision or agency thereof.

"Purchase Price" means that amount paid a Departing Shareholder as set forth in Section 4.5 and paid in accordance with Sections 4.6 and 4.7.

"Qualified Person" shall mean an individual who is licensed to practice medicine in the State of South Carolina in the area of Otolaryngology surgery.

"Remaining Shareholders" are those Shareholders retaining Shares in Corporation after the Transfer of Shares, disqualification, termination, Disability or death of a Shareholder.

"Retirement Notice" shall have the meaning set forth under the term Approved Retirement.

"Shareholder" or "Shareholders" shall have the meaning set forth in the preamble.

"Shares" means any Common Stock purchased or otherwise acquired by any Shareholder or any equity securities issued or issuable directly or indirectly with respect to the Common Stock.

"Transfer" shall have the meaning set forth in Section 4.1.

"Transferred Shares" shall have the meaning set forth in Section 4.2.

ARTICLE III

MANAGEMENT AND CONTROL; CAPITAL CONTRIBUTIONS

Section 3.1 General. The business and affairs of the Corporation shall be managed, controlled and operated in accordance with its Articles of Incorporation and this Agreement, as the same may be amended from time to time, except that the Articles of Incorporation shall not be amended in any manner that would conflict with, or be inconsistent with, the provisions of this Agreement.

Section 3.2 Corporation Shall Have No Board of Directors and the Powers of a Board of Directors Shall be Exercised by the Shareholders. As the Articles of Incorporation have dispensed with the Board of Directors pursuant to S.C. Code Ann. § 33-18-210, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the

Corporation shall be managed under the direction of, the Shareholders. The Shareholders shall hold an annual meeting on or around Labor Day each year at which the officers of the Corporation shall be elected for terms that will commence on January 1 of the succeeding year. A special meeting of the Shareholders may be called at any time by any Shareholder upon ten (10) days written notice to each Shareholder. Notice of a meeting may be waived in writing by a Shareholder.

Section 3.3 Voting Requirements. Except as otherwise provided in this Section, each outstanding Share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of the Shareholders. In the event of a tie in the voting on any matter requiring a majority vote, the Managing Shareholder shall break the tie by casting a second vote to decide the matter.

Section 3.3.1 Supermajority Voting Requirements. Notwithstanding any other provision of this Agreement, the Shareholders of the Corporation shall approve the following actions of the Corporation by affirmative vote of greater than a sixty-seven percent (67%) vote of the Shareholders:

- (i) Merger, consolidation, joint venture, dissolution or liquidation of the Corporation;
- (ii) Establishment of a new practice site for the Corporation's medical practice; and
- (iii) Creation of any subsidiary organization or affiliation of the Corporation with any other entity for the purpose of the joint conduct of business or other programs whether in the form of participation in a corporation (either through the holding of capital stock or by membership), partnership, joint venture, co-tenancy, limited liability company, limited liability partnership or other form of ownership or control.

Section 3.3.2 Unanimous Voting Requirements. The following actions of the Corporation require unanimous consent of the Shareholders of the Corporation:

- (i) Amendments to the Articles of Incorporation or this Agreement;
- (ii) Requirement of loans or contribution of capital from Shareholders;
- (iii) The admission of a shareholder in the Corporation or acceptance of an offer of Transfer of Shares, including, but not limited to, preliminary offers or discussions with any person regarding admission as a shareholder; and
- (iv) Termination of a Shareholder's Employment Agreement without cause provided that no Shareholder shall be entitled to vote for or against his or her termination and any Shares of a Shareholder who is subject to a vote for termination shall not be counted in determining whether the vote is unanimous. The foregoing sentence shall be construed as express

authority to terminate a Shareholder's Employment Agreement in accordance with Section 2.3(c) of the Shareholder's Employment Agreement.

Section 3.3.3 Informal Action by Shareholders. Any action required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by all of the Shareholders entitled to vote with respect to the subject matter thereof and are delivered to the Corporation for inclusion in the minute book. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Section 3.4 Officers. The officers of the Corporation shall consist of a President, Vice President, Secretary and Treasurer. The President may also be referred to as the "Managing Shareholder" of the Corporation. No Shareholder shall be eligible to serve as a Managing Shareholder until such person has been a Shareholder for three (3) complete years.

Section 3.4.1 Number. The officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be appointed by the Shareholders. Such other officers and assistant officers as may be deemed necessary, including any Vice Presidents, may be appointed by the Shareholders. If specifically authorized by the Shareholders, an officer may appoint one or more assistant officers. The same individual may simultaneously hold more than one office in the Corporation.

Section 3.4.2 Appointment and Term of Office. Except as provided otherwise in this Agreement, the officers of the Corporation shall be appointed by the Shareholders for a term of one (1) year. (The designation of a specified term grants to the officer no contract rights and the Shareholders can remove the officer at any time prior to the termination of such term). Once elected, an officer shall serve until their successor is appointed or until they resign, die, or until they are removed in the manner provided in §3.3 of this Article III.

Section 3.4.3 Removal. Except as provided otherwise in this Agreement, the President may be removed by the Shareholders at any time, with or without cause, upon the affirmative vote of Shareholders holding at least two-thirds (2/3) of the issued and outstanding Shares. The other officers may be removed at any time, with or without cause, upon recommendation by the President and the affirmative vote of Shareholders holding at least a majority of the issued and outstanding Shares. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer shall not of itself create contract rights.

Section 3.4.4 President. The President shall be the principal executive officer of the Corporation and, subject to the control of the Shareholders, shall in general supervise and control all of the business and affairs of the Corporation. He shall have direct responsibility for all employees and shall determine staffing levels and assign work descriptions and duties for all employees of the Corporation. He shall, when present, preside at all meetings of the Shareholders. He may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Shareholders, certificates for Shares and deeds, mortgages, bonds, contracts, or other instruments which the Shareholders have authorized to be executed, except in

cases where the signing and execution thereof shall be expressly delegated by the Shareholders or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Shareholders from time to time:

Section 3.4.5 Vice President. If appointed, or in the event of the President's death or inability to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation then in the order of their appointment) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. (If there is no Vice President then the Treasurer shall perform such duties of the President.) Any Vice President may sign, with the Secretary or an assistant Secretary, certificates for Shares the issuance of which have been authorized by resolution of the Shareholders; and shall perform such other duties as from time to time may be assigned to him by the President or by the Shareholders.

Section 3.4.6 Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Shareholders in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of any seal of the Corporation and if there is a seal of the Corporation see that it is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) when requested or required, authenticate any records of the Corporation; (e) keep a register of the post office address of each Shareholder which shall be furnished to the Secretary by such Shareholder; (f) sign with the President, or a Vice President, certificates for Shares, the issuance of which shall have been authorized by resolution of the Shareholders; (g) have general charge of the stock transfer books of the Corporation; and (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Shareholders.

Section 3.4.7 Treasurer. The Managing Shareholder shall also serve as the Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Shareholders; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Shareholders. If required by the Shareholders, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Shareholders shall determine.

Section 3.4.8 Assistant Secretaries and Assistant Treasurers. The assistant secretaries, when authorized by the Shareholders, may sign with the President or a Vice President certificates for Shares the issuance of which shall have been authorized by a resolution of the Shareholders. The assistant Treasurers shall respectively, if required by the Shareholders, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Shareholders shall determine. The assistant secretaries and assistant Treasurers in general, shall

perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Shareholders.

Section 3.4.9 Salaries. The salaries of the officers shall be fixed from time to time by the Shareholders.

Section 3.5 Shareholder Guarantee. The Shareholders agree to execute any guarantee necessary to secure the obligations of the Corporation as approved by a majority of the Shareholders.

Section 3.6 Capital Contributions. Additional Capital Contributions must be approved by the unanimous consent of all Shareholders as provided in Section 3.3.2.(I). None of the Shareholders shall at any time be required to contribute a larger sum than the Shareholder's Equal Percentage of the total amount of any capital contribution. This paragraph shall not apply to a Shareholder's initial purchase of stock in the Corporation.

Section 3.7 Confidentially. The Shareholders shall not disclose any information relating to the Corporation regarding the Corporation's operations, records, patients, or procedures, to any persons other than employees of the Corporation, federal and state regulatory agencies, third-party reimbursement agencies, the Corporation's accountants, lawyers, consultants and other professional advisors, without the prior written consent of the Corporation or, as the case may be, an enforceable subpoena, or the final order of a court of competent jurisdiction. Each Shareholder shall use information related to the business of the Corporation to advance the Corporation's best interests, and not to benefit their personal interest. All forms, templates, systems (including billing systems) are the property of the Corporation and shall not be used apart from the Corporation by a Shareholder or Departing Shareholder without the written consent of the Corporation. This provision shall survive the termination of this Agreement or the termination of a Shareholder's Employment Agreement. This confidentiality clause is not intended to restrict or limit any confidentiality clause contained in a Shareholder's Employment Agreement. Accordingly, any separate confidentiality clause contained in a Shareholder's Employment Agreement will be separately enforceable in addition to the terms contained in this Agreement.

Section 3.8 Banking. Corporation's banking arrangements with any banking institution shall provide that deposits may be withdrawn only by check, wire transfer or other similar instruments and valid only when signed by the Managing Shareholder or other Person authorized (by appropriate corporate resolutions) by the Corporation.

Section 3.9 Founding Shareholder Protection Provisions. The following provisions shall apply to Robert Puchalski during the term of his employment with the Corporation:

- (I) The Shareholders agree to vote their Shares each year to elect Robert Puchalski as the Managing Shareholder through the end of the calendar year 2014. Thereafter, the Managing Shareholder may only be removed from office "for cause" by the unanimous vote of all Shares excluding the Shares owned by the Managing Shareholder.

(ii) If Robert Puchalski's Employment Agreement is terminated without cause, as provided in Section 2.3(c) of his Employment Agreement, then simultaneously with the termination, the Employment Agreement shall be deemed amended to provide:

(a) Section 3.10 of the Employment Agreement shall not be applicable to prohibit or otherwise restrict Robert Puchalski from discussing and hiring Stephanie Tetterton, Robert Puchalski's current physician assistant, or any other employee of the Corporation hired prior to March 31, 2005;

(b) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall allow Robert Puchalski to conduct a medical practice at one (1) location in Kershaw or Richland County, South Carolina, with such location determined in his sole discretion, without any restrictions imposed by application of Section 3.9 or the Covenant Not to Compete referenced therein; and

(c) Section 3.7 of the Employment Agreement shall be amended to allow Robert Puchalski to retain copies of all medical records of patients treated by him while an owner of the Corporation.

(iv) If Robert Puchalski's Employment Agreement is terminated without cause, as provided in Section 2.3(c) of his Employment Agreement, then simultaneously with the termination, Section 3.7 of this Agreement shall be deemed amended to provide that Robert Puchalski shall be entitled to use any forms or systems of the Corporation in place prior to March 31, 2005.

(v) Robert Puchalski shall retain Stephanie Tetterton, or her replacement, as his physician assistant while he is employed by the Group.

(vi) Notwithstanding anything in this Agreement or Robert Puchalski's Employment Agreement to the contrary, in the event of a purchase of all of Robert Puchalski's Shares by the Corporation, for any reason, the purchase price shall be 100% of the Purchase Price and the 50% reduction in Section 4.5 shall not be applicable.

Section 3.10 East Campus Protection Provision. If any Shareholder practicing primarily at the Hartsville, South Carolina, (the "Hartsville site") and the Cheraw, South Carolina (the "Chesterfield site"), practice sites is terminated without cause as provided in Section 2.3(c) of such Physician's Employment Agreement and the Hartsville site is closed either within 18 months prior or 18 months subsequent to the termination, then such Employment Agreement shall be deemed amended upon the later of the date of termination of the Employment Agreement or date of the closing of the Hartsville site to provide:

- (a) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall be void as to any restrictions within Darlington or Chesterfield Counties, South Carolina.
- (b) Section 3.10 of such Shareholder's Employment Agreement shall be amended to remove any restrictions from hiring Corporation employees whose jobs required they perform a majority of their services at the Hartsville site or the Chesterfield site.
- (c) Section 3.7 of such Shareholder's Employment Agreement shall be amended to provide that such Shareholder shall be entitled to retain copies of medical records of patients treated by such Shareholders at the Hartsville site or the Chesterfield site.

For purposes of this Section 3.10, an office site will be deemed to be "closed" upon the earlier of the time it: (i) is operating for three (3) consecutive calendar months providing less than fifty percent (50%) of the level of services to patients that it customarily provides, or (ii) when it physically closes its doors for business on a permanent basis.

Section 3.11 Richland County Campus Protection Services. If any Shareholder practicing primarily at the Richland County, South Carolina, practice site (the "Richland site") is terminated without cause as provided in Section 2.3(c) of such Physician's Employment Agreement and the Richland site is closed either within 18 months prior or 18 months subsequent to the termination, then such Employment Agreement shall be deemed amended upon the later of the date of termination of the Employment Agreement or date of the closing of the Richland site to provide:

- (a) Section 3.9 of the Employment Agreement and the Covenant Not to Compete referenced therein shall be void as to any restrictions within Richland County, South Carolina.
- (b) Section 3.10 of such Shareholder's Employment Agreement shall be amended to remove any restrictions from hiring Corporation employees whose jobs required they perform a majority of their services at the Richland site.
- (c) Section 3.7 of such Shareholder's Employment Agreement shall be amended to provide that such Shareholder shall be entitled to retain copies of medical records of patients treated by such Shareholders at the Richland site.

For purposes of this Section 3.11, an office site will be deemed to be "closed" upon the earlier of the time it: (i) is operating for three (3) consecutive calendar months providing less than fifty percent (50%) of the level of services to patients that it customarily provides, or (ii) when it physically closes its doors for business on a permanent basis.

Section 3.12 Managing Shareholder Protection Provision. The Managing Shareholder shall have at least two (2) extra half days each week during normal business hours to perform

administrative duties of the practice in lieu of providing patient services. For purposes of the Managing Shareholder's Employment Agreement, the extra half days referenced above shall be counted as annual leave and credited to the Managing Shareholder's Total Production in the manner described in Section 4.2(c) of the Employment Agreement.

Section 3.13 Personnel. The Managing Shareholder shall have the right to hire and terminate any employee of the Corporation except that the hiring or termination of a physician, physician extender, or office manager shall require the vote of a majority of the Shareholders. The duties, authority, limitations and compensation of officers and employees shall be determined by the majority vote of Shareholders.

Section 3.14 Distributions. Each year all compensation, including bonuses, shall be paid to the Shareholders in their capacity as employees and all operating expenses of the Corporation shall be paid prior to any distribution of profits of the Corporation. Subject to available cash flow, after the payment of all compensation and operating expenses, the Corporation shall make the following distributions to the Shareholders:

- (a) Every two weeks, Physician shall receive a distribution in such amount as recommended by the Managing Shareholder, based on available cash flow, from time to time and approved by a majority of the Shareholders (the "Biweekly Distribution"); and
- (b) On a monthly basis, Physician shall receive an amount established by the Managing Shareholder as a month-end distribution (the "Sweep Distribution").

Section 3.15 Expenditures. The Managing Shareholder shall not make any disbursements of cash or assets of the Corporation or incur any debt on behalf of the Corporation in excess of Ten Thousand and 00/100 (\$10,000) dollars without consultation and agreement by a majority of the Shareholders with the exception of recurring ordinary and necessary expenses of the Corporation which may be disbursed without consultation and agreement by the Shareholders.

Section 3.16 Loans To and From Shareholders. No Shareholder shall have any obligation to make contributions to the Corporation other than those as mutually agreed upon. Any Shareholder that makes a loan to the Corporation shall do so in writing with such loan not being effective unless authorized in writing by the Managing Shareholder.

ARTICLE IV

RESTRICTIONS ON TRANSFER OF SHARES

Section 4.1 General. No Shareholder may sell, assign, transfer, grant, give away, hypothecate, pledge or in any manner dispose of or encumber ("Transfer") any Common Stock whether presently owned or hereafter acquired, except as specifically set forth in this Article IV. No Transfer of Common Stock shall be valid or recognized in the books and records of the Corporation without first obtaining the written consent of the Corporation and the other Shareholders or, in the absence of such written consent, without first complying with the terms

and conditions of this Agreement. No Transfer of any Common stock pursuant to this Agreement shall be valid or recognized on the books and records of the Corporation as a Transfer of the interest in the Corporation unless such transferee is a Qualified Person who first becomes a party to this Agreement and evidences his or her consent to, and approval of, the terms and provisions hereof by execution of this Agreement. If any Common Stock is transferred in accordance with this Article IV, the Employment Agreement of such Shareholder shall terminate effective upon such transfer.

Section 4.2 Involuntary Transfers or Transfers According to Judicial Process. Any Person (the "Involuntary Transferee") who becomes the holder of any Shares or possessor of any certificates representing Shares (the "Transferred Shares") by virtue of any judicial process, attachment, bankruptcy, receivership, execution, insolvency proceeding and competency proceeding, judicial sale or divorce decree (a "Departure Event") shall immediately offer all such Shares to the Corporation whenever requested by the Corporation to do so. The Corporation shall have the obligation to purchase the Transferred Shares, which right shall be exercised by written notice given to the Involuntary Transferee within 30 days after the Shares are presented to the Corporation for registration in the Involuntary Transferee's name. None of such Shares will be entitled to any vote nor will any dividend or other distribution be paid, allowed or made upon any of such Shares for so long as such Involuntary Transferee fails to comply with such request. Corporation shall pay such holder of any Shares or possessor of such certificates representing Shares pursuant to this Section in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement. The Shareholder's salary and bonus set forth under such Shareholder's Employment Agreement and the distributions due the Shareholder pursuant to this Agreement will be reduced and the reduction applied to the Purchase Price set forth in Section 4.5, by such amounts as determined in the Corporation's sole discretion, until the Purchase Price is paid.

Section 4.2.1 Transfer Upon Shareholder Disqualification. In the event that a Shareholder is no longer authorized to practice medicine in South Carolina in the area of Otolaryngology, other than for a period lasting no longer than five months, (a "Departure Event"), then the Corporation shall have the obligation to purchase the Departing Shareholder's Shares. The Corporation shall pay such holder of any Shares in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3 Transfer Upon Death or Permanent Disability of Shareholder. In the event of the death or Permanent Disability (each, a "Departure Event") of a Shareholder, the Corporation or the Remaining Shareholders shall purchase, according to their Equal Percentages, and the Departing Shareholder agrees to sell, all Shares owned by the Departing Shareholder in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3.1 Simultaneous Death. If all of the Shareholders shall die simultaneously or shall die within thirty (30) days of one another, then there shall be no obligation by any party herein to purchase the Shares of any Shareholder in the Corporation, unless a sale shall have taken place prior to the first death, pursuant to this Agreement. As long as no such prior sale shall have occurred, the Departing Shareholder's interest in the proceeds of the liquidation of the Corporation and the proceeds of any insurance policies owned pursuant to Article V of this Agreement shall be delivered to the estate of such deceased Shareholder.

Section 4.4 Compulsory Redemption of Stock Upon Termination of Employment. If a Shareholder's Employment Agreement is terminated: (i) by the Corporation pursuant to Section 2.2. of the Shareholder's Employment Agreement, (ii) by the Shareholder pursuant to Paragraph 2.3(a) of the Shareholder's Employment Agreement, or (iii) because the Shareholder elects not to renew his Employment Agreement upon the expiration of its term (each a "Departure Event"), the Corporation shall purchase such Departing Shareholder's Shares in the Corporation in exchange for the payment as provided in Sections 4.5, 4.6, and 4.7 of this Agreement. Nothing in this Section shall affect a Shareholder's right to arbitrate a decision of the Corporation to terminate his Employment Agreement.

Section 4.4.1 Modification of Employment Agreement by Corporation. If the Corporation elects not to extend the term of a Shareholder's Employment Agreement by giving notice to the Shareholder in accordance with such agreements, then the Corporation must offer a new Employment Agreement to all Shareholders on substantially identical terms.

Section 4.5 Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall pay the Departing Shareholder a purchase price ("Purchase Price") for the Shares in an amount equal to: (A) one-fourth of the total collected revenue of the group for the twelve whole calendar months preceding the Departure Event divided by the number of Shareholders of the Corporation including the Departing Shareholder plus (B) one-third of the sum of the accounts receivable of the Corporation, booked in accordance with the Corporation's normal accounting methods, and the cash (to include cash equivalents and marketable securities) of the Corporation divided by the number of Shareholders of the Corporation including the Departing Shareholder, and minus (C) any amount, if any, owed by the Departing Shareholder as of the effective date of the Termination of Employment under Section 4.6.4 of this Agreement. The Departing Shareholder also agrees that he shall sell his interest in SCENT Land Holdings, LLC at the price specified in that company's operating agreement at the same time the Shareholder's Shares are redeemed pursuant to this Agreement. Provided, however, the Purchase Price shall be reduced by fifty percent (50%) if (i) the term of Physician's employment did not consist of at least thirty-six (36) whole calendar months, (ii) Physician elects to terminate the Employment Agreement without cause pursuant to Section 2.3(d) of the Employment Agreement and Physician fails to give the Group the twelve (12) whole calendar months written notice requested by that provision, or (iii) Physician is terminated pursuant to Sections 2.2(c)-(h) or Section 2.3(a). For clarity, any termination pursuant to Section 2.2(a)(death), Section 2.2(b)(disability), Section 2.2(i)(change in law), Section 2.3(a)(a material breach by the Corporation), Section 2.3(b)(mutual agreement), or Section 2.3(c)(by the group without cause) or Section 2.3(d)(by Physician without cause with twelve months notice) shall be subject to payment for Physician's Shares at the Purchase Price. The Corporation and the Departing Shareholder may agree that such payments may be made in cash or as a distribution of corporate assets in kind to satisfy the Corporation's obligations. Notwithstanding anything in this Agreement to the contrary, a Departing Shareholder shall not be entitled to any distribution from the Corporation nor be entitled to vote the Shares subsequent to the Event of Departure.

Section 4.6 Method and Schedule of Payment of Purchase Price.

Section 4.6.1 Payment of Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall commence payment of the Purchase Price as defined in

Section 4.5 above to the Departing Shareholder, within sixty (60) days after the following applicable date: (i) effective date of the Departing Shareholder's Termination Date; (ii) the effective date that a Shareholder is deemed to have a "Permanent Disability"; (iii) the effective date that a Shareholder is disqualified from being a shareholder in the Corporation; (iv) the date of receipt of notice of the qualification of the personal representative of the estate of a Departing Shareholder; or (v) the date of notice to the Involuntary Transferee that the Corporation will purchase the Transferred Shares. To the extent permitted by applicable law, the Purchase Price shall be paid to the Departing Shareholder in sixty (60) equal monthly installments as evidenced by a promissory note. Notwithstanding the above, any life insurance proceeds or any Disability "buy-out" insurance proceeds received from such insurance policies on the Shareholder shall be paid as provided for in Article V of this Agreement.

Section 4.6.2 Closing of Sale of Shares. Upon the payment of the first installment of the Purchase Price as provided above in this Article IV, the Departing Shareholder shall endorse all of the Shares to be sold and deliver such Shares to an escrow agent appointed by the Corporation together with: (i) the appropriate amount of federal and state documentary stamps affixed thereto; and, if applicable; (ii) the appropriate tax waiver from the Estate Tax Division of the South Carolina Department of Revenue; and (iii) a certificate of discharged property from lien of federal estate tax. The Shares shall be held by the escrow agent until such time as the Purchase Price for the Shares has been fully paid. Upon payment in full of the Purchase Price, the escrow agent shall deliver the Shares together with all endorsements to the Remaining Shareholders or the Corporation, as applicable. Title to the Shares shall be deemed to have passed to the Remaining Shareholders upon the payment of the first installment of the Purchase Price.

Section 4.6.3 Shareholder Representations. The Departing Shareholder shall deliver at the closing and as a condition of sale, the following written representations: (i) that he or she is the owner and holder of record of such Shares being sold, that such Shares are free and clear of any and all liens, security interests, pledges, judgments or other encumbrances of any kind, and that the Departing Shareholder has full power to sell the Shares being sold; (ii) that the Departing Shareholder has not entered into on behalf of the Corporation, any agreement, commitment or understanding binding upon the Corporation except for transactions in the normal course of business, in amounts, quantities and nature which are normal and reasonable in relation to the normal and reasonable requirements of the Corporation's businesses as have been previously conducted and which have been fully recorded on the books and records of the Corporation or fully disclosed to the Shareholders of the Corporation; (iii) that the Departing Shareholder has not incurred any debt or other charges for which the Corporation may be liable except for normal and reasonable charges in connection with the business of the Corporation and that Departing Shareholder has surrendered to the Corporation all credit cards issued to the Corporation in the Departing Shareholder's possession.

Section 4.6.4 Setoff. Any damages resulting from the breach of any of the foregoing representations or a breach of Section 3.6 shall be applied against the balance of the Purchase Price in the same manner as if there were a prepayment of the Purchase Price. The intent of this provision is to provide for a reduction in the Purchase Price as a result of such a breach. Additionally, any damages owed to the Corporation by the Departing Shareholder under an Employment Agreement between the Corporation and the Departing Shareholder shall be

setoff against the Purchase Price. To the extent such adjustment or amount required to be paid shall exceed the balance due on the Purchase Price, the Departing Shareholder shall make prompt payment of such excess to the Corporation or the Remaining Shareholders.

Section 4.7 Promissory Note. The Remaining Shareholders or the Corporation, as the case may be, shall execute a promissory note (hereinafter referred to as "Note") for all payments due pursuant to Article IV of this Agreement. Such Note shall be negotiable and bear interest at the adjusted prime rate plus one percent (1%). The Note shall become due and payable at the option of the holder immediately upon the occurrence of the following events:

- (i) Default in the payment of any installment. Default shall occur following a thirty (30) day grace period after written notice of nonpayment is given to the defaulting party. If payment is not made within the thirty (30) day grace period, the Payee shall be in Default;
- (ii) Sale of substantially all of the Corporation's assets;
- (iii) Dissolution and liquidation of the Corporation; or
- (iv) Bankruptcy of the Corporation.

Section 4.7.1 Default. If the payor of the Note shall default in paying any installment of the Purchase Price, then all remaining installments shall be accelerated. In the event of the liquidation or dissolution of the Corporation, the Departing Shareholder shall be paid the balance of the Purchase Price remaining unpaid out of the proceeds of such liquidation or dissolution.

Section 4.8 Legend on Shares. The certificates for the Shares shall, in addition to any notice thereon required by the Articles of Incorporation or Bylaws of the Corporation, or the Securities Act and other applicable securities laws, bear the following notice conspicuously marked on the face or back thereof:

The securities evidenced hereby are subject to the terms of a Shareholders' Agreement among the Company and the shareholders of the Company. A copy of the Shareholders' Agreement is on file at the office of the Company and is available upon request. The Shareholders' Agreement provides, among other things, for restrictions on the sale, transfer, pledge, hypothecation or other disposition of the securities represented by this Certificate. Any attempted sale, transfer, pledge, hypothecation or other disposition of the securities represented by this Certificate not in compliance with the terms and conditions of the Shareholders' Agreement shall be void and of no force and effect.

Section 4.9 Effect of Waiver. Any failure of the Corporation to exercise any option to purchase given under this Agreement and any waiver by the Corporation of any rights hereunder as to any Transfer will not, as to any future Transfer of the Shares (either voluntary or by operation of law), discharge the Shares from any of the restrictions herein contained.

ARTICLE V

COVENANTS REGARDING SUBCHAPTER S

Section 5.1 Revocation. If the Shareholders shall determine to revoke the Corporation's Subchapter S election, each Shareholder agrees that he or she shall execute all documents and take such further action as may be necessary or advisable to effectuate such revocation.

Section 5.2 Maintain S Status. Except as provided in Section 5.1 above, the Corporation and each Shareholder covenant and agree not to do any act or fail to do any act, the commission or omission of which would cause the termination of the Subchapter S election of the Corporation. In the event of the violation of any provision of this Section 5.2 by the Corporation or any Shareholder, the Shareholder who authorizes or causes the violation, whether in his or her capacity as a Shareholder, officer, employee or agent for the Corporation or otherwise, shall be liable to the Corporation and to the other Shareholder(s) for any damages, liabilities, or costs resulting directly or indirectly therefrom, including, without limitation, any additional federal or state income tax, penalties and interest incurred by the Corporation and the other Shareholder(s); provided, however, that no Shareholder shall be so liable if such Shareholder acted in the good faith belief and upon the advice of tax counsel that termination of the election would not be caused thereby. In the event of an inadvertent termination of the Corporation's Subchapter S election, the Corporation and each Shareholder shall take whatever actions are necessary under Section 1362(f) of the Code and the Regulations thereunder to request a determination of inadvertent termination from the Commissioner of Internal Revenue allowing the Corporation to be treated as continuing to be an S corporation, and if a waiver of the terminating event is not granted, to request consent for an early reelection of Subchapter S status under Section 1362(g) of the Code and the Regulations thereunder.

Section 5.3 Dividend Distributions. Each Shareholder and the Corporation acknowledge that the Corporation shall use its best efforts to make pro rata (based on the total Shares owned by each Shareholder) distributions of money with respect to the Shares in an amount at least sufficient to pay the federal and state income taxes on the income that passes through to the Shareholders from the Corporation under Section 1366 of the Code for each taxable year, net of any tax benefits produced by losses, deductions and credits that pass through under Section 1366 of the Code. The Corporation shall use its best efforts to make such distributions on a quarterly basis during each taxable year and in any event no later than ninety (90) days following the end of each taxable year. The Managing Shareholder, after consultation and reasonable input from the Shareholders', shall make the final decision as to the amount of each distribution with respect to the Shares. For purposes of this Section 5.3 a distribution shall be treated as made with respect to a particular taxable year of the Corporation if (A) it is made during the taxable year and not designated by the Corporation as made with respect to another taxable year or (B) it is specifically designated by the Corporation as made with respect to that particular taxable year. The foregoing distribution requirement set forth in this Section 5.3 is subject, however, to (Y) the reasonably required needs of the Corporation as determined by the Managing Shareholder to maintain sufficient funds for working capital and business needs so as not to impair the ability of the Corporation to continue its business operations, and (Z) any applicable restrictions contained in loan documents with the Corporation's creditors.

Section 5.4 Withholding. The Corporation is authorized to withhold from amounts to be distributed to any Shareholder hereunder any amount required to be withheld by any provision of the Code, Treasury Regulations or other applicable law, and to pay such amounts to the Internal Revenue Service ("IRS") or other appropriate taxing authority in accordance with the Code, Treasury Regulations or other applicable law. In addition to such withholding from distributions, the Corporation is authorized to remit to the IRS or other appropriate taxing authority any amounts due as a result of the allocation of taxable income to any Shareholder. Any amounts paid over to the IRS or other appropriate taxing authority with respect to this Section to a Shareholder pursuant to this Section shall be treated for all purposes hereunder as a distribution made to the Shareholder with respect to whom such withholding or remittance was made.

Section 5.5 Code Section 1377(a)(2) Election. If a Shareholder makes a Transfer of his or her Shares pursuant to this Agreement while the Corporation is an S corporation, and such Transfer results in the complete termination of the interest in the Corporation of such Shareholder, and if either the selling Shareholder or the purchaser requests, then all of the Shareholders and the Corporation agree to take appropriate action to make an effective election under Section 1377(a)(2) of the Code and the Regulations thereunder to treat the taxable year of the Transfer as if it consisted of two taxable years, the first of which ended on the effective date of the Transfer. For purposes of this election, Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year in which the Transfer occurs.

Section 5.6 Closing of Corporate Books. In the event the Corporation's Subchapter S status terminates during the course of a taxable year for any reason whatsoever, and if any Shareholder so requests, then all of the Shareholders shall take appropriate action to make an effective election under Section 1362(e)(3) of the Code and the Regulations thereunder to close the Corporation's books on the date immediately preceding the date on which the termination of Subchapter S status occurs. For purposes of this election, the term Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year ending on the date of termination of the Corporation's Subchapter S status and all Persons who are or were Shareholders in the Corporation on the first day following the termination of the Corporation's Subchapter S status.

Section 5.7 South Carolina S Corporation Status. Each Shareholder agrees to file a South Carolina income tax return and pay South Carolina income tax on his or her proportionate share of the Corporation's taxable income for each taxable year of the Corporation that he or she is a Shareholder and the Corporation is an S corporation, and to execute such consents as are necessary to assure that the Corporation's Subchapter S election will be effective for South Carolina income tax purposes.

Section 5.8 President as Attorney-in-Fact for Elections. If any document evidencing a Shareholder's consent or other action is required for filing or for other purposes under the provisions of the Code or otherwise in order to effectuate the matters set forth in Article V and any Shareholder is unable or otherwise fails to execute such document in a timely manner, then such Shareholder hereby appoints the President of the Corporation, as from time to time elected, as his agent and attorney-in-fact for the purpose of executing any such document and taking all such further action as may be necessary or advisable to effectuate such consent or other action. The Corporation shall

indemnify, defend and hold harmless the President of the Corporation from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as result of acting under such power of attorney.

Section 5.9 Tax Matters Person. The Managing Shareholder is hereby designated as the tax matters person of the Corporation. The tax matters person may resign at any time by giving written notice to the Corporation and each of the other Shareholders, and the tax matters person may be removed at any time by unanimous consent of all of the other Shareholders. Upon the resignation or removal of the tax matters person, a new tax matters person, who must be a Shareholder, shall be elected by holders of a majority of the Shares, which majority shall be determined by excluding the Shares of a removed tax matters person. The Corporation shall indemnify, defend and hold harmless the tax matters person from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as a result of acting as tax matters person.

ARTICLE VII

INSURANCE

Section 6.1 Life Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain insurance on the life of each of the Shareholders.

Section 6.2 Disability Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain Disability "buy-out" insurance on each of the Shareholders.

Section 6.3 Excess Insurance Proceeds. To the extent any insurance proceeds are in excess of the amount due a Shareholder under Section 4.5, such excess shall not affect the purchase price under Section 4.5. Any excess proceeds from a policy purchased by the Corporation or a Shareholder shall be retained by the Corporation or Shareholder, as the case may be.

Section 6.4 Shareholders' Right to Purchase Insurance Policies. In the event that a Shareholder Transfers his Shares, or upon dissolution or liquidation of the Corporation before the death or Permanent Disability of such Shareholder, the insured Shareholder shall have the right to purchase such life insurance and Disability insurance policies purchased by the Corporation that are subject to this Agreement for a purchase price equal to the amount of:

- (i) the cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions; plus
- (ii) the pro rata portion of any premium paid prior to the date which covers a period extending beyond the date of the transaction; plus
- (iii) any dividend or dividend accumulations; and less

- (iv) any policy loan plus interest then due.

The rights granted in this Section 6.4 shall lapse and expire unless the Transferring Shareholder notifies the Corporation in writing within thirty (30) days of the effective date of the Transfer of Departing Shareholder's Shares of his desire to purchase all or some of the Disability or life insurance contracts maintained pursuant to this Article V. Any policy or policies not purchased within such thirty (30) day period may be disposed of by the Corporation in its discretion and the Departing Shareholder agrees to execute and deliver such instruments as may be required by the Corporation to dispose of such policies. If such an insurance policy is transferred to a Departing Shareholder, the Corporation shall execute and deliver to the Departing Shareholder, such instruments as are necessary and proper to transfer full and complete title to such policies.

ARTICLE VII

TERM AND TERMINATION

The term of this Agreement shall begin on the Effective Date and terminate upon the occurrence of any of the following: (i) the bankruptcy of the Corporation or (ii) a written agreement to terminate this Agreement executed by Shareholders of not less than one hundred percent (100%) of the Common Stock subject to this Agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Prior Agreements. All other agreements dated prior to the date of this Agreement are hereby superseded in their entirety by the terms and conditions of this Agreement; provided however, that this Agreement shall not be deemed to supersede the terms and conditions of the Employment Agreements executed simultaneously with this Agreement. Any inconsistency or ambiguity with the terms of this Agreement and the terms of the Employment Agreements shall be construed and interpreted in accordance with the terms of this Agreement.

Section 8.2 Patient Records. The Corporation owns all patient records and charts. The records of patients of a Departing Shareholder shall remain with the Corporation. In the event of dissolution of Corporation, the patient records shall be provided to the Shareholder who primarily treated the patient. Notwithstanding the above, upon written authorization of a patient, the patient's records shall be provided to such Departing Shareholder (or former Shareholder if a liquidation or dissolution has occurred) who shall bear the cost of such photocopying.

Section 8.3 Shareholder's Personal Property. Each of the Shareholder's personal property at the Practice location is listed in Schedule B hereto which shall remain each Shareholder's property and may be removed from the Practice location at any time by the owning Shareholder. Any amendments to the inventory list in this Schedule B must be approved by all of the Shareholders:

Section 8.4 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery, and in the case where delivery is made by any established and reputable next day delivery service, delivery shall be deemed to occur on the day after delivery to such delivery service, or on the fifth day following mailing by registered or certified mail, return receipt requested, postage prepaid, addressed at such Shareholder's address as set forth on Schedule A attached hereto or at such other address as such Shareholder shall designate by written notice to the Corporation and the other Shareholders; or if to the Corporation, at 1165 Highway 1 South, Suite 300, Lugoff, South Carolina, or at such other address as the Corporation shall have furnished to the Shareholder in writing.

Section 8.5 Construction. The Shareholders hereby agree and consent to take or cause to be taken all actions necessary to implement the intents and purposes of this Agreement, including, but not limited to, to vote their Common Stock to amend the Articles of Incorporation or the Bylaws in such manner as may be necessary to implement the provisions of this Agreement, and further agree not to vote their Common Stock at any time so as to amend the Articles of Incorporation in a manner inconsistent with or in contravention of this Agreement.

Section 8.6 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, taken together, shall constitute and be one and the same instrument.

Section 8.7 Successor and Assigns. This Agreement shall be binding upon the parties hereto, their heirs, legal representatives, successors and permitted assigns.

Section 8.8 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter.

Section 8.9 Remedies. The parties acknowledge that remedies at law for breach of covenants contained in this Agreement may be inadequate and that the Corporation may be entitled to injunctive or to such other equitable relief as a court may deem appropriate for a breach of such covenants. If such covenants are at any time adjudged invalid to any extent by any court of competent jurisdiction, such covenants shall be deemed modified to the extent necessary to render any or all of them enforceable.

Section 8.10 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Camden, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

Section 8.11 Amendment. This Agreement may not be amended or supplemented except in writing, executed by holders of not less than one hundred (100%) percent of the Common Stock subject to this Agreement.

Section 8.12 Severability. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provisions hereof, all of which provisions are hereby declared severable.

Section 8.13 Choice of Law. This Agreement is to be governed by and construed in accordance with the laws of the State of South Carolina.

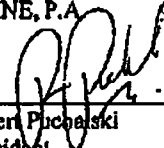
Section 8.14 Descriptive Headings and Section References. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Provided, however, any reference in this Agreement to a particular Section shall also include all subsections thereto unless explicitly referenced otherwise (e.g., a reference to Section 4.2 shall also include Section 4.2.1, 4.2.2, etc.).

Section 8.15 Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

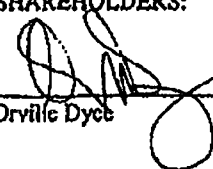
Section 8.16 Applicability of Agreement. Unless otherwise provided by this Agreement, each provision of this Agreement shall apply to all of the Shares owned by each Shareholder, whether presently owned or hereafter acquired.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SOUTH CAROLINA ENT, ALLERGY & SLEEP
MEDICINE, P.A.

By: 
Robert Pichalski
Its: President

SHAREHOLDERS:


Orville Dye

SCHEDULE A

SHAREHOLDERS AND NUMBER OF SHARES

<u>Name and Address of Shareholder</u>	<u>Number of Shares</u>
Robert Puchalski	50,000
Orville Dyce	50,000

-Doc# 3989413.9-

SCHEDULE B
PERSONAL PROPERTY

-Doc 1787423.9-

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

Orville Dyce,)

Plaintiff,)

vs.)

South Carolina ENT, Allergy & Sleep
Medicine, P.A., Robert Puchalski, and
Amy Puchalski)

SCENT.)

South Carolina ENT, Allergy and Sleep
Medicine, P.A. and Robert Puchalski)

Third Party Plaintiffs)

vs.)

Jamie Curley)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No. 2010-CP-28-323

**ANSWER TO FIRST AMENDED
COMPLAINT AND
COUNTERCLAIMS**

JURY TRIAL DEMANDED

FILED FOR RECORD
2012 JUN -4 PM 3:54
JOYCE H. HARRIS
CLERK OF COURT
KERSHAW COUNTY, S.C.

Defendants through undersigned counsel, Answers the First Amended Complaint
of Plaintiff Orville Dyce as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, SCENT admits the allegations in paragraph 1 of the Complaint.
2. Defendants admit the allegations of paragraph 2 of the Complaint.
3. Defendants admit paragraphs 3 and 4 stating that Dr. Puchalski and Amy Puchalski are citizens and residents of Kershaw County South Carolina.
4. Defendants admit the allegations of paragraph 5 and notes that other amendments have occurred.

5. Defendants admit so much of the allegations of paragraph 6 as allege that SCENT is in the business of providing otolaryngological services. SCENT denies any and all remaining allegations of paragraph 6 and states that other services are provided.

6. Defendants deny the allegations of paragraph 7.

7. Defendants respond to the allegations of paragraph 8 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendants crave reference to that document. Defendants specifically deny any further allegations of paragraph including the allegation that Plaintiff was issued shares or became a shareholder at that time.

8. Defendants respond to the allegations of paragraphs 9 and 10 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and Defendants crave reference to that document. Defendants specifically deny any and all allegations of paragraph 8 of the Complaint that are inconsistent with the Shareholders' Agreement.

9. As to paragraph 11, Defendants admit the parties entered into an employment agreement and crave reference to that Agreement for its terms and denies any terms not contained within it.

10. Defendants respond to the allegations of paragraph 12, 13, 14, 15 and 16 and admits so much of the allegations as allege that Dr. Puchalski has certain rights, duties, and responsibilities in his capacity as Managing Shareholder of SCENT. Defendants deny any and all remaining allegations of these paragraphs and allege that Plaintiff, while a Shareholder had input and a vote in determining the direction of the business and access to information. Defendants specifically deny any and all allegations of these paragraphs that are inconsistent with the Shareholders' Agreement.

11. Defendants admit so much of the allegations of paragraphs 17 and 18 of the Complaint as allege that Plaintiff had at various times made requests for SCENT corporate information, however, Plaintiff has failed to make a request for SCENT corporate information that complied with applicable statutory and common law in South Carolina and his contractual obligations. Defendants specifically deny the allegations of paragraph 17 and 18 of the Complaint insofar as they imply that Plaintiff's requests for SCENT corporate information were proper and in accordance with applicable statutory and common law and his contractual obligations. Defendant also alleges that Defendant shared information with Plaintiff on multiple occasions throughout the years. Plaintiff was not operating in good faith during this time period but was attempting to damage the Defendant for his own gain. Defendants deny any and all remaining allegations of paragraph 17 and 18 of the Complaint.
12. Defendants deny paragraphs 19, 20, and 21.
13. Defendants respond to the allegations of paragraph 22 of the Complaint by stating that the Shareholders' Agreement speaks for itself, and SCENT craves reference to that document. Defendants specifically deny any and all allegations of paragraph 22 of the Complaint that are inconsistent with the Shareholders' Agreement.
14. Defendants deny the allegations of paragraphs 23 through 27.
15. Defendants admit the allegations of paragraphs 28 and 29.

16. Defendants deny the remaining allegations of the Complaint and state that any recitations of legal authorities or causes of action do not require a response as they are not factual allegations but simply statements of law and claims.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

17. Plaintiff's action must be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action against Defendants.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

18. Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

19. Expressly preserving and without waiving all defenses previously stated, with respect to Plaintiff's allegations of failing to provide information and documents in accordance with the Shareholders' Agreement and applicable statutory law, Plaintiff failed to satisfy all conditions precedent to SCENT's performances under the Shareholders' Agreement and applicable statutory and common law and Plaintiff's other contractual obligations. SCENT was, therefore, relieved of any obligations to perform and was entitled to withhold performance. Furthermore, Plaintiff has been provided with all information requested and this claim is moot.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

20. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

21. Plaintiff's claims are barred because Plaintiff actually, expressly or implicitly consented to the complained of actions of Defendants and are barred by his conduct.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

22. The damages, if any, recoverable by Plaintiff must be reduced by any amount of damages legally caused by the Plaintiff's failure to mitigate those damages in whole or part.

BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)

23. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
24. SCENT, Dr. Puchalski, and Dr. Dyce entered into employment and shareholder agreements.
25. Dr. Dyce breached these agreements by, among other things, disclosing confidential information in violation of these agreements, obstructing normal operations, and obstructing the closing of the loan on SCENT's new office building causing damages to SCENT, Dr. Puchalski, SCENT LH and, in turn, the contractors working on SCENT's new building and others.
26. In addition, Dr. Dyce is in breach of the non-competition provisions of his employment agreement and covenants by working in conjunction with Carolina Pines Regional Medical Center to open and operate a new practice in Hartsville. He is in further breach by employing former employees of SCENT, breaching his duties of good faith and fair dealing, disclosing confidential information, and acting in a way that does not support SCENT's best interests. Finally, he is violating the non-

solicitation provision of his agreement by soliciting patients of SCENT to move their medical care to his new practice causing severe damages and in such other ways as can be proven at trial.

27. As a result, Defendants are entitled to actual, consequential, and liquidated damages in an amount to be proven at trial, as allowed under the relevant agreements, and as allowed by law.

BY WAY OF SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

28. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
29. Dr. Dyce's disloyal and obstructive conduct towards SCENT violated his fiduciary duty, duty of loyalty, and duty of good faith and fair dealing toward SCENT under the contracts, the common law, and statutory law of the State of South Carolina, including but not limited to that found in S.C. Code Ann. § 33-44-409 et seq, as more fully set forth above.
30. Dr. Dyce's conduct was the direct and proximate cause of harm to Defendants and Defendants have suffered damages as a result of that harm. Defendants are entitled to damages under 33-44-409 and 410 et seq and other damages as allowed by common or statutory law for breach of Dr. Dyce's fiduciary duties.

BY WAY OF THIRD COUNTERCLAIM AND CROSS CLAIM
(Conspiracy)

31. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

32. Drs. Dyce and Gunnlaugsson were physicians and employees of SCENT. Dr. Dyce was also a shareholder of SCENT. Mrs. Curley was a member of SCENT LH and cooperated with Dr. Dyce to stymie the normal operations of both SCENT and SCENT LH.

33. As part of a scheme to harm SCENT and Dr. Puchalski and wrongfully obtain its confidential information, Dr. Dyce has acted overtly and in concert with others, including, Mrs. Curley, Dr. Gunnlaugsson, and Rebecca Gunnlaugsson with an intent to harm and cause injury to SCENT by means of:

- a. Making inappropriate and unlawful demands for confidential and proprietary corporate information;
- b. Falsely stating that SCENT would not provide requested information;
- c. Threatening to report SCENT and Dr. Robert Puchalski to the South Carolina Board of Medical Examiners, the American Medical Association, and other authorities following termination of their respective employments with SCENT in order to gain an advantage in litigation and negotiations regarding their departure from SCENT;
- d. Orchestrating multiple failures of the real estate closing on SCENT's new building in Lugoff in an attempt to weaken the practice, and which resulted in a third party asserting a mechanic's lien against that building;

- e. Making knowing and intentionally false statements to SCENT and Dr. Puchalski about their intentions with respect to Dr. Gunnlaugsson becoming a shareholder with SCENT;
 - f. Inducing SCENT and Dr. Puchalski to increase and continue to provide elevated levels of compensation based on intentional misrepresentations and falsehoods; and
 - g. Obtaining confidential and proprietary information from SCENT under false pretenses and based on knowing and intentionally false statements.
 - h. Assisting Dr. Gunnlaugsson in creating a competing practice while still employed by SCENT and such other actions as can be proven at trial
34. The overt acts described above caused SCENT special damages that it would not otherwise have suffered but for the conspiracy, including but not limited to the diminution of market value for remaining SCENT stockholders, loss of dividends, damage to business reputation, loss of corporate opportunities, and damage to corporate good will.

BY WAY OF FOURTH COUNTERCLAIM AND CROSS CLAIM
(Interference with a Contractual Relationship)

35. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
36. As set forth more fully above, SCENT had an employment contract with Dr. Gunnlaugsson.

37. SCENT LH had an agreement to pay back the loan made by SCENT to SCENT LH.
38. SCENT LH had agreements with various contractors relating to their work on SCENT's new office building.
39. Dr. Dyce and Mrs. Curley had knowledge of these contracts.
40. Dr. Dyce and Mrs. Curley intentionally breached or sought the breach of these contracts by failing to agree to the permanent financing on SCENT's new office building and by working with Dr. Gunnlaugsson to injure SCENT's practice and breach Dr. Gunnlaugsson's contracts. .
41. Dr. Dyce's and Mrs. Curley's actions in this regard were not justified.
42. Defendants suffered damages as a result.

BY WAY OF FIFTH COUNTERCLAIM AND CROSS CLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

43. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
44. Dr. Dyce's and Mrs. Curley's trade practices were unfair and deceptive. The conduct constitutes unfair or deceptive acts or practices in the conduct of trade or commerce as prohibited by Section 39-5-20 of the South Carolina Code.
45. Dr. Dyce's and Mrs. Curley's unfair and deceptive practices impact the public generally in that they affected SCENT's ability to serve its patients and SCENT LH's ability to pay back its lenders and contractors and Dr. Puchalski's ability to practice medicine.

46. Upon information and belief, Dr. Dyce's and Mrs. Curley's unfair and deceptive practices have occurred on other occasions and/or are likely to reoccur without deterrence.

47. As a result of the unfair and deceptive practices, willfully committed, SCENT and SCENT LH are entitled to recover under the South Carolina Unfair Trade Practices Act three times actual damages, all litigation costs, and attorney's fees.

BY WAY OF SIXTH COUNTERCLAIM
(Defamation- Libel and Slander per se)

48. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.

49. Upon information and belief, Plaintiff has in writing and orally defamed Defendants in their practice, character, business, reputation, and persons. Upon information and belief, such statements including statements to employees or agents of Hartsville HMA, LLC and other physicians in the area.

50. Plaintiff, in written and oral form, published communications concerning the Defendants that had a defamatory meaning, were published to others with malice, were false, and resulted in both presumed and special damages to Defendants.

BY WAY OF SEVENTH COUNTERCLAIM
(Breach of Contract/Payment of Debt)

51. Each and every allegation contained in the preceding paragraphs is realleged and re-asserted.

52. Upon information and belief, Plaintiff cosigned and agreed to pay or be responsible for one half of the debt of Defendant SCENT. Furthermore, as a shareholder Plaintiff was responsible for payment of his share of the debt and committed to Dr. Puchalski that he would pay or be responsible for one half of the debt of SCENT and SCENT Land.
53. That Plaintiff is responsible, both in equity and under contract, to pay his share of the debt.
54. Furthermore, Plaintiff knew or should have known that if he opened a practice in Hartsville South Carolina it would seriously damage SCENT causing SCENT to not have the contemplated revenue to service its debt, operate its business, and pay Plaintiff what he claims he is owed under the Shareholder Agreement. The calculations set forth in the Shareholder Agreement specifically contemplated that the normal business of SCENT would continue and that a physician would not leave and take significant portions of the business. All parties contemplated this as part of their agreements.
55. That Defendants are entitled to judgment against Plaintiff for one half of the outstanding debt of SCENT

BY WAY OF EIGHTH COUNTERCLAIM
(Shareholder Oppression)

56. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
57. By virtue of his status as a one half shareholder of SCENT, Dr. Dyce had the ability to affect and determine the operations of SCENT.

58. By his actions and inactions, Dr. Dyce acted in a way that was not in the best interests of SCENT and that oppressed the other shareholder.
59. Dr. Dyce acted in such a way as to be unfair in blocking the normal operations of SCENT, departing from those standards of fair dealing that a fellow shareholder should expect, and acting in a deceptive and dishonest manner. His actions violate both the statutory and common law of South Carolina.
60. Therefore, Defendants are entitled to judgment against Dr. Dyce and damages flowing from his oppressive conduct.

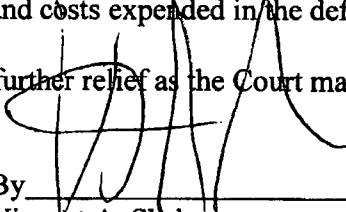
BY WAY OF NINTH COUNTERCLAIM
(Breach of Contract Accompanied by Fraudulent Acts)

61. Each and every allegation contained in the preceding paragraphs is realleged and reasserted.
62. The breaches of his agreements with SCENT and Dr. Puchalski were accompanied by fraudulent acts including, without limitation, failing to provide Defendants with a complete and accurate statement that Dr. Dyce was cooperating with Dr. Gunnlaugsson to the detriment of SCENT, secretly giving confidential information to Dr. Gunnlaugsson and third parties, not acting in the best interests of SCENT, and purposefully stopping the normal operations SCENT while falsely stating he was not receiving sufficient information, and other false actions and statements.
63. As a direct and proximate result of the breaches of Dr. Dyce accompanied by the fraudulent acts, Defendants have suffered damages.

64. Accordingly, Defendants are entitled to judgment against Plaintiff and recovery of actual, consequential, punitive, and such other relief as this court deems appropriate.

WHEREFORE, having fully answered the Complaint of Plaintiff Orville Dyce, and having asserted the affirmative defenses, counterclaims, and third party claims above, SCENT prays that the Complaint be dismissed with prejudice on all counts and that SCENT be provided with the following relief:

- (a) actual, compensatory, and consequential damages;
- (b) judgment and post-judgment interest at lawful rates;
- (c) attorneys' fees and costs expended in the defense of this action; and
- (d) such other and further relief as the Court may deem just and proper.

By 

Vincent A. Sheheen
Savage, Royall & Sheheen LLP
P.O. Drawer 10
Camden, S.C. 29020
(803)432-4391

June 4, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

Orville Dyce,)

Plaintiff,)

vs.)

South Carolina ENT, Allergy & Sleep)
Medicine, P.A., Robert Puchalski, and)
Amy Puchalski)

Defendant(s).)

South Carolina ENT, Allergy and Sleep)
Medicine, P.A. and Robert Puchalski)

Third Party Plaintiffs)

vs.)

Jamie Curley)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS

2010-CP-28-00323

CERTIFICATE OF SERVICE

FILED FOR RECORD
2012 JUN -4 PM 3:54
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

I, the undersigned, an employee of Savage, Royall & Sheheen, L.L.P., do hereby certify that I have mailed the foregoing Answer to First Amended Complaint and Counterclaims by depositing a copy of same in a United States Postal Mailbox, First Class Mail, postage prepaid, addressed to the attorney as shown below on the 4th day of May, 2012.

Jana B. Baker, Esquire
Womble Carlyle Sandridge & Rice, PLLC
PO Box 999
Charleston SC 29402

SWORN to before me this 4th day of
May, 2012

Nancy M. Nichols
Notary Public for South Carolina
My Commission Expires: 9/22/14

Brittany D. Bradley
Brittany D. Bradley
Secretary for Vincent A. Sheheen
1111 Church Street
Post Office Drawer 10
Camden, South Carolina 29020
(803) 432-4391

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

JAMIE CURLEY,

Plaintiff,

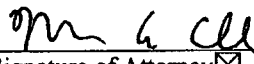
v.

SCENT LAND HOLDINGS, LLC,
AMY PUCHALSKI AND ROBERT
PUCHALSKI

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-28-322

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Jana B. Baker, Esq., SC Bar #72487 Womble Carlyle Sandridge & Rice 5 Exchange Street, Charleston, SC 29401 Phone: 843-722-3400 Fax: 843-723-7398 Email: jabaker@wcsr.com		Defendant's Attorney: Vincent A. Sheheen, Esq. Savage Royall & Sheheen, LLP P.O. Box 10 Camden, SC 29021 Phone: _____ Fax: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion for Summary Judgment</u> Estimated Time Needed <u>20 minutes</u> Court Reporter Needed: <u>Yes</u>			
SECTION II: Motion/Order Type			
☒ Written Motion ☐ Consent Scheduling Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney ☒ for ☐ Defendants		February 23, 2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Date Filed: _____			
Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-28-322

Plaintiff,

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

Defendants.

FM 2:34

The grounds for this Motion are as follows:

A. Alleged Breach of Fiduciary Duty Counterclaim (paragraph 16 of Answer to Amended Complaint and Counterclaims).

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2. **AS TO THE SECOND COUNTERCLAIM:**

A. **Alleged Conspiracy Counterclaim (paragraphs 30, 31 and 32 of Answer to Amended Complaint and Counterclaims).**

- i. SCENT Land's claim fails as a matter of law because SCENT Land has not adequately pled special damages, which must be entirely different from the alleged damages described in the other causes of action.

3. **AS TO THE THIRD COUNTERCLAIM:**

A. **Alleged Interference with A Contractual Relationship Counterclaim (paragraphs 23, 24, 25, 26, 27, 28 and 29 of Answer to Amended Complaint and Counterclaims).**

- i. SCENT Land's claim fails as a matter of law because SCENT Land failed to identify a contract with which Plaintiff allegedly interfered; and,
- ii. SCENT Land has not pled facts to support why Plaintiff "intentionally" breach such alleged contract.

4. **AS TO THE FOURTH COUNTERCLAIM:**

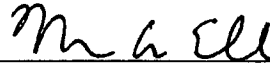
A. **Alleged Violation of the South Carolina Unfair Trade Practice Act Counterclaim (paragraphs 31, 32, 33 and 34 of Answer to Amended Complaint and Counterclaims).**

- i. SCENT Land's claim fails as a matter of law because SCENT Land has not provided evidence that Plaintiff engaged in deceptive acts that rise to the level of an unfair trade practice or that would cause injury to the public; and,
- ii. Even if SCENT Land could prove that Plaintiff has engaged in deceptive acts that would damage the public, a dispute between members of a limited liability company does not affect the public; and
- iii. A deliberate or intentional breach of contract, (which Plaintiff specifically denies), without more, does not constitute a violation of the South Carolina Unfair

Trade Practices Act ("SCUTPA") because it does not adversely affect the public and only affects those parties to the contract.

This Motion is based upon the pleadings, the relevant documents, a copy of the Affidavit of Jamie Curley hereto as Exhibit "A" and incorporated herein by reference, the Operating Agreement of SCENT Land attached hereto as Exhibit "B" and incorporated herein by reference and controlling case law, together with such other evidence, affidavits and memoranda of law which might be presented to the Court prior to the hearing on this Motion.

WHEREFORE, Plaintiff respectfully requests that this Court issue an Order granting Plaintiff's Motion for Summary Judgment and dismissing Defendant SCENT Land's counterclaims in their entirety, with prejudice.



Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
WOMBLE CARLYLE SANDRIDGE & RICE
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

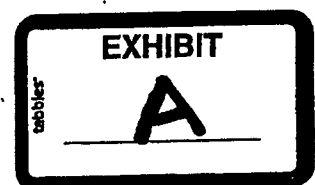
February 23, 2012
Charleston, South Carolina

OPERATING AGREEMENT
OF
SCENT LAND HOLDINGS, LLC

PARTIES

This Agreement, dated as of September 30, 2009, is among the following parties (the "Initial Members"):

1.	Amy Puchalski- Founding Member	3 Puddle Lane Camden, SC 29020
2.	Jamie Curley-Member	401 Woodland Drive Hartsville, SC 29550
3.	Robert Puchalski- Founding Manager	3 Puddle Lane Camden, SC 29020



BACKGROUND

The Initial Members have formed the Company under the Limited Liability Company Act of the State of South Carolina (the "LLC Act"), [§33-44-101 et seq.] for the principal purpose of owning real estate in any Counties in South Carolina in which they may transact business, and any other endeavors authorized by this Agreement. This Agreement sets forth the agreement among the parties as to the internal affairs of the Company and the conduct of its business.

TERMS AND CONDITIONS

The parties, intending to be legally bound, agree as follows:

SECTION 1 PRELIMINARY PROVISIONS AND DEFINITIONS

1.1 EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement (the "Effective Date") shall be Sept 30th, 2009.

1.2 ENFORCEABILITY OF AGREEMENT

On the Effective Date and thereafter until the parties amend or terminate the Agreement, all rights, duties and liabilities of the Company and of the Members as Members shall be enforceable against the Company and the Members in accordance with the terms of the Agreement.

1.3 COMPANY FORMATION

A copy of the Articles of Organization (the "Articles") for the Company is attached to this Agreement as Exhibit A.

The Company shall be a legal entity separate and distinct from its Members.

1.4 COMPANY

The name of the Company shall be SCENT Land Holdings, LLC but shall be referred to in this document as the "Company".

1.5 PRINCIPAL PLACE OF BUSINESS OF COMPANY

Upon its formation, the Company's principal place of business shall be 1165 Highway 1 South, Lugoff, South Carolina 29078. The Manager may change the Company's principal place of business from time to time upon reasonable notice to the Members.

1.6 COMPANY DURATION

The duration of the Company shall be indefinite.

1.7 COMPANY PURPOSE

The Company's principal purpose shall be owning real estate in any Counties in South Carolina in which they may transact business, and any other endeavors authorized under this Agreement.

1.8 COMPANY POWERS

Except as expressly otherwise provided in this Agreement, the Company shall have all powers provided to Companies under the LLC Act.

1.9 COMPANY REGISTERED AGENT AND REGISTERED OFFICE

The Company's registered agent and registered office shall be as set forth in the Articles.

1.10 MEMBERS

A. On the date of formation of the Company, the Initial Members shall be the only Members of the Company. Additional Members shall be admitted to the Company in accordance with Section 5. "Members" are individuals who are either physicians employed by or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse.

B. Disinterested Members are those Members claiming to have been harmed or injured in some fashion by and act or omission of the Manager acting on behalf of the Company.

1.11 LIMITED LIABILITY OF MEMBERS

No Member shall be personally obligated to any third party for any debt, obligation or liability of the Company solely by reason of being a Member. Members shall be liable for their conduct other than as Members as provided by law.

1.12 FIDUCIARY DUTIES AND LIABILITIES OF MEMBERS

Except as otherwise expressly provided in this Agreement, no Member in the Member's capacity as a Member shall have any fiduciary duties or liabilities to the Company or to the

other Members under this Agreement except to the extent of their participation in the management of the Company. For purposes of this Section 1.12:

(a) A Member's voting on Member Matters (as defined in Section 3.1) shall not constitute participation in the management of the Company;

(b) A Member's obtaining and using Company information shall constitute participation in the management of the Company as determined under applicable case law and under the relevant facts and circumstances.

1.13 RESERVATION OF COMPANY MANAGEMENT TO A MANAGER OR MANAGERS; APPOINTMENT OF INITIAL MANAGER

Except as otherwise expressly provided in this Agreement, the management of the business and internal affairs of the Company shall be reserved to one or more managers (the "Manager"). The initial Manager of the Company shall be Robert Puchalski.

1.14 TAXATION OF COMPANY AND MEMBERS

Under federal tax law and to the maximum extent possible under the tax laws of each state and the District of Columbia, the Company and its Members shall be taxable as a partnership and as partners.

The provisions of this Agreement shall be construed and applied in such a manner as to ensure full compliance with the provisions of the Internal Revenue Code applicable to partnerships and with the regulations thereunder.

1.15 ANNUAL ACCOUNTING PERIOD OF COMPANY

The Company's annual accounting period for financial and tax purposes shall be the calendar year.

1.16 COMPANY METHOD OF ACCOUNTING

The Company shall use the cash method of accounting to compute its taxable income.

1.17 ADDITION OF COMPANY AS PARTY TO AGREEMENT

Promptly after the formation of the Company, the Members and Manager shall sign this Agreement on behalf of the Company, and the Company shall become a party to the Agreement.

1.18 EFFECT OF LLC ACT

Except as otherwise provided in this Agreement or by law, the business and internal affairs of the Company shall be governed by the Company Act as in effect on the Effective Date.

1.19 RELATION OF AGREEMENT TO ARTICLES

If there is any conflict between the provisions of this Agreement and those of the Articles, then, in any dispute among the Members, the provisions of this Agreement shall prevail.

1.20 AMENDMENT OF AGREEMENT AND ARTICLES

No amendment of this Agreement or of the Articles shall be valid except upon the affirmative vote of all Members.

1.21 QUALIFICATION OF COMPANY IN OTHER JURISDICTIONS

Before conducting business in any jurisdiction other than South Carolina, the Company shall file all forms and shall do all other things required under the laws, including the tax laws, of that jurisdiction in order to conduct that business.

1.22 FOUNDING MEMBER AND MANAGER

Amy Puchalski shall be deemed Founding Member and Robert Puchalski shall be deemed Founding Manager for as long as they shall be associated with the Company in any way. As such, the Founding Member and Manager are vested with certain authorities and powers as set forth herein.

1.23 VOTING

Until the Company has more than four (4) Members, the vote of a majority of the Members shall control any vote taken. In the event of a tie vote, the Founding Member's vote shall break the tie. Once there are five (5) Members, the language referenced in this document requiring a majority vote shall be interpreted in accordance with this provision of section 1.22 and the vote of Seventy-five (75%) percent of the Members shall control any vote taken.

1.24 APPLICABILITY OF NAME

References in this agreement to South Carolina ENT, Allergy and Sleep Medicine, P.A., shall include references to its predecessors, Kershaw ENT, South Carolina ENT & Facial Plastic Surgery, Inc. and any subsequently re-named physician practice containing all, or substantially all, of the existing shareholders of South Carolina ENT, Allergy and Sleep Medicine, P.A..

SECTION 2 MEMBERS' CONTRIBUTIONS TO COMPANY, ETC.

2.1 CLASSES OF MEMBERS

The Company shall have a single class of Members.

2.2 CONTRIBUTIONS TO BE MADE BY MEMBERS IN EXCHANGE FOR THEIR MEMBERSHIPS

Promptly after the Company's formation, the Initial Members shall, in exchange for their Memberships, make contributions to the Company of the cash, non-cash property and services and the promises of cash, non-cash property and services as provided in the attached Exhibit A.

Members admitted to the Company after its formation shall make contributions in exchange for their Memberships as set forth in amendments to that exhibit.

2.3 VALUATION OF NON-CASH CONTRIBUTIONS

Before any Member makes a contribution to the Company in a form other than money, the manager shall determine the value of that contribution in dollars. In the absence of fraud and after consultation with the Company's Tax Advisor, the Founding Manager's determination shall be conclusive as to that value.

2.4 ENFORCEABILITY OF PROMISES TO MAKE CONTRIBUTIONS

No promise by a Member to make a contribution to the Company shall be enforceable unless set forth in this Agreement or in another writing signed by the Member.

2.5 DUTY OF DISABLED MEMBERS TO MAKE CONTRIBUTIONS, ETC.; COMPROMISES

Members or their representatives shall be obligated to perform enforceable promises to make contributions to the Company even if the Members are unable to do so because of their disability, death or otherwise. No such promise shall be compromised except by vote of a majority of the Members.

2.6 PENALTIES FOR FAILURE TO CONTRIBUTE

If any Member fails to make a contribution required or agreed to under 2.4, the other Members by vote of Members holding a majority of Member votes (exclusive of the votes

of the Member failing to make the contribution) may impose upon the Member any penalty that the other Members agree is reasonable in the circumstances, including:

- (a) Reduction or elimination of the Member's proportionate interest in the Company;
- (b) Forfeiture of all or a portion of the Member's Membership rights; or
- (c) Sale of all or a portion of the Member's Membership rights.

In determining which penalty to apply under this Section 2.6, the Members shall consult with the Company's accountant under Section 15.

2.7 NO INTEREST ON CONTRIBUTIONS

The Members shall earn no interest on their contributions under this Section 2.

SECTION 3 MEMBERS' NON-ECONOMIC RIGHTS

3.1 MATTERS ON WHICH MEMBERS MAY VOTE

Members in their capacity as Members shall have the right to vote on the following types of matters ("Member Matters"):

- (a) All matters on which this Agreement expressly provides them with a right to vote.

3.2 NUMBER OF VOTES THAT MEMBERS MAY CAST

Except as otherwise expressly provided in this Agreement, each Member shall have one vote on each Member Matter for:

- (a) Each percentage of ownership the Member has in the company; and

3.3 NUMBER OF VOTES NECESSARY TO DECIDE MEMBER MATTERS

Except as otherwise expressly provided in this Agreement, each Member Matter shall be decided by the affirmative vote of Members holding a majority of Member votes. In the event of a tie by the Members, the Founding Member shall vote to break the tie.

3.4 PROCEDURAL RULES GOVERNING MEMBER VOTING

In the absence of fraud or bad faith, no vote by the Members on any Member Matter shall be

deemed to be invalid on any procedural or similar ground, including any ground relating to lack of notice, lack of meeting, lack of quorum, or failure to record votes;

PROVIDED, that the Manager shall use his reasonable best efforts to make a written record of each significant vote by the Members and to circulate these records on a timely basis among the Members.

In the event a Member cannot be present at a properly called meeting for any reason, the Member may submit a proxy to the Theresa Williams, or the then acting Office Manager, indicating to whom the proxy is given. The proxy may, but is not required to, dictate a certain vote to the proxy recipient.

No vote on a matter requiring Member vote, including but not limited to the purchase or sale of real estate, can be called to question by anyone other than the Manager.

For purposes of this Section 3.4, the terms "procedural or similar ground" shall be construed broadly. Members may vote on Member Matters in person, by phone, by fax or by any other reasonable means.

3.5 MEMBERS HAVE NO AGENCY RIGHT OR POWER

No Member as a Member shall have the right or power to bind the Company in dealings with third parties, in statements about the Company or in any other manner.

3.6 RIGHT OF MEMBERS TO OBTAIN COMPANY INFORMATION

During normal business hours and after reasonable notice, each Member shall be entitled for any purpose reasonably related to the Member's Membership:

To view any financial information in the Company's possession or control; and

To inspect and, at the Member's expense, to copy any documents and other media in the Company's possession or control;

PROVIDED, that all information thus acquired by the Member shall be subject to the provisions of Section 11 (relating to the confidentiality of certain Company information).

3.7 RIGHT OF MEMBERS TO BRING ACTIONS AGAINST, IN THE NAME OF OR ON BEHALF OF THE COMPANY OR AGAINST OTHER MEMBERS

3.7.1 GENERAL PROHIBITION OF SUITS

No Member in the Member's capacity as a Member may bring an action in law or equity

against the Company or against any other Member in the other Member's capacity as a Member in any court for any reason except to enforce an arbitration order under Section 19.

3.7.2 VOTING REQUIREMENT FOR SUITS

No Member may bring a suit or action against any person in the name of or on behalf of the Company except with the affirmative vote of other Members holding a majority of Member votes (exclusive of the votes of the Member seeking to bring suit).

3.7.3 ARBITRATION

Any Member may assert in arbitration under Section 19 any claim that could be asserted in any suit or action against, in the right of or in the name of the Company.

SECTION 4 INTERIM ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS; GUARANTEED PAYMENTS, ETC.

4.1 INTERIM ALLOCATIONS OF COMPANY PROFITS AND LOSSES

The Company shall make interim allocations of its profits and losses (as defined in Section 4.3) among the Members in proportion to their respective shares of aggregate contributions to the Company;

PROVIDED, that the Company shall allocate its income, gains, deductions and other tax items to Members in respect of contributed non-cash property in accordance with Internal Revenue Code section 704 (c) (1) (A) and the regulations thereunder.

For purposes of this Section 4, contributions shall (except as otherwise expressly provided in this Agreement) include only the value of contributions which the Company has actually received from the Members and has not returned.

4.2 ALLOCATIONS OF INTERIM DISTRIBUTIONS

The Company shall allocate to the Members Interim Distributions (as defined in Section 4.3) on the same basis on which it allocates its profits and losses.

4.3 DEFINITION OF INTERIM ALLOCATION AND INTERIM DISTRIBUTION

For purposes of this Section 4, the term "Interim Allocation" and "Interim Distribution" shall mean, respectively, any allocation of profits or losses among the Members and any

distribution of profits or other assets by the Company to the Members as their share of Company assets except allocations and distributions in connection with:

- (a) The liquidation of a Member's Company interest (as the term "Company interest" is defined in Section 4.4); and
- (b) The liquidation of the Company.

4.4 DEFINITION OF COMPANY INTEREST

For purposes of this Agreement, a Member's Company interest shall mean

- (a) The Member's share of the Company's profits and losses; and
- (b) The Member's right to receive distributions of the Company's assets.

4.5 DISTRIBUTIONS IN KIND

If this Agreement or applicable law requires the Company to make an Interim Distribution to any Member, the Member may not require the Company to make this distribution except in the form of cash. The Company may not compel a Member to accept an Interim Distribution except in the form of cash.

4.6 NO COMPANY DUTY TO MAKE INTERIM DISTRIBUTIONS

The Company shall have no duty to make Interim Distributions except as expressly provided in this Agreement or as determined from time to time by the Founding Manager, or his successor.

4.7 TAX DISTRIBUTIONS

In the event sufficient cash exists and the Founding Manager or his successor deems it prudent to do so, the Company shall make Interim Distributions to the Members to enable them to pay taxes on allocations to them of Company profits.

4.8 LIQUIDATING DISTRIBUTIONS

The Company shall make distributions to Members in connection with the liquidation of their Company interests in accordance with Section 5. The Company shall make distributions to Members in connection with the liquidation of the Company in accordance with Section 16.

4.9 UNLAWFUL DISTRIBUTIONS

The Company shall make no Unlawful Distribution of its assets to any Member. For purposes of this Section 4.9, a distribution is an Unlawful Distribution:

- (a) If, as a result of the distribution, the Company would be unable to pay its reasonably foreseeable obligations as they become due; or
- (b) If the distribution is unlawful under the Company Act as in effect from time to time.

4.10 LIABILITY FOR AUTHORIZING OR RECEIVING UNLAWFUL DISTRIBUTIONS

Members who vote to authorize Unlawful Distributions or who receive these distributions shall be liable as provided in the Company Act.

4.11 REIMBURSEMENT OF EXPENSES

If any Member or manager incurs a reasonable expense on behalf of the Company and reasonably documents this expense to the Company, the Company shall reimburse the Member for this expense as promptly as reasonably possible after receiving this documentation. A Reasonable Expense shall be deemed to be reasonable and reimbursable upon agreement by the Founding Manager, or his successor, after consultation with the Company Tax Advisor.

SECTION 5 TRANSFERS AND PLEDGES OF MEMBERSHIP RIGHTS, ETC.

5.1 RESTRICTIONS ON RIGHT OF MEMBERS TO TRANSFER AND PLEDGE THEIR MEMBERSHIP RIGHTS

Except as may be provided herein, any transfer or sale of economic or non-economic Member rights shall be directly to the Company, a physician member of South Carolina ENT, Allergy and Sleep Medicine, P.A., or the current spouse of a physician member of South Carolina ENT, Allergy and Sleep Medicine, P.A.. Upon the purchase by the Company of a Member's rights hereunder, the ownership percentages of the remaining Members shall be automatically adjusted so that each remaining Member shares equally in the profits and losses of the Company. The intent of this provision is that every Member shall be just as vested in the Company as any other Member.

ANY PURCHASE OF NEW MEMBERSHIP OR SURRENDER (BUY-IN OR BUY-OUT) OF EXISTING MEMBERSHIP, FOR ANY REASON DESCRIBED HEREIN, SHALL BE BASED UPON THE VALUATION AND PROCEDURE IDENTIFIED IN SECTION 5.5. BUYOUT DUE TO DEATH, DISABILITY, RETIREMENT OR DISSOCIATION WILL BE VALUED AND PAID ACCORDING TO THE TERMS IDENTIFIED HEREIN.

5.2 DEFINITION OF TRANSFER

For purposes of this Section 5, "transfer" shall include:

- (a) Transfers by sale;
- (b) Transfers by gift;
- (c) Transfers (whether by will, trust or otherwise) taking effect on the death of the transferor; and
- (d) Involuntary transfers, including transfers by operation of law and pursuant to divorce and bankruptcy decrees.

Transfers and pledges in breach of the terms of this Section 5 shall be void and of no effect.

5.3 ADMISSIONS OF ADDITIONAL MEMBERS BY THE COMPANY

The Company shall admit no person as a Member of the Company after the Company's formation except upon the affirmative vote of Members holding 75% of Member votes.

5.4 ELECTION UNDER INTERNAL REVENUE CODE SECTION 754

Before any Member transfers any of the Member's rights as a Member to any person, the Members shall negotiate in good faith and shall agree whether to file an election under Internal Revenue Code section 754 to adjust the basis of Company property in connection with that transfer.

5.5 VALUATION OF MEMBERSHIP INTEREST AND BUYOUT

Subject to (C) herein, the value of the Member's equity shall be determined as follows:

The determination of value for a Member either a) buying in to, at any time, or b) dissociating out of the Company after the first five (5) years of the member obtaining shares of SCENT Land Holdings, LLC and after the first seven and one-half (7.5) years of the member obtaining shareholder status in South Carolina ENT, Allergy and Sleep Medicine, P.A., shall be based on the appraised value of the assets of the property less any outstanding

mortgage indebtedness and the Member's ownership percentage thereof (in the event the appraised value is less than the mortgage balance, use the mortgage balance to determine value); or,

(B) For a Member dissociating from the Company prior to the 5th anniversary of the Member obtaining their Membership shares in SCENT Land Holdings, LLC and the seven and one-half (7.5) year anniversary of obtaining shareholder status in South Carolina ENT, Allergy and Sleep Medicine, P.A., the value of the Member's interest shall be the Member's ownership percentage multiplied by the difference between the cost of land acquisition and the construction of the improvements/buildings on the property, as computed by the Founding Manager, after consultation with the Company Tax Advisor, less any outstanding mortgage indebtedness.

(C) In the event a Member withdraws from the Company prior to the previously stated anniversaries of obtaining Membership interest and the properties appraised value is below the actual cost of actual acquisition and construction of the improvements, the withdrawing Member shall be entitled only to the lower value of the Company as computed by processes A and B above.

(D) The Member withdrawing or dissociating from the Company, after five (5) years of the Member obtaining shares of SCENT Land Holdings, LLC and after seven and one-half (7.5) years of obtaining shareholder status with South Carolina ENT, Allergy and Sleep Medicine, P.A., shall pay for an MAI certified, market based appraisal of the property and if the Company and the Member disagree on the value shown on the appraisal, the Company will pay for an additional appraisal and the two figures shall be averaged to determine the value of the property

(E) For any Buy-out of Membership shares of the Company, the majority vote of the non-withdrawing Members of the Company shall vote to make buyout payments in either one payment or in equal payments spread out over no more than 5 years.

(F) For purposes of establishing dates of joining the company for the initial Members or Manager, Amy and Robert Puchalski's relative date is July, 2004 and Jamie Curley and Orville Dyce's relative date is July, 2007.

(G) Upon determination of the Buyout amount owed to the withdrawing Member, the Interim Distributions normally made to that Member shall cease and the withdrawing Member shall only be entitled to the funds due for buyout of that Member's interest in the Company.

SECTION 6 MEMBER DISSOCIATIONS

6.1 DEFINITION OF MEMBER DISSOCIATION

The dissociation of a Member means the termination of the Member's right to participate in the Company's business and internal affairs by voting on matters relating to the business, rights to Interim Distributions and internal affairs of the Company, by acting as an agent for the Company or otherwise.

6.2 EVENTS OF DISSOCIATION

The Company may require a Member to promptly sell all or any part of the Member's Company interest to the Company or to the other Members for the value set forth in 5.5 herein if a Member is dissociated. Under certain circumstances, a shareholder shall be required to transfer Membership interest, or proxy vote, to a physician spouse who is a shareholder of South Carolina ENT, Allergy and Sleep Medicine, P.A.. In no event can the Founding Member or Founding Manager ever be forcefully Dissociated.

A Member shall be dissociated only upon the occurrence of one of the following events:

(a) The Member dies, unless the Member is a spouse of the practicing South Carolina ENT, Allergy & Sleep Medicine, P.A. physician, in which case the Member's interest shall vest only in the South Carolina ENT, Allergy & Sleep Medicine, P.A. physician;

Notwithstanding anything to the contrary, any Member who is the surviving spouse (with no legal separation or divorce proceedings having been commenced) of a physician who has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. seven and one-half (7.5) years and also a Member of this Company for at least 5 years prior to the death of the physician shall be entitled to continued Membership privileges for the duration of his or her life. However, these privileges shall be of a personal nature to the surviving spouse and not transferrable to the surviving spouse's children or a subsequent non-South Carolina ENT, Allergy & Sleep Medicine, P.A. member physician spouse upon her remarriage.

(b) The physician or physician spouse incurs a Total Disability (as defined in Section 6.6), unless the physician has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. for at least seven and one-half (7.5) years;

(c) The Member resigns in accordance with Section 6.9;

(d) The Member transfers the Member's entire Company interest to another person, who is not the South Carolina ENT, Allergy & Sleep Medicine, P.A. physician

spouse of the Member;

(e) The South Carolina ENT, Allergy & Sleep Medicine, P.A. physician and Member spouse divorce. In this event, the shares owned by the Member spouse shall be transferred to the physician in any settlement proceedings. Until a determination is made by a Court of competent jurisdiction, the non-physician spouse will lose the non-economic rights vested in this agreement with proxy vote transferring to the physician spouse.

(f) The Member, or Member's spouse, is no longer employed by or a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. This will not apply in the event the Member or physician spouse has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. for a period of at least seven and one-half (7.5) years.

(g) In the event the Member (who is not a physician with South Carolina ENT, Allergy & Sleep Medicine, P.A.) becomes incapacitated or incompetent and therefore unable to participate in Company business, the Member's non-economic right to participate in any Company business shall vest in the physician spouse for the duration of the disability.

6.3 LOSS OF VOTING RIGHTS, ETC., UPON DISSOCIATION

Except as otherwise expressly provided in this Agreement, a Member upon the Member's dissociation shall immediately lose any right of the Member to participate in the business and affairs of the Company by voting on Member Matters, by acting as an agent for the Company, by initiating a dispute in the Member's capacity as a Member, by having access to Company information in the Member's capacity as a Member or by any other means.

6.4 NO DISTRIBUTIONS, ETC., TO DISSOCIATED MEMBERS

A Member's dissociation shall not entitle the Member to receive any distribution of Company profits or other assets or to receive any payment for the Member's Company interest, unless said profits, assets or payment for the Member's interest are owed to the Member from a date which precedes the Member's date of dissociation.

6.5 DEFINITION OF TOTAL DISABILITY

A Member, if a physician or Member's physician spouse, shall be deemed to have incurred a Total Disability within the meaning of Section 6.2 (b) as defined by the shareholder's agreement with South Carolina ENT, Allergy and Sleep Medicine, P.A.

6.6 DETERMINATION OF TOTAL DISABILITY

Whether a Member, or Member's physician spouse, has incurred a Total Disability and the date on which the Member, or Member's physician spouse, has incurred a Total Disability

shall be determined by the vote of other Members holding a majority of Member votes (except the votes of the Member about whose disability they are voting). All such determinations shall be subject to review in arbitration under Section 19.

6.7 DEFINITION AND EFFECTIVE DATE OF RESIGNATION

For purposes of this Section 6, the resignation of a Member means the Member's voluntary written renunciation of the Member's right to participate in the business and internal affairs of the Company. A Member shall be deemed to have resigned from the Company within the meaning of this Section 6 on the effective date of the notice of resignation described in Section 6.9.

6.8 RIGHT OF MEMBERS TO RESIGN FROM COMPANY; NOTICE OF RESIGNATION

A Member may without liability resign as a Member of the Company by giving written notice of resignation to the other Members. The resignation shall be effective 60 days after all of the other Members have received the notice.

6.9 EXPULSION OF MEMBER

A Member may only be expelled by the Company and forced to accept a buy-out of his or her interest as valued in Section 5 herein if the Member:

(a) is a physician owning an interest in the Company and the physician withdraws from practice with South Carolina ENT, Allergy & Sleep Medicine, P.A. prior his or her seven and one-half (7.5) year anniversary of Membership in South Carolina ENT, Allergy & Sleep Medicine, P.A.; or,

(b) is the spouse member of a South Carolina ENT, Allergy & Sleep Medicine, P.A. physician who leaves the practice prior to the 7.5th anniversary of the Member spouse's Membership in South Carolina ENT, Allergy & Sleep Medicine, P.A.; or,

(c) fails to make a mandatory capital contribution to the Company, within six (6) weeks of written notice given thereof, for a project that is approved by the Membership for such contribution to be made.

SECTION 7 MANAGER'S DUTY OF CARE; RELATED MATTERS

7.1 DUTY OF CARE - GENERAL RULE

In participating in or handling any matter (an "Company matter") relating to the business and

internal affairs of the Company, the Manager shall use his reasonable best efforts to further the interests of the Company;

PROVIDED, that the Manager shall be liable for violations of their duty of care as Manager only as provided in Section 7.2.

7.2 PERSONAL LIABILITY OF MANAGERS FOR FAILURE TO USE ORDINARY PRUDENCE

The Manager shall be personally liable to the Company for money damages and other relief if, in participating in or handling any Company matter as Manager:

They fail to exercise the care that an ordinarily prudent person would exercise under similar circumstances; and

They are unable to rely on the defenses to liability set forth in Sections 7.4 and 7.5.

7.3 DUTY TO OBTAIN INFORMATION

Before making any decision or taking any action in an Company matter, the Manager in his capacity as Manager shall use their best efforts to obtain all relevant information.

7.4 NO MANAGER LIABILITY IF A MANAGER RELIES ON COMPANY INFORMATION, ON OTHER COMPANY MANAGERS, ETC.

No manager as a manager shall be personally liable to the Company or to the Members for any claim of violation of the manager's duties under this Section 7 to the extent that, with respect to the matter in question, the manager has acted in reasonable reliance on:

- (a) Company records;
- (b) Other Company managers, employees or officers of the Company;
- (c) Other persons whom, at the time of the action, the manager reasonably believed to be competent in the matter in question; or
- (d) Any provision of this Agreement.

7.5 NO MEMBER LIABILITY FOR ACTIONS TAKEN IN GOOD FAITH, ETC.

No Manager in the Manager's capacity as a manager shall be personally liable for a breach of any duty of the Manager under this Section 7 if, with respect to the matter in question, the Manager has acted:

- (a) In good faith; and,
- (b) In the reasonable belief that the action was in the best interest of the Company; and,
- (c) With reasonable diligence.

7.6 WHO MAY CLAIM BREACH OF THIS SECTION; MEMBER VOTE NECESSARY TO MAKE CLAIM

Only the Company may make a claim against a Manager for a breach of a duty of the Manager under this Section 7. The Company shall make no such claim except upon the unanimous vote of Members entitled to vote (exclusive of the votes, if any, of the Manager potentially subject to the claim). Regardless of the claim made by the Membership, no such claim for breach of a Managerial duty shall be maintained against Robert Puchalski or Amy Puchalski.

7.7 STANDARD OF PROOF

Any claim of breach of this Section 7 shall be deemed to be proven if supported by a preponderance of the evidence.

7.8 INDEMNIFICATION OF MANAGERS FOR CLAIMS UNDER THIS SECTION

If any person makes a claim against a Manager for a violation of a duty of the Manager under this Section 7, the Company shall indemnify the Manager for reasonable expenses and for damages or settlement amounts reasonably incurred by the Manager in respect of the claim if Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who is the subject of the claim) determine that in respect of the matter in question:

The Manager has exercised the care that an ordinarily prudent person would exercise under similar circumstances; or

The Manager is protected from liability under Sections 7.4 or 7.5.

7.9 ADVANCEMENT OF ARBITRATION AND LITIGATION EXPENSES

The Company shall advance arbitration and litigation expenses to a Manager for the defense of claims against the Manager for breaches of the Member's duty under this Section 7:

If Disinterested Members holding a majority of Member votes (excluding the Member votes,

if any, of the Manager who is the subject of the claim) determine that in respect of the relevant matter, it is probable that the Manager has exercised the care that an ordinarily prudent person would exercise under similar circumstances or that the Manager is protected from liability under Sections 7.4 or 7.5; and

If the Manager promises to return all such advances to the Company if the court, arbitrator or other tribunal deciding the claim finds otherwise.

7.10 LIABILITY INSURANCE FOR MANAGERS

Whether the Company shall maintain an insurance policy to cover Manager liabilities arising under this Section 7 shall be determined by the affirmative vote of Members holding a majority of Member votes.

SECTION 8 MANAGERS' DUTY OF LOYALTY; RELATED MATTERS

8.1 DUTY OF LOYALTY-GENERAL RULE

In matters relating to the business and affairs of the Company, Manager in his capacity as Manager shall act solely for the benefit of the Company and not for their personal benefit.

8.2 DUTY NOT TO COMPETE AGAINST THE COMPANY

In any geographical area where the Company is engaged in business or has definite plans (as evidenced by Company documents) to engage in business, a Manager shall not directly or indirectly compete against the Company while the Manager is a Manager and until the second anniversary of the date on which the Manager ceases to be a Manager; PROVIDED, that the Manager may compete against the Company with the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who wishes to compete against the Company).

8.3 DUTIES IN DOING BUSINESS WITH COMPANY

No Manager shall engage directly or indirectly in any business arrangement or transaction with the Company on the Manager's own behalf or on behalf of a disclosed or undisclosed third party except:

After making full disclosure to the Company; and After receiving the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager wishing to engage in business with the Company).

The terms of any business engagement permitted under this Section 8.4 shall be arm's-length terms.

8.4 DUTIES WITH RESPECT TO COMPANY BUSINESS OPPORTUNITIES

If a Manager or Member learns (whether in the course of Company business or otherwise) of a business opportunity potentially valuable to the Company, the Manager or Member shall promptly disclose the opportunity to the Company and shall not exploit the opportunity for the Manager's or Member's personal benefit unless:

(a) Within 10 business days after receiving written, faxed or emailed notice of the opportunity, the Company fails to provide either an acceptance or rejection to the Member or Manager disclosing the opportunity; or

(b) After accepting it, the Company fails to exploit it with reasonable promptness and diligence.

Whether the Company shall accept the opportunity shall be decided in each case by the affirmative vote of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who wishes to exploit the opportunity).

8.5 DUTY TO AVOID IMPROPER PERSONAL BENEFITS

If any Manager directly or indirectly receives from any person a monetarily significant benefit, including cash, in connection with the Manager's activities as a Manager of the Company, the Manager shall promptly transfer this benefit to the Company; PROVIDED, that the Manager may retain the benefit if authorized to do so:

(a) By this Agreement; or

(b) By the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager in question).

8.6 DUTIES OF GOOD FAITH AND FAIR DEALING

In all Company matters, Manager in their capacity as Manager shall act in good faith and shall deal fairly with the Company and with the Members.

8.7 WHO MAY CLAIM BREACH OF THIS SECTION; MEMBER VOTE NECESSARY TO MAKE CLAIM

Only the Company may make a claim against a Manager for a breach of the Manager's duty under this Section 8. The Company shall make no such claim except upon the affirmative vote of Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager potentially subject to the claim).

8.8 STANDARD OF PROOF

Any claim of breach of this Section 8 shall be deemed to be proven if supported by a preponderance of the evidence.

8.9 ADVANCEMENT OF LITIGATION EXPENSES

The Company shall advance arbitration and litigation expenses to a Manager for the defense of claims against the Manager for breaches of the Manager's duty under this Section 8:

If Disinterested Members holding a majority of Member votes (excluding the Member votes, if any, of the Manager who is the subject of the claim) determine that in respect of the relevant matter, it is probable that the Manager has complied with the provisions of this Section 8; and

If the Manager promises to return all such advances to the Company if the court, arbitrator or other tribunal deciding the claim finds otherwise.

SECTION 9 MANAGER'S DUTY OF OBEDIENCE

The Manager shall promptly comply with all reasonable instructions approved by Members holding a majority of Member votes.

SECTION 10 MANAGER'S DUTY OF CANDOR

The Manager shall deal honestly with the Company and, promptly after learning of any information (including information about their own health and personal affairs) that is material to the business and affairs of the Company, they shall disclose this information to the Company to the other Managers (or, if there is only one Manager, to the Members).

SECTION 11 MEMBERS' AND MANAGER'S DUTY OF CONFIDENTIALITY

11.1 MEMBERS' AND MANAGER'S DUTY TO MAINTAIN CONFIDENTIALITY OF COMPANY INFORMATION

The Members and Managers:

- (a) Shall maintain the confidentiality of Confidential Information (as defined in Section 11.2);
- (b) Except as required in conducting the business and internal affairs of the Company, shall not disclose Confidential Information to any third party;
- (c) Shall make copies of documents and other media containing Confidential Information only for the benefit of the Company;
- (d) Shall use Confidential Information only for the benefit of the Company; and
- (e) Promptly after ceasing to be Members and Managers (as the case may be), shall return to the Company all documents and other media containing Confidential Information.

11.2 DEFINITION OF CONFIDENTIAL INFORMATION

For purposes of this Agreement, Confidential Information means:

- (a) The terms of this Agreement; PROVIDED, that a Member may disclose these terms on a confidential basis to his or her spouse and professional advisers;
- (b) Information that the Company maintains in confidence;
- (c) Information that the Member or Manager knows to be proprietary to the Company.
- (d) Financial information relating to the Company and to the Members;
- (e) Information relating to Company marketing and business plans and strategies;
- (f) Information concerning the design and manufacture of Company products and concerning methods of providing Company services;
- (g) Information in Company personnel files and similar files relating to Company Members and employees;

- (h) Information entrusted to the Company in confidence by third parties;
- (i) Information reasonably designated by the Managers as Confidential Information; and
- (j) Information disclosed by Managers under Sections 11 and 12.

11.3 EXCEPTIONS TO DUTY OF CONFIDENTIALITY

Section 11.1 shall not apply to information:

- (a) Which the Member or Manager in question (the "Recipient") already lawfully possess at the time of its disclosure to the Member or Manager by the Company or which the Recipient lawfully obtains thereafter;
- (b) Which is already in the public domain at the time of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Member;
- (c) The disclosure of which is required by final order of a court of competent jurisdiction;
- (d) The disclosure of which is made on a confidential basis to an arbitrator in an arbitration under Section 19; and
- (e) Which the Company discloses without restriction to any person other than the Recipient.

11.4 BINDING EFFECT; TERMINATION

This Section 11 shall bind each Recipient even after the Recipient ceases to be a Member or Manager. Subject to any contrary arrangement with a third party, this Section 11 shall terminate upon the termination of the legal existence of the Company.

SECTION 12 MANAGER QUALIFICATIONS, RESPONSIBILITIES, ETC.

12.1 MANAGER QUALIFICATIONS

The Manager shall be a natural person and shall be a shareholder of South Carolina ENT, Allergy and Sleep Medicine, P.A.

12.2 MANAGER TITLES

In performing management functions for the Company, Managers may use the title "Manager" or such other title or titles (including, without limitation, the title "President" or "Chief Executive Officer") as the Members may determine from time to time by affirmative vote of Members holding a majority of Member votes.

12.3 MANAGER RESPONSIBILITIES

The Manager shall have general responsibility for managing the day to day business and internal affairs of the Company. The Manager shall have any additional responsibilities that are set forth in this Agreement or that the Members may determine from time to time by affirmative vote of Members holding a majority of Member votes. If the Managers responsibilities are expanded pursuant to this section, the Manager may request a reasonable management fee to be determined by the Members based upon a fair market valuation of the services performed.

12.4 MULTIPLE MANAGER VOTING- N/A

12.5 METHOD OF APPOINTING MANAGERS AFTER INITIAL MANAGER

Subsequent to the terms of 12.6 herein, after the formation of the Company, Managers shall be appointed by the affirmative vote of Members holding seventy-five (75%) percent of Member votes.

12.6 MANAGER'S TERMS OF OFFICE

The term of office of each Manager shall be indefinite, but shall terminate upon the earliest of the date of the Manager's (a) death, (b) resignation, (c) disability (as determined by vote of Members holding a majority of votes) or (d) removal as a Manager. Regardless of any information contained in this document to the contrary, Robert Puchalski, as Founding Manager, shall remain as Manager for the duration of his association with the company, even if he is no longer a shareholder with South Carolina ENT, Allergy & Sleep Medicine, P.A.

12.7 MANAGER RESIGNATIONS

A Manager may resign as a Manager upon giving 60 days' written notice to each Member. Except as otherwise provided in this Agreement, the Manager shall have no liability to the Company or to the other Members for any such resignation; PROVIDED, that the resignation shall not absolve the Manager from any liabilities arising before the resignation.

12.8 MANAGER REMOVALS

The Members may, without liability, remove a Manager, except Robert Puchalski if he is serving as Manager, at any time with or without cause by affirmative vote of Members holding seventy-five (75%) percent of Member votes. Robert Puchalski may only be removed by the Members if a unanimous vote is taken to remove them and only as a result of an intentionally illegal action by or on behalf of the Company or he attempts to secure or sign a contract or any other document purporting to sell any real property asset of the Company or

obligate the Company to purchase additional real property without obtaining prior approval of the Members.

12.9 NO MANAGER LIABILITY AS MANAGER FOR CLAIMS AGAINST COMPANY BY THIRD PARTIES

No Manager as such shall have personal liability for a claim against the Company by any third party. Managers shall be personally liable for their personal misconduct as provided by this Agreement and by applicable law.

12.10 MANAGERS' EXCLUSIVE RIGHT TO BIND COMPANY, ETC. Only the Manager shall have the following rights:

12.10.1 CONTRACTS

The Manager shall have the right to bind the Company in dealings with third parties.

12.10.2 BUSINESS DECISIONS

The Manager shall have the exclusive right to decide all Company matters relating to the business of the Company.

12.10.3 CONDUCT OF BUSINESS AND AFFAIRS OF COMPANY

The Manager shall have the right to conduct the day to day business and internal affairs of the Company. The Manager shall have the right to employ accountants, attorneys, property or construction managers and other persons whose employ would benefit the Company. The Manager shall also have the exclusive right to determine appropriate distributions to Members based on their Membership interest and the cash position of the Company at the time of the anticipated distribution. Matters outside the normal operations of Company business, such as selling, buying or mortgaging of any Company real property asset, shall be handled by the Manager but upon written approval and direction of Members holding seventy-five (75%) percent of the Member votes.

12.11 DUTY OF MANAGER TO INFORM MEMBERS

The Managers shall use reasonable efforts to inform the Members on an annual basis, or as requested by the Members, concerning the internal affairs of the Company and the condition of its business.

12.12 MANAGER VALUATION OF CONTRIBUTIONS, ETC.

Whenever, after the formation of the Company, the Company admits a person as a new Member of the Company, the Manager (and not the Members):

Shall promptly determine in dollars a value for the contribution of that person in exchange for the person's Membership or that there was no contribution;

Shall record this determination in the records of the Company, and

Shall promptly notify all Members concerning the determination. Thereafter, in the absence of fraud, the determination shall be conclusive as to the value of the contribution or as to whether there was a contribution.

12.12 INITIAL MANAGER

The Company shall be managed by Robert Puchalski as the initial Manager of the Company.

12.13 APPOINTMENT OF SUBSTITUTE MANAGER(S)

The Members shall have the right to appoint a substitute "Manager" or "Managers" to operate the Company and to conduct its business in the event of illness, disability, or death of the primary Manager, and his stated successor. The Members shall also have the right to nominate or elect an additional Manager for the purposes set forth herein. The "Manager" shall have the rights, powers, and obligations granted or created herein to the initial Managers, except as the Members shall otherwise restrict or limit in the document appointing the "Manager".

SECTION 13 MEMBERS' REPRESENTATIONS AND WARRANTIES

13.1 REPRESENTATIONS AND WARRANTIES BY INDIVIDUAL MEMBERS

Each Member represents and warrants in the Member's capacity as a Member as follows:

13.1.1 FREEDOM OF MEMBER TO ENTER INTO AGREEMENT, ETC.

The Member:

(a) Is legally free to enter into this Agreement and to perform the Member's obligations under the Agreement in accordance with its terms; and

(b) Is not prevented from doing so by order of any court or other governmental authority, by any agreement with a third party (including an employment agreement, non-competition agreement or non-disclosure agreement) or by any other cause.

13.1.2 GOODFAITH, DISCLOSURE, ETC. IN NEGOTIATING TERMS OF AGREEMENT

In negotiating and entering into this Agreement, the Member has acted fairly and in good faith and has disclosed to the other Members all information reasonably likely to be relevant to them in determining whether to enter into it.

13.1.3 ACCESS TO LEGAL ADVICE, ETC.

Before accepting the terms of this Agreement, the Member has had every reasonable opportunity to consider these terms and to review them with the Member's personal attorney.

13.1.4 FREE ACCEPTANCE OF TERMS, ETC.

Each Member has accepted the terms of this Agreement knowingly and freely.

13.2 DUTY TO UPDATE

If, after a Member signs this Agreement, the Member discovers that any of the above representations were erroneous when made or have become erroneous, the Member shall immediately so advise the other Members.

SECTION 14 COMPANY RECORDS, BOOKS OF ACCOUNT, REPORTS TO MEMBERS, ETC.

14.1 RECORDS TO BE MAINTAINED BY Company

The Company shall maintain at its principal place of business:

- (a) A copy of its Articles and operating agreement and all amendments of these documents;
- (b) Copies of all of its federal and state tax returns;
- (c) A current list of the name and last known business, residence or mailing address of each of its Members;
- (d) True and complete information concerning:

The amount of cash and a description and statement of the value of any other property or services which each Member has contributed to the Company or which any Member has

agreed to contribute to it;

Any return by the Company to a Member of cash or other property contributed by the Member; and

(e) A record stating the date on which each Member became a Member (unless this date is evident from the content of the Agreement).

14.2 BOOKS OF ACCOUNT

The Company shall maintain books of account concerning the business and affairs of the Company that shall be:

(a) Accurate;

(b) Reasonably current; and

(c) In compliance with financial and other standards normally applicable to the records of business organizations generally similar to the Company in size and business activities,

14.3 REPORTS TO MEMBERS, ETC.

Through the provision of written financial reports or through other appropriate measures, the Company shall advise the Members on a regular basis concerning the financial and business condition of the Company.

SECTION 15 TAX PLANNING AND COMPLIANCE

15.1 IMPORTANCE TO COMPANY OF TAX MANAGEMENT AND COMPLIANCE

The parties acknowledge the importance to the Company and the Members of:

Competent tax planning for the Company and for the Members as Members; and

Full compliance by the Company and by the Members with federal and state tax requirements applicable to the Company and the Members in their capacity as such.

15.2 APPOINTMENT OF COMPANY TAX ADVISER

In connection with its formation and on a continuing basis thereafter, the Members hereby appoint as the Company's tax adviser the individual or firm of Sheheen, Hancock & Godwin.

The Manager may change the Company's tax adviser from time to time..

15.3 COOPERATION WITH COMPANY TAX ADVISER

The parties shall cooperate with the Company's tax adviser to the maximum reasonable extent to ensure adequate Company tax planning and compliance.

15.4 COMPANY TAX RETURNS

On a timely basis each year, the Company shall accurately complete and file its federal tax return and all applicable state returns.

15.5 COMPANY PROVISION OF TAX INFORMATION TO MEMBERS

As soon as reasonably possible after the close of each of its taxable years, the Company shall provide each Member with completed federal and state tax forms and with all other documents and information relevant to the federal and state tax liabilities of the Member as a Member of the Company; PROVIDED, that each Member shall have sole responsibility for preparing and timely filing the Member's federal and state tax returns and for paying the Member's taxes, and the Company shall have no responsibility or liability with respect to these matters.

15.6 COMPANY COMPUTATION AND RECORDING OF MEMBERS' CONTRIBUTIONS, CAPITAL ACCOUNTS AND ADJUSTED TAX BASES

The Company shall compute on a current basis and in accordance with applicable U.S. Treasury Department regulations the contributions and capital accounts of the Members and their adjusted tax bases in their Company interests.

The Company shall maintain current and accurate records concerning Members' contributions, capital accounts and adjusted tax bases and, promptly after the request of any Member, shall make these records available to the Member.

15.7 PLANNING OF INDIVIDUAL TRANSACTIONS

Before undertaking any major transaction involving the Company or any Member in the Member's capacity as a Member:

(a) The Company and each affected Member shall consult with one or more partnership tax experts concerning the tax implications of the transaction; and

(b) The Company and affected Members shall make any tax elections and shall take any other actions necessary or appropriate in the circumstances to ensure tax compliance and maximum lawful tax avoidance.

The issue of the fairness of the transaction to the Company and to the Members shall be subject to arbitration under Section 19.

15.8 TAX DISTRIBUTIONS

If any Member requires a distribution of all or any portion of the Member's share of Company profits in order to pay the Member's federal or other taxes on the Member's share of these profits for any taxable year, the Company shall, to the extent that its financial condition reasonably permits, make this distribution to the Member on a timely basis; PROVIDED, that as a condition for the distribution, the Company may, under reasonable conditions of confidentiality, require the Member to disclose to the Company's tax adviser relevant information concerning the Member's tax and financial affairs.

15.9 TAX MATTERS PARTNER

Robert Puchalski shall serve as the Company's tax matters partner for purposes of unified administrative and judicial federal tax proceedings under Internal Revenue Code section 6231 (a) (1).

SECTION 16 COMPANY DISSOLUTION, WINDING-UP AND LIQUIDATION; LIQUIDATION DISTRIBUTIONS

16.1 DEFINITION OF COMPANY DISSOLUTION, ETC.

For purposes of this Agreement, the following terms shall have the following meanings:

16.1.1 DISSOLUTION

The dissolution of the Company shall mean the cessation of its normal business activities and the beginning of the process of winding up its business and internal affairs and of liquidating it.

16.1.2 WINDING-UP

The winding-up of the Company shall mean the process of concluding its existing business activities and preparing for its liquidation.

16.1.3 LIQUIDATION

The liquidation of the Company shall mean the sale or other disposition of its assets and the distribution of its assets (or the distribution of the proceeds of the sale or other disposition of its assets) to its creditors and to the Members.

16.2 EVENTS CAUSING DISSOLUTION

The Company shall be dissolved:

(a) Upon the affirmative vote of Members holding seventy-five (75%) percent of Member votes; PROVIDED, that upon any such dissolution, Members holding less than the required number of votes may seek damages and other relief in arbitration under Section 19 for any injury unfairly resulting to them or likely to result from the dissolution;

(b) Upon the issuance of an order of dissolution by a court or by the Secretary of State; or

(c) Upon the issuance of an order of dissolution by an arbitrator under Section 19.

16.3 EFFECTIVE DATE OF DISSOLUTION OF COMPANY BY VOTE OF MEMBERS

The dissolution of an Company by vote of the Members shall be effective on the date specified in that vote or, if the Members do not specify a date, then on the date of completion of the vote.

16.4 DETERMINATION OF DATE FOR DELIVERY OF CERTIFICATE OF CANCELLATION AND FOR EFFECTIVE DATE OF CERTIFICATE

The date on which the Company shall deliver a certificate of cancellation to the Secretary of State for filing and the effective date of this certificate shall be determined by the affirmative vote of Members holding seventy-five (75%) percent of the Member votes.

16.5 CESSATION OF COMPANY'S LEGAL EXISTENCE

Unless a court or administrative authority duly and finally determines otherwise, the Company shall cease to exist as a legal entity on the effective date set forth in the certificate of cancellation.

16.6 WINDING-UP OF COMPANY

After the Company is dissolved, the person or persons responsible for winding it up shall as expeditiously as reasonably possible:

(a) Wind up its business and internal affairs; and

(b) Cause its liquidation.

During the wind-up period, the Company shall accept no new business except to the extent necessary to dispose of existing inventory.

16.7 COMPLIANCE WITH THE LAWS OF THIS STATE APPLICABLE TO ENTITY DISSOLUTIONS AND LIQUIDATION

The Company shall make no distribution to Members or others in connection with its liquidation until it has complied with all applicable laws and regulations of this State (including tax laws and regulations) relating to its dissolution and liquidation.

16.8 DISPOSITION OF KNOWN AND UNKNOWN CLAIMS AGAINST COMPANY

Promptly after the dissolution of the Company, the Company shall take all reasonable measures under the laws of this State to dispose of (and, to the extent reasonable, to bar) known and unknown claims against the Company.

16.9 DISTRIBUTIONS UPON COMPANY LIQUIDATION

Upon completion of the Company's winding-up but, if reasonably possible, on or before the date of termination of the Company's legal existence, the Company shall (subject to any applicable provisions of section 704 (b) of the Internal Revenue Code and other applicable federal and state law) distribute its assets as follows:

First, the Company shall pay (or shall make adequate provision to pay) its creditors.

Second, the Company shall distribute its assets to Members in satisfaction of its liabilities for distributions to them under Section 4.

Third, the Company shall distribute its assets to Members for the return of their contributions.

Fourth, the Company shall distribute its assets to Members in accordance with their right to share in distributions of its assets under Section 4.

16.10 DUTY TO CONSULT TAX ADVISER IN CONNECTION WITH COMPANY DISSOLUTIONS, ETC.

Before the Members begin the wind-up and liquidation of the Company, the Company and the Members shall consult with their respective tax advisers and shall structure and implement the liquidation in a manner that is as fair as possible to each Member from a tax viewpoint.

SECTION 17 ASSIGNMENTS OF COMPANY INTERESTS

Except as otherwise provided in this Agreement:

17.1 DEFINITION OF ASSIGNMENT

For purposes of this Agreement, an assignment means a transfer by a Member of all or any portion of the Member's Company interest to another person.

17.2 NO ASSIGNEE RIGHT TO PARTICIPATE IN THE MANAGEMENT OF THE COMPANY

No person receiving an Assignment shall, solely by reason of the Assignment, have any right to participate in the business and affairs of the Company by any means, including participation by voting, by access to Company information, or by initiating lawsuits or arbitrations; PROVIDED, that, to the extent permissible under the Company Act, an assignee may initiate an arbitration on behalf of the Company in accordance with the provisions of the Company Act.

17.3 NO ASSIGNEE LIABILITY FOR CERTAIN OBLIGATIONS OF ASSIGNOR

No assignee shall be liable for obligations of an assignor of which the assignee was unaware and which the assignee could not ascertain from this Agreement.

17.4 CONTINUING LIABILITY OF ASSIGNOR FOR CERTAIN OBLIGATIONS

Notwithstanding an assignor's making an Assignment, the assignor shall remain liable for the assignor's obligations to make contribution to the Company and to return Unlawful Distributions received by the assignor.

17.5 NO ASSIGNEE LIABILITY FOR COMPANY OBLIGATIONS

No assignee as such shall be liable for any obligations of the Company solely by reason of the Assignment.

SECTION 18 TERM OF AGREEMENT; TERMINATION; SURVIVAL OF CERTAIN RIGHTS AND DUTIES, ETC.

18.1 TERM

Subject to the provision of Sections 18.2 through 18.4, the term of this Agreement shall begin on the Effective Date (as defined in Section 1.1) and, unless earlier terminated by the parties, shall terminate:

(a) If the Company is terminated by vote of the Members on the effective date of the certificate of cancellation of the Company's articles of organization;

(b) If the Company is terminated by decree of a duly authorized judicial or administrative authority, on the date of termination of the Company's existence as determined by that authority; or,

(c) If no clear date is established under Sections 18.1 (a) or (b) and if the Members can agree on no such date, by determination of an arbitrator under Section 19.

18.2 SURVIVAL OF ACCRUED RIGHTS, ETC.

Rights, duties and liabilities accrued by the parties under this Agreement before its termination shall continue in full force and effect after its termination.

18.3 ARBITRATION OF MATTERS RELATING TO COMPANY'S WINDING-UP, ETC.

Notwithstanding the termination of this Agreement, any party may, after that termination, initiate an arbitration under Article 19 to determine and enforce rights and duties of the party relating to:

(a) Matter arising before and during the Company's winding up;

(b) The Company's liquidation; and

(c) Matters arising after the cancellation of the Company's Articles.

SECTION 19 ARBITRATION OF COMPANY DISPUTES

19.1 MANDATORY ARBITRATION OF CERTAIN DISPUTED MATTERS

Any dispute between or among the parties relating to Arbitrable Matters (as defined in Section 19.2) shall be exclusively and finally resolved by arbitration by a single arbitrator (the "Arbitrator") without recourse to any court.

19.2 DEFINITION OF ARBITRABLE MATTER

Arbitrable Matters shall include only the following types of matters:

How to construe and enforce the provisions of this Section (including any matter concerning the scope of these provisions);

Whether the purchase price or the other terms of purchase of a Member's Company interest pursuant to the terms of this Agreement are fair to the Company and to the Members;

Any claim by a Member in the Member's capacity as a Member against any other Member in that other Member's capacity as a Member;

Whether any action by the Company or by the Members is (a) contrary to this Agreement or (b) seriously unfair to any Member;

Whether the expulsion of a Member under Section 6.9 is fair;

Whether a vote by majority Members concerning the Company's dissolution is fair to minority Members; and

Any other matter that, in the Arbitrator's view, is appropriate for decision under this Section.

19.3 EXCLUSIONS FROM DEFINITION OF ARBITRABLE MATTER

Arbitrable Matters shall not include:

(a) Routine business matters of the Company;

(b) Matters requiring urgent judicial relief; or

(c) Matters involving the enforcement of orders under this Section 19.

19.4 RULES GOVERNING ARBITRATION

Except as otherwise provided in this Section, any arbitration (an "Arbitration") under this section shall be governed by the Rules of Commercial Arbitration of the American Arbitration Association ("AAA").

19.5 NOTICE OF ARBITRATION

Any Member may initiate an Arbitration of any Arbitrable Matter. The initiating Member shall do so by providing written notice of the Arbitration to the other Members. The notice shall bear a current date, shall state the name of the initiating Member and shall briefly state the matter to be arbitrated.

19.6 SELECTION OF ARBITRATOR

If, within 15 business days after all the parties entitle to notice of an Arbitration have received that notice, the Members have not agreed among themselves as to the identity of the Arbitrator or the site of the Arbitration, the Company shall immediately refer these matters for resolution by the AAA office located in the city of Camden, South Carolina, or the AAA office nearest thereto. That office may resolve these matters without liability and in its sole discretion.

19.7 NO APPEAL, ETC.

No Member shall appeal to any court an order of an Arbitrator under this Section 19. The Company or any Member may enter any such order in any court of competent jurisdiction.

19.8 ALLOCATIONS OF COSTS, FEES, ETC.

The Arbitrator may allocate among the Members the costs, fees and other expenses relating to an Arbitration in any manner that the Arbitrator shall determine to be appropriate in his or her absolute discretion; PROVIDED, that if the Arbitrator determines that a party has initiated an Arbitration without a reasonable basis for doing so, the Arbitrator shall assess against that party the costs of the other parties relating to the Arbitration, including the reasonable attorneys' fees.

19.9 AWARDING OF LITIGATION COSTS TO PREVAILING PARTY

If, in a suit in law or equity, any party seeks judicial review of any issue arising in an Arbitration under this Section, an Arbitrator under this Section may allocate to the losing party in that suit all costs reasonably incurred by the prevailing party.

SECTION 20 GENERAL PROVISIONS

20.1 ENTIRE AGREEMENT

This Agreement contains the entire agreement among the parties concerning its subject matter and replaces all other agreements among them, whether written or oral, concerning this subject matter.

20.2 AMENDMENTS

No amendment of this Agreement shall be valid unless set forth in a writing signed by all parties.

20.3 INCORPORATION OF EXHIBITS

All exhibits identified in the Agreement as exhibits to the Agreement are hereby incorporated into the Agreement and made integral parts of it.

20.4 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of South Carolina without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of the State of South Carolina or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

20.5 FORUM FOR LITIGATION; ACCEPTANCE OF PERSONAL JURISDICTION

If any party sues another party in a suit under or relating to this Agreement, the party bringing the suit shall do so in the courts of the State of South Carolina. The parties hereby irrevocably accept the personal jurisdiction of those courts in any such suit.

20.6 ASSIGNMENTS AND DELEGATIONS

Excepting powers previously granted to the Manager herein, no party shall assign any of its rights or delegate any of its duties under this Agreement to any third party except with the consent of the other parties to the Agreement, which consent these other parties shall not unreasonably withhold.

20.7 CAPTIONS

All captions in this Agreement are for convenience only and shall be deemed irrelevant in construing any provision of the Agreement.

20.8 NOTICES

All notices under this Agreement shall be in writing and shall be delivered to a party at the party's address as stated on the first page of this Agreement. A party may change this address upon reasonable notice to the other parties. Notices provided under this Agreement shall be deemed to be received when actually received.

20.9 MEANING AND CONSTRUCTION OF "INCLUDING" AND "PERSON"

The terms "including" and "includes" as used in this Agreement shall denote partial definitions. The term "person" as used in this Agreement shall mean a natural person or an entity as the context shall require.

20.10 NUMBER AND GENDER

As the context shall require:

The use of the singular in this Agreement shall denote the plural and vice versa; and
The use of a particular gender shall denote another gender.

20.11 WAIVERS

No delay of or omission by a party in the exercise of any right, power or remedy accruing to the party as a result of any breach or default by another party under this Agreement:

(a) Shall impair any such right, power or remedy accruing to the party;

(b) Shall be construed as a waiver of or acquiescence by the party in any such breach or default or of any similar breach or default occurring later.

No waiver by a party of any single breach or default under this Agreement shall be

construed as a waiver by the party of any other breach or default occurring before or after that waiver.

20.12 SEPARABILITY OF PROVISIONS

Each provision of this Agreement (a "Provision") shall be deemed separable. If any (a) Provision or (b) the application of any Provision to any person or circumstance shall be held invalid or unenforceable in any jurisdiction, the Provision shall be ineffective:

(a) Only in that jurisdiction;

(b) Only to the extent that it has been expressly held to be invalid or unenforceable in that jurisdiction; and

(c) Without invalidating any other provision of the Agreement or the application of the Provision itself to persons or circumstances other than those to which it was held invalid or unenforceable in the jurisdiction in question.

20.13 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts. Each of these counterparts when so executed shall be deemed to be an original and all such counterparts taken together shall constitute one and the same agreement.

In witness of their acceptance of the above terms and conditions, the parties, in their capacities as Members and Manager, by themselves or by their duly authorized representatives, have duly signed and dated this Agreement as follows:

 Oct. 9, 2009
Amy Pughalski, Member

 09/30/09, 2009
Jamie Curley, Member

 10/8/09, 2009
Robert Puchalski, Manager of SCENT Land Holdings, LLC

EXHIBIT "A"

<u>Member</u>	<u>Contribution</u>	<u>Fair Market Value</u>
Amy Puchalski	Building lots in Darlington/Richland Co.	\$110,000.00
Jamie Curley		

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2010-CP-28-322

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)
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2

4. On or about September 30, 2009, Amy Puchalski and I entered into that certain Operating Agreement for SCENT Land Holdings, LLC (the “**Company**”) (the “**Operating**



Agreement”), which is attached as Exhibit “A” to this motion for summary judgment and a second motion for summary judgment, which I am contemporaneously filing in this matter.

5. As of May 9, 2010 and at all other times relevant hereto, Robert Puchalski was the Company’s manager.

6. The Operating Agreement entitles me, as a member of the Company, to, among other things, view any financial information in the Company’s possession or control and to inspect and copy any documents and other media in the Company’s possession or control.

7. In December 2009 and 2010, my husband, Dr. Orville Dyce, made numerous oral and written requests to Dr. Puchalski to provide me the fundamental documents pertaining to the closing for South Carolina ENT, Allergy & Sleep Medicine, P.A.’s (“SCENT”) new office building such as a lease and the loan documents themselves. A copy of an email sent from Dr. Dyce to Robert Puchalski requesting the lease and fundamental loan documents dated March 3, 2010 is attached hereto and incorporated herein as Exhibit “B.”

8. Robert Puchalski refused to provide me such requested information.

9. In March 2010, Robert Puchalski sought to compel the members to obtain a loan for the benefit of the Company.

10. When I was not provided with certain information related to the proposed loan, I declined to authorize the proposed loan.

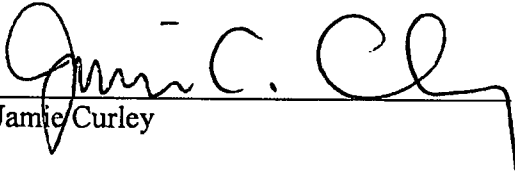
11. On or about March 12, 2010, Robert Puchalski purported to hold a telephonic meeting of the Company’s members where he purported to require the Company’s members to make a capital contribution to the Company. A copy of the meeting notice is attached hereto and incorporated herein by reference as Exhibit “C.”

12. The Operating Agreement does not authorize telephonic meetings.

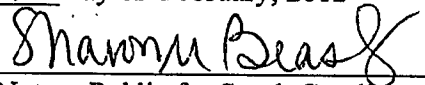
13. The Operating Agreement does not authorize capital calls.
14. The Operating Agreement does not require its members to contribute money to the Company upon the request of the manager.
15. I did not participate in the unauthorized capital call.
16. I did not make a written promise to the Company to contribute money to the Company.
17. My husband, Dr. Orville Dyce, was a shareholder of SCENT.
18. I was not an employee of SCENT or a shareholder of SCENT.
19. Robert Puchalski terminated by husband from SCENT on or about May 9, 2010.
20. Article 1.10 of the Operating Agreement provides, in part, that "Members" of the Company "are individuals who are either physicians employed by or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse."
21. The Operating Agreement provides, in pertinent part, that a "Member shall be dissociated only upon the occurrence of one of the following events. . . the Member, or Member's spouse is no longer employed by or a shareholder of" SCENT. Therefore, as of May 9, 2010, I was dissociated from the Company.
22. I am entitled to have my distributional interest purchased by the Company.
23. The Company, through its manager Robert Puchalski and/or remaining member, Amy Puchalski, did not deliver a purchase offer to me to purchase my distributional interest in the Company within thirty (30) days of May 9, 2010.
24. The Company still has not delivered a purchase offer to me to purchase my distributional interest in the Company.

25. Robert Puchalski's conduct was unfair, oppressive and unfairly prejudicial to me by, among other things, trying to force me to contribute capital to the Company and not delivering a purchase offer to me once I was dissociated from the Company.

FURTHER DEPONENT SAYETH NAUGHT.


Jamie Curley

SWORN to before me this
22nd day of February, 2012


Notary Public for South Carolina
My Commission Expires: 2/19/13

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

SEP 5 2008

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
MARK HAMMOND
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

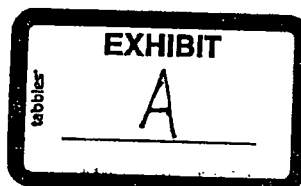
SCENT LAND HOLDINGS, L.L.C.

The undersigned deliver the following articles of organization to form a South Carolina limited liability company pursuant to §33-44-202 and §33-44-203 of the 1976 South Carolina Code, as amended.

1. Name. The name of the limited liability company which complies with § 33-43-105 of the South Carolina Code of 1976 as amended is SCENT Land Holdings, L.L.C.
2. Designated Office. The office of the initial designated office of the limited liability company in South Carolina is 1165 Highway 1 South, Lugoff, South Carolina 29078.
3. Registered Agent and Office. The initial registered agent for service of process of the limited liability company is Robert Puchalski, and the street address for service of process is 1165 Highway 1 South, Lugoff, South Carolina 29078. The undersigned hereby consents to the appointment as registered agent of the Limited Liability Company.

Robert Puchalski
Robert Puchalski, Registered Agent

4. Organizer. The name and address of the sole organizer is Robert Puchalski, 3 Puddle Lane, Camden, South Carolina 29020.
5. Term. This company is to be a term company expiring on December 31, 2038, or as otherwise extended or terminated.
6. Management. The management of the L.L.C. is vested in a Manager or Managers and the names and addresses of the Managers are Robert Puchalski and Orville Dyce, 1165 Highway 1 South, Lugoff, South Carolina 29078.
7. No Personal Liability. The members of the company are not liable for its debts and obligations under Section 33-44-303(c) of the South Carolina Code, as



080916-0398 FILED: 09/16/2008
SCENT LAND HOLDINGS, L.L.C.

Filing Fee: \$110.00 ORIG

Mark Hammond

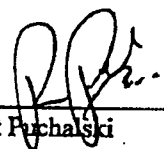
South Carolina Secretary of State

amended.

8. **Effective Date.** These Articles of Organization will be effective when endorsed for filing by the Secretary of State.
9. **Optional Provisions.** Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability operating agreement.

A: Pursuant to S.C. Code Ann. §33-44-301(c), in order to bind the limited liability company, all documents relating to real property, including without limitation all leases, deeds, mortgages, assignments, security agreements, and other documents of security, conveyance, transfer, or liens, must be signed on behalf of the limited liability company by Robert Puchalski and Orville Dyce, to bind the company to any agreement set forth herein.

10. **Signature of organizer.**



Robert Puchalski

Date: September 10, 2008.

From: orville dyce [mailto:odyce@yahoo.com]
Sent: Wednesday, March 03, 2010 3:18 PM
To: robert puchalski
Cc: Bruce Armon; Jamie Dyce
Subject: Fw: Closing Scheduled

Bob:

Neither Jamie nor I will attend a closing until after our information request has been satisfied and the business points arising from the loan have been resolved. You will not see either of us at 4:00. Please see comments in green below.

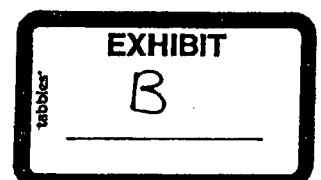
----- Forwarded Message -----

From: Robert Puchalski <rpuchalski@southcarolinaent.com>
To: orville dyce <odyce@yahoo.com>; Jamie <curleyjamie@hotmail.com>; alpuchalski@gmail.com
Cc: Bruce Armon <barmon@saul.com>; Ed White <ed.white@nelsonmullins.com>; gus.dixon@nelsonmullins.com; Theresa Williams <twilliams@southcarolinaent.com>
Sent: Wed, March 3, 2010 2:46:04 PM
Subject: RE: Closing Scheduled

Just opened your email this PM. Thank you for engaging us and giving SCENT Land Holdings the individual attention it deserves in this critical time. Please see comments in red.

1. Neither Jamie nor I have been furnished with a proposed or executed lease of the building between the Practice and the Company. Please provide a copy to me. We will have a lease once the building is complete, since payments on the construction loan will be "rolled in" to the final loan payment. SCENT Land Holdings will not make a payment on the loan until SCENT moves in. Just like the Hartsville deal.

Regardless of what may have happened in the past, I am advised that it would be imprudent to sign a construction loan until a lease has been executed.



2. You have not been provided us with a proposed budget for the project. The estimated construction cost per the construction contract is \$1,471,316. Why is the loan for \$1,796,316? The land loan has been graciously rolled into the construction loan. Just like the Hartsville deal.

We need to see a budget and see precisely how the money is to be spent.

3. I don't understand why there appear to be two notes for the same amount, \$1,796,316. One of the notes calls for an explained initial advance of \$325,000. What is the purpose of this advance? I suspect it is a pay-off of the land note. The land was purchased in two increments (\$200K and \$125). We will ask the real estate attorney for SCENT Land Holdings, William Cox, this at closing.

We need to know prior to any proposed closing.

4. We will not permit the automatic transfer authorization of \$10,810.27 to the Company as proposed in the loan documentation. We will consider advances by joint check to the Company and Pyramid Contracting in the amount of any draw request which you and I both approve. We can discuss this at closing.

If there is to be a discussion, we can discuss prior to any closing. The proposed disbursement in the authorization is not acceptable. I don't think it is fair to anyone to wait on documents to be redone at a closing.

5. I don't see a proposed closing statement and would like to review one. Theresa has already sent it, but we just received another version from William Cox's office today. Theresa will forward this to you.

Still not seen.

**NOTICE OF SPECIAL MEETING OF THE MEMBERS
OF
SCENT LAND HOLDINGS, LLC**

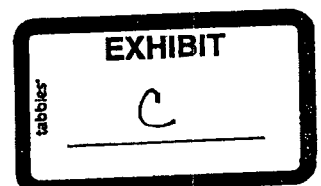
A Special Meeting of the Members of SCENT Land Holdings, LLC (the "Company") will be held on Friday, March 12, 2010 by teleconference, at 10:00am. The dial in number for the meeting is 888-543-4442, passcode 803-255-9559.

It is expected that the following items will be discussed and that action, if deemed appropriate, will be taken with respect to them:

1. Status of the building being constructed on Hwy. 601, Lugoff, SC.
2. The Mechanics Lien on the building and the situation that exists where the contractor and his subcontractors have not been paid for their work and have communicated to the Company that they are in a negative cash flow position as a result of their work on the building.
3. Damage to the contractor, the subcontractors and the Company if the contractor remains unpaid.
4. A capital call and other steps to finance and complete the building.

Date: March 11, 2010
Lugoff, South Carolina

Robert Puchalski, M.D.
Manager
SCENT Land Holdings, LLC



entered into that certain Operating Agreement for the Company”(the “**Operating Agreement**”), a copy of which is attached hereto as **Exhibit “B”** and incorporated herein by reference. Robert Puchalski is, and at all times relevant hereto was, the Company’s manager. (Ex. B) The Company’s principal purpose is, among other things, to own real estate in South Carolina. (Ex. B at 1.7.)

Plaintiff’s husband, Dr. Orville Dyce (“**Dr. Dyce**”), and Robert Puchalski were shareholders in South Carolina ENT, Allergy Sleep Medicine, P.A. (“**SCENT**”) from March 1, 2007 until May 9, 2010. SCENT Land owns buildings and real property where SCENT performs its services.

On or about March 12, 2010, Robert Puchalski purported to hold a telephonic meeting of the Company’s members where he tried to require the Company’s members to make a capital contribution to the Company as shown by the Affidavit of Jamie Curley on file with the Court and attached hereto and incorporated herein as **Exhibit “C”**. (Ex. C. at Para. 11.) A copy of the meeting notice is attached hereto and incorporated herein by reference as **Exhibit “D.”** The Operating Agreement does not (i) authorize telephonic meetings, (ii) authorize capital calls, or (iii) require its members to contribute money to the Company upon the request of the manager. (Ex. B and Ex. C. at ¶¶ 12, 13 and 14.) Plaintiff did not participate in the unauthorized capital call or make a written promise to the Company to contribute money to the Company. (Ex. C. at Para. 15.)

At all relevant times pertinent hereto, Plaintiff’s husband, Dr. Dyce, was a shareholder of SCENT. (Ex. C. at Para. 17.) Robert Puchalski purported to terminate Dr. Dyce from SCENT effective May 9, 2010. (Ex. C. at Para. 19.) Article 1.10 of the Operating Agreement provides, in part, that “Members” of the Company “are individuals who are either physicians employed by

or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse.” (Ex. B. at Art. 1.10 & Ex. C. at Para. 20.) The Operating Agreement provides, in pertinent part, that a “Member shall be dissociated only upon the occurrence of one of the following events . . . the Member, or Member’s spouse is no longer employed by or a shareholder of” SCENT. (Ex. B at 6.2(f) & Ex. C. at Para. 21.) Therefore, as of May 9, 2010, Plaintiff was dissociated from the Company. (Ex. C. at Para. 21.)

Plaintiff is entitled to have her distributional interest purchased by the Company pursuant to the terms and provisions of S.C. Code Ann. Section 33-44-701, *et. seq.* The Company, through its manager Robert Puchalski and/or remaining member, Amy Puchalski, did not deliver a purchase offer to Plaintiff to purchase her distributional interest in the Company within thirty (30) days of May 9, 2010. (Ex. C. at Para. 23.) The Company still has not delivered a purchase offer to me to purchase Plaintiff’s distributional interest in the Company. (Ex. C. at Para. 24.) Robert Puchalski’s conduct was unfair, oppressive and unfairly prejudicial to Plaintiff by, among other things, trying to force her to contribute capital to the Company and not delivering a purchase offer to Plaintiff once she was dissociated from the Company. (Ex. C. at Para. 2.) Defendant Robert Puchalski’s conduct was unfair, oppressive and unfairly prejudicial to the Plaintiff since he did not have authority to compel the Company’s members to make a capital contribution. (Aff. of J. Curley at paras. 13, 14 & 24.).

I. Summary Judgment Should Be Granted in Favor of Plaintiff for Defendants Failure to Purchase Her Distributional.

As stated above, on or about May 9, 2010, Plaintiff’s husband was terminated from SCENT. SCENT Land’s Operating Agreement provides that a “Member shall be dissociated only upon the occurrence of one of the following events: the Member, or Member’s spouse is no

longer employed by or a shareholder of' SCENT. (Ex. B. at Section 6.2(f)). Article 1.10 of the Operating Agreement provides, in part, that "Members" of the Company "are individuals who are either physicians employed by or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse." Therefore, Plaintiff's date of dissociation from SCENT Land was May 9, 2010. (Ex. B. at Section 6.2(f) & J. Curley Aff. at para. 21.)

S.C. Code Ann. § 33-44-701 required Defendants to deliver a purchase offer to Plaintiff to purchase her distributional interest in the Company but they failed to do so. (Aff. at paras. 22 & 23.) S.C. Code Ann. § 33-44-701 requires a limited liability company to purchase a distributional interest of a member for its fair value as of the date of the member's dissociation. S.C. Code Ann. § 33-44-701(b) states, in part, a "limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date" of dissociation." § 33-44-701(b). The Company did not comply with these statutes. S.C. Code. Ann. § 33-44-702(c) requires judicial dissolution of the Company if the purchase is not completed. Therefore, Plaintiff is entitled to summary judgment on her judicial dissolution cause of action under S.C. Code. Ann. § 33-44-801(4)(d) of the Carolina Uniform Limited Liability Company Act (the "Act").

II. Plaintiff's Motion for Summary Judgment Should Be Granted Because Puchalski Made An Unlawful Capital Call, and therefore, the Company Should Be Dissolved.

As stated above, Defendant Robert Puchalski, without authority, attempted to compel the Company's members to make a capital contribution. Such conduct was unfair, oppressive and unfairly prejudicial to the Plaintiff (Aff. of J. Curley at paras. 13, 14 & 24.). South Carolina Code Ann. § 33-44-801(4)(e) provides that oppressive or unfair conduct are grounds for this Court to enter judgment in favor of Plaintiff and dissolve the Company. § 33-44-801(4)(e).

Specifically, Defendant Robert Puchalski, as manager of SCENT Land, called a telephonic meeting of its members in order to compel the Members to make a capital call. (Ex. C at para. 11). The Operating Agreement does not authorize (i) telephonic meetings; and/or, (ii) capital calls. (Ex. C at paras. 11, 12, 13 and 14 & Ex. B.) S.C. Code Ann. § 33-44-103(a) restricts the Company's powers to those (i) enumerated in the Operating Agreement or (ii) otherwise provided in the Act.

Neither the Act nor the Operating Agreement authorizes telephonic meetings and/or capital calls. Accordingly, the meeting and the capital call were both unauthorized. (Ex. B at Art. 2.4 & S.C. Code Ann. 33-44-401, *et. seq.*) Section 2.4 of the Operating Agreement provides that “[n]o promise by a Member to make a contribution to the Company shall be enforceable *unless set forth in this Agreement or in another writing signed by the Member.*” (Ex. A at Section 2.4) (emphasis added). The Operating Agreement does not authorize capital calls and Ms. Curley never made a written promise to contribute monies to the Company. (Aff. of J. Curley at para. 16.) Therefore, Ms. Curley's refusal to submit to Robert Puchalski's demand to pay an unauthorized capital call was proper. Robert Puchalski's actions of unlawfully trying to hold a telephonic meeting and compelling the Company's members to contribute capital is oppressive and unfair conduct. Under South Carolina Code Ann. § 33-44-801(4)(e) such oppressive, or unfair conduct provides grounds for this Court to enter judgment in favor of Plaintiff and dissolve the Company. § 33-44-801(4)(e).

Second, as stated in Section I of this Memorandum, Robert Puchalski violated the Act by failing to, among other things, purchase Plaintiff's distributional interest in accordance with the Act constituting oppressive and unfair conduct further authorizing the Court to judicially dissolve the Company under South Carolina Code Ann. § 33-44-801(4)(e) .

CONCLUSION

For the foregoing reasons, Plaintiff Jamie Dyce respectfully requests that this Court grant summary judgment in her favor against Defendants SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski and judicially dissolve SCENT Land Holdings Company, LLC under S.C. Code Ann. § 33-44-801.

Respectfully Submitted,



Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
WOMBLE CARLYLE SANDRIDGE & RICE
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

April 10, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 14 day of April, 2012, she served a copy of the attached the **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT SEEKING JUDICIAL DISOOLUTION** via hand delivery by courier addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

Vincent Sheheen, Esq.
Savage Royall & Sheheen, LLP
P.O. Drawer 10
1111 Church Street
Camden, SC 29020

FILED FOR RECORD
2012 APR 11 PM 4:15
JOYCE H. HARRIS
CLERK OF COURT
KERSHAW COUNTY, S.C.

WOMBLE CARLYLE SANDRIDGE & RICE

Carol Casey

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

SEP 5 2008

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
MARK HAMMOND
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

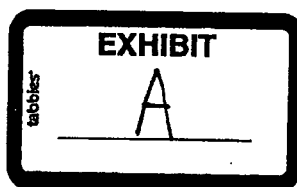
SCENT LAND HOLDINGS, L.L.C.

The undersigned deliver the following articles of organization to form a South Carolina limited liability company pursuant to §33-44-202 and §33-44-203 of the 1976 South Carolina Code, as amended.

1. Name. The name of the limited liability company which complies with § 33-43-105 of the South Carolina Code of 1976 as amended is SCENT Land Holdings, L.L.C.
2. Designated Office. The office of the initial designated office of the limited liability company in South Carolina is 1165 Highway 1 South, Lugoff, South Carolina 29078.
3. Registered Agent and Office. The initial registered agent for service of process of the limited liability company is Robert Puchalski, and the street address for service of process is 1165 Highway 1 South, Lugoff, South Carolina 29078. The undersigned hereby consents to the appointment as registered agent of the Limited Liability Company.

Robert Puchalski
Robert Puchalski, Registered Agent

4. Organizer. The name and address of the sole organizer is Robert Puchalski, 3 Puddle Lane, Camden, South Carolina 29020.
5. Term. This company is to be a term company expiring on December 31, 2038, or as otherwise extended or terminated.
6. Management. The management of the L.L.C. is vested in a Manager or Managers and the names and addresses of the Managers are Robert Puchalski and Orville Dyce, 1165 Highway 1 South, Lugoff, South Carolina 29078.
7. No Personal Liability. The members of the company are not liable for its debts and obligations under Section 33-44-303(c) of the South Carolina Code, as



080918-0389 FILED: 09/15/2008
SCENT LAND HOLDINGS, L.L.C.

Filing Fee: \$110.00 ORIG

Mark Hammond

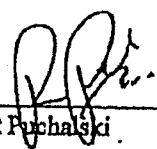
South Carolina Secretary of State

amended.

8. **Effective Date.** These Articles of Organization will be effective when endorsed for filing by the Secretary of State.
9. **Optional Provisions.** Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability operating agreement.

A: Pursuant to S.C. Code Ann. §33-44-301(c), in order to bind the limited liability company, all documents relating to real property, including without limitation all leases, deeds, mortgages, assignments, security agreements, and other documents of security, conveyance, transfer, or liens, must be signed on behalf of the limited liability company by Robert Puchalski and Orville Dyce, to bind the company to any agreement set forth herein.

10. **Signature of organizer.**



Robert Puchalski

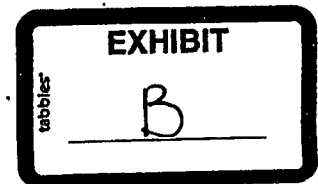
Date: September 10, 2008.

OPERATING AGREEMENT
OF
SCENT LAND HOLDINGS, LLC

PARTIES

This Agreement, dated as of September 30, 2009, is among the following parties (the "Initial Members"):

1.	Amy Puchalski- Founding Member	3 Puddle Lane Camden, SC 29020
2.	Jamie Curley- Member	401 Woodland Drive Hartsville, SC 29550
3.	Robert Puchalski- Founding Manager	3 Puddle Lane Camden, SC 29020



BACKGROUND

The Initial Members have formed the Company under the Limited Liability Company Act of the State of South Carolina (the "LLC Act"), [§33-44-101 et seq.] for the principal purpose of owning real estate in any Counties in South Carolina in which they may transact business, and any other endeavors authorized by this Agreement. This Agreement sets forth the agreement among the parties as to the internal affairs of the Company and the conduct of its business.

TERMS AND CONDITIONS

The parties, intending to be legally bound, agree as follows:

SECTION 1 PRELIMINARY PROVISIONS AND DEFINITIONS

1.1 EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement (the "Effective Date") shall be Sept 30th, 2009.

1.2 ENFORCEABILITY OF AGREEMENT

On the Effective Date and thereafter until the parties amend or terminate the Agreement, all rights, duties and liabilities of the Company and of the Members as Members shall be enforceable against the Company and the Members in accordance with the terms of the Agreement.

1.3 COMPANY FORMATION

A copy of the Articles of Organization (the "Articles") for the Company is attached to this Agreement as Exhibit A.

The Company shall be a legal entity separate and distinct from its Members.

1.4 COMPANY

The name of the Company shall be SCENT Land Holdings, LLC but shall be referred to in this document as the "Company".

1.5 PRINCIPAL PLACE OF BUSINESS OF COMPANY

Upon its formation, the Company's principal place of business shall be 1165 Highway 1 South, Lugoff, South Carolina 29078. The Manager may change the Company's principal place of business from time to time upon reasonable notice to the Members.

1.6 COMPANY DURATION

The duration of the Company shall be indefinite.

1.7 COMPANY PURPOSE

The Company's principal purpose shall be owning real estate in any Counties in South Carolina in which they may transact business, and any other endeavors authorized under this Agreement.

1.8 COMPANY POWERS

Except as expressly otherwise provided in this Agreement, the Company shall have all powers provided to Companies under the LLC Act.

1.9 COMPANY REGISTERED AGENT AND REGISTERED OFFICE

The Company's registered agent and registered office shall be as set forth in the Articles.

1.10 MEMBERS

A. On the date of formation of the Company, the Initial Members shall be the only Members of the Company. Additional Members shall be admitted to the Company in accordance with Section 5. "Members" are individuals who are either physicians employed by or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse.

B. Disinterested Members are those Members claiming to have been harmed or injured in some fashion by and act or omission of the Manager acting on behalf of the Company.

1.11 LIMITED LIABILITY OF MEMBERS

No Member shall be personally obligated to any third party for any debt, obligation or liability of the Company solely by reason of being a Member. Members shall be liable for their conduct other than as Members as provided by law.

1.12 FIDUCIARY DUTIES AND LIABILITIES OF MEMBERS

Except as otherwise expressly provided in this Agreement, no Member in the Member's capacity as a Member shall have any fiduciary duties or liabilities to the Company or to the

other Members under this Agreement except to the extent of their participation in the management of the Company. For purposes of this Section 1.12:

(a) A Member's voting on Member Matters (as defined in Section 3.1) shall not constitute participation in the management of the Company;

(b) A Member's obtaining and using Company information shall constitute participation in the management of the Company as determined under applicable case law and under the relevant facts and circumstances.

1.13 RESERVATION OF COMPANY MANAGEMENT TO A MANAGER OR MANAGERS; APPOINTMENT OF INITIAL MANAGER

Except as otherwise expressly provided in this Agreement, the management of the business and internal affairs of the Company shall be reserved to one or more managers (the "Manager"). The initial Manager of the Company shall be Robert Puchalski.

1.14 TAXATION OF COMPANY AND MEMBERS

Under federal tax law and to the maximum extent possible under the tax laws of each state and the District of Columbia, the Company and its Members shall be taxable as a partnership and as partners.

The provisions of this Agreement shall be construed and applied in such a manner as to ensure full compliance with the provisions of the Internal Revenue Code applicable to partnerships and with the regulations thereunder.

1.15 ANNUAL ACCOUNTING PERIOD OF COMPANY

The Company's annual accounting period for financial and tax purposes shall be the calendar year.

1.16 COMPANY METHOD OF ACCOUNTING

The Company shall use the cash method of accounting to compute its taxable income.

1.17 ADDITION OF COMPANY AS PARTY TO AGREEMENT

Promptly after the formation of the Company, the Members and Manager shall sign this Agreement on behalf of the Company, and the Company shall become a party to the Agreement.

1.18 EFFECT OF LLC ACT

Except as otherwise provided in this Agreement or by law, the business and internal affairs of the Company shall be governed by the Company Act as in effect on the Effective Date.

1.19 RELATION OF AGREEMENT TO ARTICLES

If there is any conflict between the provisions of this Agreement and those of the Articles, then, in any dispute among the Members, the provisions of this Agreement shall prevail.

1.20 AMENDMENT OF AGREEMENT AND ARTICLES

No amendment of this Agreement or of the Articles shall be valid except upon the affirmative vote of all Members.

1.21 QUALIFICATION OF COMPANY IN OTHER JURISDICTIONS

Before conducting business in any jurisdiction other than South Carolina, the Company shall file all forms and shall do all other things required under the laws, including the tax laws, of that jurisdiction in order to conduct that business.

1.22 FOUNDING MEMBER AND MANAGER

Any Puchalski shall be deemed Founding Member and Robert Puchalski shall be deemed Founding Manager for as long as they shall be associated with the Company in any way. As such, the Founding Member and Manager are vested with certain authorities and powers as set forth herein.

1.23 VOTING

Until the Company has more than four (4) Members, the vote of a majority of the Members shall control any vote taken. In the event of a tie vote, the Founding Member's vote shall break the tie. Once there are five (5) Members, the language referenced in this document requiring a majority vote shall be interpreted in accordance with this provision of section 1.22 and the vote of Seventy-five (75%) percent of the Members shall control any vote taken.

1.24 APPLICABILITY OF NAME

References in this agreement to South Carolina ENT, Allergy and Sleep Medicine, P.A., shall include references to its predecessors, Kershaw ENT, South Carolina ENT & Facial Plastic Surgery, Inc. and any subsequently re-named physician practice containing all, or substantially all, of the existing shareholders of South Carolina ENT, Allergy and Sleep Medicine, P.A..

SECTION 2 MEMBERS' CONTRIBUTIONS TO COMPANY, ETC.

2.1 CLASSES OF MEMBERS

The Company shall have a single class of Members.

2.2 CONTRIBUTIONS TO BE MADE BY MEMBERS IN EXCHANGE FOR THEIR MEMBERSHIPS

Promptly after the Company's formation, the Initial Members shall, in exchange for their Memberships, make contributions to the Company of the cash, non-cash property and services and the promises of cash, non-cash property and services as provided in the attached Exhibit A.

Members admitted to the Company after its formation shall make contributions in exchange for their Memberships as set forth in amendments to that exhibit.

2.3 VALUATION OF NON-CASH CONTRIBUTIONS

Before any Member makes a contribution to the Company in a form other than money, the manager shall determine the value of that contribution in dollars. In the absence of fraud and after consultation with the Company's Tax Advisor, the Founding Manager's determination shall be conclusive as to that value.

2.4 ENFORCEABILITY OF PROMISES TO MAKE CONTRIBUTIONS

No promise by a Member to make a contribution to the Company shall be enforceable unless set forth in this Agreement or in another writing signed by the Member.

2.5 DUTY OF DISABLED MEMBERS TO MAKE CONTRIBUTIONS, ETC.; COMPROMISES

Members or their representatives shall be obligated to perform enforceable promises to make contributions to the Company even if the Members are unable to do so because of their disability, death or otherwise. No such promise shall be compromised except by vote of a majority of the Members.

2.6 PENALTIES FOR FAILURE TO CONTRIBUTE

If any Member fails to make a contribution required or agreed to under 2.4, the other Members by vote of Members holding a majority of Member votes (exclusive of the votes

of the Member failing to make the contribution) may impose upon the Member any penalty that the other Members agree is reasonable in the circumstances, including:

- (a) Reduction or elimination of the Member's proportionate interest in the Company;
- (b) Forfeiture of all or a portion of the Member's Membership rights; or
- (c) Sale of all or a portion of the Member's Membership rights.

In determining which penalty to apply under this Section 2.6, the Members shall consult with the Company's accountant under Section 15.

2.7 NO INTEREST ON CONTRIBUTIONS

The Members shall earn no interest on their contributions under this Section 2.

SECTION 3 MEMBERS' NON-ECONOMIC RIGHTS

3.1 MATTERS ON WHICH MEMBERS MAY VOTE

Members in their capacity as Members shall have the right to vote on the following types of matters ("Member Matters"):

- (a) All matters on which this Agreement expressly provides them with a right to vote.

3.2 NUMBER OF VOTES THAT MEMBERS MAY CAST

Except as otherwise expressly provided in this Agreement, each Member shall have one vote on each Member Matter for:

- (a) Each percentage of ownership the Member has in the company; and

3.3 NUMBER OF VOTES NECESSARY TO DECIDE MEMBER MATTERS

Except as otherwise expressly provided in this Agreement, each Member Matter shall be decided by the affirmative vote of Members holding a majority of Member votes. In the event of a tie by the Members, the Founding Member shall vote to break the tie.

3.4 PROCEDURAL RULES GOVERNING MEMBER VOTING

In the absence of fraud or bad faith, no vote by the Members on any Member Matter shall be

deemed to be invalid on any procedural or similar ground, including any ground relating to lack of notice, lack of meeting, lack of quorum, or failure to record votes;

PROVIDED, that the Manager shall use his reasonable best efforts to make a written record of each significant vote by the Members and to circulate these records on a timely basis among the Members.

In the event a Member cannot be present at a properly called meeting for any reason, the Member may submit a proxy to the Theresa Williams, or the then acting Office Manager, indicating to whom the proxy is given. The proxy may, but is not required to, dictate a certain vote to the proxy recipient.

No vote on a matter requiring Member vote, including but not limited to the purchase or sale of real estate, can be called to question by anyone other than the Manager.

For purposes of this Section 3.4, the terms "procedural or similar ground" shall be construed broadly. Members may vote on Member Matters in person, by phone, by fax or by any other reasonable means.

3.5 MEMBERS HAVE NO AGENCY RIGHT OR POWER

No Member as a Member shall have the right or power to bind the Company in dealings with third parties, in statements about the Company or in any other manner.

3.6 RIGHT OF MEMBERS TO OBTAIN COMPANY INFORMATION

During normal business hours and after reasonable notice, each Member shall be entitled for any purpose reasonably related to the Member's Membership:

To view any financial information in the Company's possession or control; and

To inspect and, at the Member's expense, to copy any documents and other media in the Company's possession or control;

PROVIDED, that all information thus acquired by the Member shall be subject to the provisions of Section 11 (relating to the confidentiality of certain Company information).

3.7 RIGHT OF MEMBERS TO BRING ACTIONS AGAINST, IN THE NAME OF OR ON BEHALF OF THE COMPANY OR AGAINST OTHER MEMBERS

3.7.1 GENERAL PROHIBITION OF SUITS

No Member in the Member's capacity as a Member may bring an action in law or equity

against the Company or against any other Member in the other Member's capacity as a Member in any court for any reason except to enforce an arbitration order under Section 19.

3.7.2 VOTING REQUIREMENT FOR SUITS

No Member may bring a suit or action against any person in the name of or on behalf of the Company except with the affirmative vote of other Members holding a majority of Member votes (exclusive of the votes of the Member seeking to bring suit).

3.7.3 ARBITRATION

Any Member may assert in arbitration under Section 19 any claim that could be asserted in any suit or action against, in the right of or in the name of the Company.

SECTION 4 INTERIM ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS; GUARANTEED PAYMENTS, ETC.

4.1 INTERIM ALLOCATIONS OF COMPANY PROFITS AND LOSSES

The Company shall make interim allocations of its profits and losses (as defined in Section 4.3) among the Members in proportion to their respective shares of aggregate contributions to the Company;

PROVIDED, that the Company shall allocate its income, gains, deductions and other tax items to Members in respect of contributed non-cash property in accordance with Internal Revenue Code section 704 (c) (1) (A) and the regulations thereunder.

For purposes of this Section 4, contributions shall (except as otherwise expressly provided in this Agreement) include only the value of contributions which the Company has actually received from the Members and has not returned.

4.2 ALLOCATIONS OF INTERIM DISTRIBUTIONS

The Company shall allocate to the Members Interim Distributions (as defined in Section 4.3) on the same basis on which it allocates its profits and losses.

4.3 DEFINITION OF INTERIM ALLOCATION AND INTERIM DISTRIBUTION

For purposes of this Section 4, the term "Interim Allocation" and "Interim Distribution" shall mean, respectively, any allocation of profits or losses among the Members and any

distribution of profits or other assets by the Company to the Members as their share of Company assets except allocations and distributions in connection with:

(a) The liquidation of a Member's Company interest (as the term "Company interest" is defined in Section 4.4); and

(b) The liquidation of the Company.

4.4 DEFINITION OF COMPANY INTEREST

For purposes of this Agreement, a Member's Company interest shall mean

(a) The Member's share of the Company's profits and losses; and

(b) The Member's right to receive distributions of the Company's assets.

4.5 DISTRIBUTIONS IN KIND

If this Agreement or applicable law requires the Company to make an Interim Distribution to any Member, the Member may not require the Company to make this distribution except in the form of cash. The Company may not compel a Member to accept an Interim Distribution except in the form of cash.

4.6 NO COMPANY DUTY TO MAKE INTERIM DISTRIBUTIONS

The Company shall have no duty to make Interim Distributions except as expressly provided in this Agreement or as determined from time to time by the Founding Manager, or his successor.

4.7 TAX DISTRIBUTIONS

In the event sufficient cash exists and the Founding Manager or his successor deems it prudent to do so, the Company shall make Interim Distributions to the Members to enable them to pay taxes on allocations to them of Company profits.

4.8 LIQUIDATING DISTRIBUTIONS

The Company shall make distributions to Members in connection with the liquidation of their Company interests in accordance with Section 5. The Company shall make distributions to Members in connection with the liquidation of the Company in accordance with Section 16.

4.9 UNLAWFUL DISTRIBUTIONS

The Company shall make no Unlawful Distribution of its assets to any Member. For purposes of this Section 4.9, a distribution is an Unlawful Distribution:

(a) If, as a result of the distribution, the Company would be unable to pay its reasonably foreseeable obligations as they become due; or

(b) If the distribution is unlawful under the Company Act as in effect from time to time.

4.10 LIABILITY FOR AUTHORIZING OR RECEIVING UNLAWFUL DISTRIBUTIONS

Members who vote to authorize Unlawful Distributions or who receive these distributions shall be liable as provided in the Company Act.

4.11 REIMBURSEMENT OF EXPENSES

If any Member or manager incurs a reasonable expense on behalf of the Company and reasonably documents this expense to the Company, the Company shall reimburse the Member for this expense as promptly as reasonably possible after receiving this documentation. A Reasonable Expense shall be deemed to be reasonable and reimbursable upon agreement by the Founding Manager, or his successor, after consultation with the Company Tax Advisor.

SECTION 5 TRANSFERS AND PLEDGES OF MEMBERSHIP RIGHTS, ETC.

5.1 RESTRICTIONS ON RIGHT OF MEMBERS TO TRANSFER AND PLEDGE THEIR MEMBERSHIP RIGHTS

Except as may be provided herein, any transfer or sale of economic or non-economic Member rights shall be directly to the Company, a physician member of South Carolina ENT, Allergy and Sleep Medicine, P.A., or the current spouse of a physician member of South Carolina ENT, Allergy and Sleep Medicine, P.A.. Upon the purchase by the Company of a Member's rights hereunder, the ownership percentages of the remaining Members shall be automatically adjusted so that each remaining Member shares equally in the profits and losses of the Company. The intent of this provision is that every Member shall be just as vested in the Company as any other Member.

ANY PURCHASE OF NEW MEMBERSHIP OR SURRENDER (BUY-IN OR BUY-OUT) OF EXISTING MEMBERSHIP, FOR ANY REASON DESCRIBED HEREIN, SHALL BE BASED UPON THE VALUATION AND PROCEDURE IDENTIFIED IN SECTION 5.5. BUYOUT DUE TO DEATH, DISABILITY, RETIREMENT OR DISSOCIATION WILL BE VALUED AND PAID ACCORDING TO THE TERMS IDENTIFIED HEREIN.

5.2 DEFINITION OF TRANSFER

For purposes of this Section 5, "transfer" shall include:

- (a) Transfers by sale;
- (b) Transfers by gift;
- (c) Transfers (whether by will, trust or otherwise) taking effect on the death of the transferor; and
- (d) Involuntary transfers, including transfers by operation of law and pursuant to divorce and bankruptcy decrees.

Transfers and pledges in breach of the terms of this Section 5 shall be void and of no effect.

5.3 ADMISSIONS OF ADDITIONAL MEMBERS BY THE COMPANY

The Company shall admit no person as a Member of the Company after the Company's formation except upon the affirmative vote of Members holding 75% of Member votes.

5.4 ELECTION UNDER INTERNAL REVENUE CODE SECTION 754

Before any Member transfers any of the Member's rights as a Member to any person, the Members shall negotiate in good faith and shall agree whether to file an election under Internal Revenue Code section 754 to adjust the basis of Company property in connection with that transfer.

5.5 VALUATION OF MEMBERSHIP INTEREST AND BUYOUT

Subject to (C) herein, the value of the Member's equity shall be determined as follows:

The determination of value for a Member either a) buying in to, at any time, or b) dissociating out of the Company after the first five (5) years of the member obtaining shares of SCENT Land Holdings, LLC and after the first seven and one-half (7.5) years of the member obtaining shareholder status in South Carolina ENT, Allergy and Sleep Medicine, P.A., shall be based on the appraised value of the assets of the property less any outstanding

mortgage indebtedness and the Member's ownership percentage thereof (in the event the appraised value is less than the mortgage balance, use the mortgage balance to determine value); or,

(B) For a Member dissociating from the Company prior to the 5th anniversary of the Member obtaining their Membership shares in SCENT Land Holdings, LLC and the seven and one-half (7.5) year anniversary of obtaining shareholder status in South Carolina ENT, Allergy and Sleep Medicine, P.A., the value of the Member's interest shall be the Member's ownership percentage multiplied by the difference between the cost of land acquisition and the construction of the improvements/buildings on the property, as computed by the Founding Manager, after consultation with the Company Tax Advisor, less any outstanding mortgage indebtedness.

(C) In the event a Member withdraws from the Company prior to the previously stated anniversaries of obtaining Membership interest and the properties appraised value is below the actual cost of actual acquisition and construction of the improvements, the withdrawing Member shall be entitled only to the lower value of the Company as computed by processes A and B above.

(D) The Member withdrawing or dissociating from the Company, after five (5) years of the Member obtaining shares of SCENT Land Holdings, LLC and after seven and one-half (7.5) years of obtaining shareholder status with South Carolina ENT, Allergy and Sleep Medicine, P.A., shall pay for an MAI certified, market based appraisal of the property and if the Company and the Member disagree on the value shown on the appraisal, the Company will pay for an additional appraisal and the two figures shall be averaged to determine the value of the property.

(E) For any Buy-out of Membership shares of the Company, the majority vote of the non-withdrawing Members of the Company shall vote to make buyout payments in either one payment or in equal payments spread out over no more than 5 years.

(F) For purposes of establishing dates of joining the company for the initial Members or Manager, Amy and Robert Puchalski's relative date is July, 2004 and Jamie Curley and Orville Dyce's relative date is July, 2007.

(G) Upon determination of the Buyout amount owed to the withdrawing Member, the Interim Distributions normally made to that Member shall cease and the withdrawing Member shall only be entitled to the funds due for buyout of that Member's interest in the Company.

SECTION 6 MEMBER DISSOCIATIONS

6.1 DEFINITION OF MEMBER DISSOCIATION

The dissociation of a Member means the termination of the Member's right to participate in the Company's business and internal affairs by voting on matters relating to the business, rights to Interim Distributions and internal affairs of the Company, by acting as an agent for the Company or otherwise.

6.2 EVENTS OF DISSOCIATION

The Company may require a Member to promptly sell all or any part of the Member's Company interest to the Company or to the other Members for the value set forth in 5.5 herein if a Member is dissociated. Under certain circumstances, a shareholder shall be required to transfer Membership interest, or proxy vote, to a physician spouse who is a shareholder of South Carolina ENT, Allergy and Sleep Medicine, P.A.. In no event can the Founding Member or Founding Manager ever be forcefully Dissociated.

A Member shall be dissociated only upon the occurrence of one of the following events:

(a) The Member dies, unless the Member is a spouse of the practicing South Carolina ENT, Allergy & Sleep Medicine, P.A. physician, in which case the Member's interest shall vest only in the South Carolina ENT, Allergy & Sleep Medicine, P.A. physician;

Notwithstanding anything to the contrary, any Member who is the surviving spouse (with no legal separation or divorce proceedings having been commenced) of a physician who has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. seven and one-half (7.5) years and also a Member of this Company for at least 5 years prior to the death of the physician shall be entitled to continued Membership privileges for the duration of his or her life. However, these privileges shall be of a personal nature to the surviving spouse and not transferrable to the surviving spouse's children or a subsequent non-South Carolina ENT, Allergy & Sleep Medicine, P.A. member physician spouse upon her remarriage.

(b) The physician or physician spouse incurs a Total Disability (as defined in Section 6.6), unless the physician has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. for at least seven and one-half (7.5) years;

(c) The Member resigns in accordance with Section 6.9;

(d) The Member transfers the Member's entire Company interest to another person, who is not the South Carolina ENT, Allergy & Sleep Medicine, P.A. physician

spouse of the Member;

(e) The South Carolina ENT, Allergy & Sleep Medicine, P.A. physician and Member spouse divorce. In this event, the shares owned by the Member spouse shall be transferred to the physician in any settlement proceedings. Until a determination is made by a Court of competent jurisdiction, the non-physician spouse will lose the non-economic rights vested in this agreement with proxy vote transferring to the physician spouse.

(f) The Member, or Member's spouse, is no longer employed by or a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. This will not apply in the event the Member or physician spouse has been a shareholder of South Carolina ENT, Allergy & Sleep Medicine, P.A. for a period of at least seven and one-half (7.5) years.

(g) In the event the Member (who is not a physician with South Carolina ENT, Allergy & Sleep Medicine, P.A.,) becomes incapacitated or incompetent and therefore unable to participate in Company business, the Member's non-economic right to participate in any Company business shall vest in the physician spouse for the duration of the disability.

6.3 LOSS OF VOTING RIGHTS, ETC., UPON DISSOCIATION

Except as otherwise expressly provided in this Agreement, a Member upon the Member's dissociation shall immediately lose any right of the Member to participate in the business and affairs of the Company by voting on Member Matters, by acting as an agent for the Company, by initiating a dispute in the Member's capacity as a Member, by having access to Company information in the Member's capacity as a Member or by any other means.

6.4 NO DISTRIBUTIONS, ETC., TO DISSOCIATED MEMBERS

A Member's dissociation shall not entitle the Member to receive any distribution of Company profits or other assets or to receive any payment for the Member's Company interest, unless said profits, assets or payment for the Member's interest are owed to the Member from a date which precedes the Member's date of dissociation.

6.5 DEFINITION OF TOTAL DISABILITY

A Member, if a physician or Member's physician spouse, shall be deemed to have incurred a Total Disability within the meaning of Section 6.2 (b) as defined by the shareholder's agreement with South Carolina ENT, Allergy and Sleep Medicine, P.A.

6.6 DETERMINATION OF TOTAL DISABILITY

Whether a Member, or Member's physician spouse, has incurred a Total Disability and the date on which the Member, or Member's physician spouse, has incurred a Total Disability

shall be determined by the vote of other Members holding a majority of Member votes (except the votes of the Member about whose disability they are voting). All such determinations shall be subject to review in arbitration under Section 19.

6.7 DEFINITION AND EFFECTIVE DATE OF RESIGNATION

For purposes of this Section 6, the resignation of a Member means the Member's voluntary written renunciation of the Member's right to participate in the business and internal affairs of the Company. A Member shall be deemed to have resigned from the Company within the meaning of this Section 6 on the effective date of the notice of resignation described in Section 6.9.

6.8 RIGHT OF MEMBERS TO RESIGN FROM COMPANY; NOTICE OF RESIGNATION

A Member may without liability resign as a Member of the Company by giving written notice of resignation to the other Members. The resignation shall be effective 60 days after all of the other Members have received the notice.

6.9 EXPULSION OF MEMBER

A Member may only be expelled by the Company and forced to accept a buy-out of his or her interest as valued in Section 5 herein if the Member:

(a) is a physician owning an interest in the Company and the physician withdraws from practice with South Carolina ENT, Allergy & Sleep Medicine, P.A. prior his or her seven and one-half (7.5) year anniversary of Membership in South Carolina ENT, Allergy & Sleep Medicine, P.A.; or,

(b) is the spouse member of a South Carolina ENT, Allergy & Sleep Medicine, P.A. physician who leaves the practice prior to the 7.5th anniversary of the Member spouse's Membership in South Carolina ENT, Allergy & Sleep Medicine, P.A.; or,

(c) fails to make a mandatory capital contribution to the Company, within six (6) weeks of written notice given thereof, for a project that is approved by the Membership for such contribution to be made.

SECTION 7 MANAGER'S DUTY OF CARE; RELATED MATTERS

7.1 DUTY OF CARE - GENERAL RULE

In participating in or handling any matter (an "Company matter") relating to the business and

internal affairs of the Company, the Manager shall use his reasonable best efforts to further the interests of the Company;

PROVIDED, that the Manager shall be liable for violations of their duty of care as Manager only as provided in Section 7.2.

7.2 PERSONAL LIABILITY OF MANAGERS FOR FAILURE TO USE ORDINARY PRUDENCE

The Manager shall be personally liable to the Company for money damages and other relief if, in participating in or handling any Company matter as Manager:

They fail to exercise the care that an ordinarily prudent person would exercise under similar circumstances; and

They are unable to rely on the defenses to liability set forth in Sections 7.4 and 7.5.

7.3 DUTY TO OBTAIN INFORMATION

Before making any decision or taking any action in an Company matter, the Manager in his capacity as Manager shall use their best efforts to obtain all relevant information.

7.4 NO MANAGER LIABILITY IF A MANAGER RELIES ON COMPANY INFORMATION, ON OTHER COMPANY MANAGERS, ETC.

No manager as a manager shall be personally liable to the Company or to the Members for any claim of violation of the manager's duties under this Section 7 to the extent that, with respect to the matter in question, the manager has acted in reasonable reliance on:

- (a) Company records;
- (b) Other Company managers, employees or officers of the Company;
- (c) Other persons whom, at the time of the action, the manager reasonably believed to be competent in the matter in question; or
- (d) Any provision of this Agreement.

7.5 NO MEMBER LIABILITY FOR ACTIONS TAKEN IN GOOD FAITH, ETC.

No Manager in the Manager's capacity as a manager shall be personally liable for a breach of any duty of the Manager under this Section 7 if, with respect to the matter in question, the Manager has acted:

- (a) In good faith; and,
- (b) In the reasonable belief that the action was in the best interest of the Company; and,
- (c) With reasonable diligence.

7.6 WHO MAY CLAIM BREACH OF THIS SECTION; MEMBER VOTE NECESSARY TO MAKE CLAIM

Only the Company may make a claim against a Manager for a breach of a duty of the Manager under this Section 7. The Company shall make no such claim except upon the unanimous vote of Members entitled to vote (exclusive of the votes, if any, of the Manager potentially subject to the claim). Regardless of the claim made by the Membership, no such claim for breach of a Managerial duty shall be maintained against Robert Puchalski or Amy Puchalski.

7.7 STANDARD OF PROOF

Any claim of breach of this Section 7 shall be deemed to be proven if supported by a preponderance of the evidence.

7.8 INDEMNIFICATION OF MANAGERS FOR CLAIMS UNDER THIS SECTION

If any person makes a claim against a Manager for a violation of a duty of the Manager under this Section 7, the Company shall indemnify the Manager for reasonable expenses and for damages or settlement amounts reasonably incurred by the Manager in respect of the claim if Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who is the subject of the claim) determine that in respect of the matter in question:

The Manager has exercised the care that an ordinarily prudent person would exercise under similar circumstances; or

The Manager is protected from liability under Sections 7.4 or 7.5.

7.9 ADVANCEMENT OF ARBITRATION AND LITIGATION EXPENSES

The Company shall advance arbitration and litigation expenses to a Manager for the defense of claims against the Manager for breaches of the Member's duty under this Section 7:

If Disinterested Members holding a majority of Member votes (excluding the Member votes,

if any, of the Manager who is the subject of the claim) determine that in respect of the relevant matter, it is probable that the Manager has exercised the care that an ordinarily prudent person would exercise under similar circumstances or that the Manager is protected from liability under Sections 7.4 or 7.5; and

If the Manager promises to return all such advances to the Company if the court, arbitrator or other tribunal deciding the claim finds otherwise.

7.10 LIABILITY INSURANCE FOR MANAGERS

Whether the Company shall maintain an insurance policy to cover Manager liabilities arising under this Section 7 shall be determined by the affirmative vote of Members holding a majority of Member votes.

SECTION 8 MANAGERS' DUTY OF LOYALTY; RELATED MATTERS

8.1 DUTY OF LOYALTY-GENERAL RULE

In matters relating to the business and affairs of the Company, Manager in his capacity as Manager shall act solely for the benefit of the Company and not for their personal benefit.

8.2 DUTY NOT TO COMPETE AGAINST THE COMPANY

In any geographical area where the Company is engaged in business or has definite plans (as evidenced by Company documents) to engage in business, a Manager shall not directly or indirectly compete against the Company while the Manager is a Manager and until the second anniversary of the date on which the Manager ceases to be a Manager; PROVIDED, that the Manager may compete against the Company with the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who wishes to compete against the Company).

8.3 DUTIES IN DOING BUSINESS WITH COMPANY

No Manager shall engage directly or indirectly in any business arrangement or transaction with the Company on the Manager's own behalf or on behalf of a disclosed or undisclosed third party except:

After making full disclosure to the Company; and After receiving the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager wishing to engage in business with the Company).

The terms of any business engagement permitted under this Section 8.4 shall be arm's-length terms.

8.4 DUTIES WITH RESPECT TO COMPANY BUSINESS OPPORTUNITIES

If a Manager or Member learns (whether in the course of Company business or otherwise) of a business opportunity potentially valuable to the Company, the Manager or Member shall promptly disclose the opportunity to the Company and shall not exploit the opportunity for the Manager's or Member's personal benefit unless:

(a) Within 10 business days after receiving written, faxed or emailed notice of the opportunity, the Company fails to provide either an acceptance or rejection to the Member or Manager disclosing the opportunity; or

(b) After accepting it, the Company fails to exploit it with reasonable promptness and diligence.

Whether the Company shall accept the opportunity shall be decided in each case by the affirmative vote of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager who wishes to exploit the opportunity).

8.5 DUTY TO AVOID IMPROPER PERSONAL BENEFITS

If any Manager directly or indirectly receives from any person a monetarily significant benefit, including cash, in connection with the Manager's activities as a Manager of the Company, the Manager shall promptly transfer this benefit to the Company; PROVIDED, that the Manager may retain the benefit if authorized to do so:

(a) By this Agreement; or

(b) By the advance consent of Disinterested Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager in question).

8.6 DUTIES OF GOOD FAITH AND FAIR DEALING

In all Company matters, Manager in their capacity as Manager shall act in good faith and shall deal fairly with the Company and with the Members.

8.7 WHO MAY CLAIM BREACH OF THIS SECTION; MEMBER VOTE NECESSARY TO MAKE CLAIM

Only the Company may make a claim against a Manager for a breach of the Manager's duty under this Section 8. The Company shall make no such claim except upon the affirmative vote of Members holding a majority of Member votes (exclusive of the Member votes, if any, of the Manager potentially subject to the claim).

8.8 STANDARD OF PROOF

Any claim of breach of this Section 8 shall be deemed to be proven if supported by a preponderance of the evidence.

8.9 ADVANCEMENT OF LITIGATION EXPENSES

The Company shall advance arbitration and litigation expenses to a Manager for the defense of claims against the Manager for breaches of the Member's duty under this Section 8:

If Disinterested Members holding a majority of Member votes (excluding the Member votes, if any, of the Manager who is the subject of the claim) determine that in respect of the relevant matter, it is probable that the Manager has complied with the provisions of this Section 8; and

If the Manager promises to return all such advances to the Company if the court, arbitrator or other tribunal deciding the claim finds otherwise.

SECTION 9 MANAGER'S DUTY OF OBEDIENCE

The Manager shall promptly comply with all reasonable instructions approved by Members holding a majority of Member votes.

SECTION 10 MANAGER'S DUTY OF CANDOR

The Manager shall deal honestly with the Company and, promptly after learning of any information (including information about their own health and personal affairs) that is material to the business and affairs of the Company, they shall disclose this information to the Company to the other Managers (or, if there is only one Manager, to the Members).

SECTION 11 MEMBERS' AND MANAGER'S DUTY OF CONFIDENTIALITY

11.1 MEMBERS' AND MANAGER'S DUTY TO MAINTAIN CONFIDENTIALITY OF COMPANY INFORMATION

The Members and Managers:

- (a) Shall maintain the confidentiality of Confidential Information (as defined in Section 11.2);
- (b) Except as required in conducting the business and internal affairs of the Company, shall not disclose Confidential Information to any third party;
- (c) Shall make copies of documents and other media containing Confidential Information only for the benefit of the Company;
- (d) Shall use Confidential Information only for the benefit of the Company; and
- (e) Promptly after ceasing to be Members and Managers (as the case may be), shall return to the Company all documents and other media containing Confidential Information.

11.2 DEFINITION OF CONFIDENTIAL INFORMATION

For purposes of this Agreement, Confidential Information means:

- (a) The terms of this Agreement; PROVIDED, that a Member may disclose these terms on a confidential basis to his or her spouse and professional advisers;
- (b) Information that the Company maintains in confidence;
- (c) Information that the Member or Manager knows to be proprietary to the Company.
- (d) Financial information relating to the Company and to the Members;
- (e) Information relating to Company marketing and business plans and strategies;
- (f) Information concerning the design and manufacture of Company products and concerning methods of providing Company services;
- (g) Information in Company personnel files and similar files relating to Company Members and employees;

- (h) Information entrusted to the Company in confidence by third parties;
- (i) Information reasonably designated by the Managers as Confidential Information; and
- (j) Information disclosed by Managers under Sections 11 and 12.

11.3 EXCEPTIONS TO DUTY OF CONFIDENTIALITY

Section 11.1 shall not apply to information:

- (a) Which the Member or Manager in question (the "Recipient") already lawfully possess at the time of its disclosure to the Member or Manager by the Company or which the Recipient lawfully obtains thereafter;
- (b) Which is already in the public domain at the time of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Member;
- (c) The disclosure of which is required by final order of a court of competent jurisdiction;
- (d) The disclosure of which is made on a confidential basis to an arbitrator in an arbitration under Section 19; and
- (e) Which the Company discloses without restriction to any person other than the Recipient.

11.4 BINDING EFFECT; TERMINATION

This Section 11 shall bind each Recipient even after the Recipient ceases to be a Member or Manager. Subject to any contrary arrangement with a third party, this Section 11 shall terminate upon the termination of the legal existence of the Company.

SECTION 12 MANAGER QUALIFICATIONS, RESPONSIBILITIES, ETC.

12.1 MANAGER QUALIFICATIONS

The Manager shall be a natural person and shall be a shareholder of South Carolina ENT, Allergy and Sleep Medicine, P.A.

12.2 MANAGER TITLES

In performing management functions for the Company, Managers may use the title "Manager" or such other title or titles (including, without limitation, the title "President" or "Chief Executive Officer") as the Members may determine from time to time by affirmative vote of Members holding a majority of Member votes.

12.3 MANAGER RESPONSIBILITIES

The Manager shall have general responsibility for managing the day to day business and internal affairs of the Company. The Manager shall have any additional responsibilities that are set forth in this Agreement or that the Members may determine from time to time by affirmative vote of Members holding a majority of Member votes. If the Managers responsibilities are expanded pursuant to this section, the Manager may request a reasonable management fee to be determined by the Members based upon a fair market valuation of the services performed.

12.4 MULTIPLE MANAGER VOTING- N/A

12.5 METHOD OF APPOINTING MANAGERS AFTER INITIAL MANAGER

Subsequent to the terms of 12.6 herein, after the formation of the Company, Managers shall be appointed by the affirmative vote of Members holding seventy-five (75%) percent of Member votes.

12.6 MANAGER'S TERMS OF OFFICE

The term of office of each Manager shall be indefinite, but shall terminate upon the earliest of the date of the Manager's (a) death, (b) resignation, (c) disability (as determined by vote of Members holding a majority of votes) or (d) removal as a Manager. Regardless of any information contained in this document to the contrary, Robert Puchalski, as Founding Manager, shall remain as Manager for the duration of his association with the company, even if he is no longer a shareholder with South Carolina ENT, Allergy & Sleep Medicine, P.A.

12.7 MANAGER RESIGNATIONS

A Manager may resign as a Manager upon giving 60 days' written notice to each Member. Except as otherwise provided in this Agreement, the Manager shall have no liability to the Company or to the other Members for any such resignation; PROVIDED, that the resignation shall not absolve the Manager from any liabilities arising before the resignation.

12.8 MANAGER REMOVALS

The Members may, without liability, remove a Manager, except Robert Puchalski if he is serving as Manager, at any time with or without cause by affirmative vote of Members holding seventy-five (75%) percent of Member votes. Robert Puchalski may only be removed by the Members if a unanimous vote is taken to remove them and only as a result of an intentionally illegal action by or on behalf of the Company or he attempts to secure or sign a contract or any other document purporting to sell any real property asset of the Company or

obligate the Company to purchase additional real property without obtaining prior approval of the Members.

12.9 NO MANAGER LIABILITY AS MANAGER FOR CLAIMS AGAINST COMPANY BY THIRD PARTIES

No Manager as such shall have personal liability for a claim against the Company by any third party. Managers shall be personally liable for their personal misconduct as provided by this Agreement and by applicable law.

12.10 MANAGERS' EXCLUSIVE RIGHT TO BIND COMPANY, ETC. Only the Manager shall have the following rights:

12.10.1 CONTRACTS

The Manager shall have the right to bind the Company in dealings with third parties.

12.10.2 BUSINESS DECISIONS

The Manager shall have the exclusive right to decide all Company matters relating to the business of the Company.

12.10.3 CONDUCT OF BUSINESS AND AFFAIRS OF COMPANY

The Manager shall have the right to conduct the day to day business and internal affairs of the Company. The Manager shall have the right to employ accountants, attorneys, property or construction managers and other persons whose employ would benefit the Company. The Manager shall also have the exclusive right to determine appropriate distributions to Members based on their Membership interest and the cash position of the Company at the time of the anticipated distribution. Matters outside the normal operations of Company business, such as selling, buying or mortgaging of any Company real property asset, shall be handled by the Manager but upon written approval and direction of Members holding seventy-five (75%) percent of the Member votes.

12.11 DUTY OF MANAGER TO INFORM MEMBERS

The Managers shall use reasonable efforts to inform the Members on an annual basis, or as requested by the Members, concerning the internal affairs of the Company and the condition of its business.

12.12 MANAGER VALUATION OF CONTRIBUTIONS, ETC.

Whenever, after the formation of the Company, the Company admits a person as a new Member of the Company, the Manager (and not the Members):

Shall promptly determine in dollars a value for the contribution of that person in exchange for the person's Membership or that there was no contribution;

Shall record this determination in the records of the Company; and

Shall promptly notify all Members concerning the determination. Thereafter, in the absence of fraud, the determination shall be conclusive as to the value of the contribution or as to whether there was a contribution.

12.12 INITIAL MANAGER

The Company shall be managed by Robert Puchalski as the initial Manager of the Company.

12.13 APPOINTMENT OF SUBSTITUTE MANAGER(S)

The Members shall have the right to appoint a substitute "Manager" or "Managers" to operate the Company and to conduct its business in the event of illness, disability, or death of the primary Manager, and his stated successor. The Members shall also have the right to nominate or elect an additional Manager for the purposes set forth herein. The "Manager" shall have the rights, powers, and obligations granted or created herein to the initial Managers, except as the Members shall otherwise restrict or limit in the document appointing the "Manager".

SECTION 13 MEMBERS' REPRESENTATIONS AND WARRANTIES

13.1 REPRESENTATIONS AND WARRANTIES BY INDIVIDUAL MEMBERS

Each Member represents and warrants in the Member's capacity as a Member as follows:

13.1.1 FREEDOM OF MEMBER TO ENTER INTO AGREEMENT, ETC.

The Member:

(a) Is legally free to enter into this Agreement and to perform the Member's obligations under the Agreement in accordance with its terms; and

(b) Is not prevented from doing so by order of any court or other governmental authority, by any agreement with a third party (including an employment agreement, non-competition agreement or non-disclosure agreement) or by any other cause.

13.1.2 GOODFAITH, DISCLOSURE, ETC. IN NEGOTIATING TERMS OF AGREEMENT

In negotiating and entering into this Agreement, the Member has acted fairly and in good faith and has disclosed to the other Members all information reasonably likely to be relevant to them in determining whether to enter into it.

13.1.3 ACCESS TO LEGAL ADVICE, ETC.

Before accepting the terms of this Agreement, the Member has had every reasonable opportunity to consider these terms and to review them with the Member's personal attorney.

13.1.4 FREE ACCEPTANCE OF TERMS, ETC.

Each Member has accepted the terms of this Agreement knowingly and freely.

13.2 DUTY TO UPDATE

If, after a Member signs this Agreement, the Member discovers that any of the above representations were erroneous when made or have become erroneous, the Member shall immediately so advise the other Members.

SECTION 14 COMPANY RECORDS, BOOKS OF ACCOUNT, REPORTS TO MEMBERS, ETC.

14.1 RECORDS TO BE MAINTAINED BY Company

The Company shall maintain at its principal place of business:

- (a) A copy of its Articles and operating agreement and all amendments of these documents;
- (b) Copies of all of its federal and state tax returns;
- (c) A current list of the name and last known business, residence or mailing address of each of its Members;
- (d) True and complete information concerning:

The amount of cash and a description and statement of the value of any other property or services which each Member has contributed to the Company or which any Member has

agreed to contribute to it;

Any return by the Company to a Member of cash or other property contributed by the Member; and

(e) A record stating the date on which each Member became a Member (unless this date is evident from the content of the Agreement).

14.2 BOOKS OF ACCOUNT

The Company shall maintain books of account concerning the business and affairs of the Company that shall be:

(a) Accurate;

(b) Reasonably current; and

(c) In compliance with financial and other standards normally applicable to the records of business organizations generally similar to the Company in size and business activities,

14.3 REPORTS TO MEMBERS, ETC.

Through the provision of written financial reports or through other appropriate measures, the Company shall advise the Members on a regular basis concerning the financial and business condition of the Company.

SECTION 15 TAX PLANNING AND COMPLIANCE

15.1 IMPORTANCE TO COMPANY OF TAX MANAGEMENT AND COMPLIANCE

The parties acknowledge the importance to the Company and the Members of:

Competent tax planning for the Company and for the Members as Members; and

Full compliance by the Company and by the Members with federal and state tax requirements applicable to the Company and the Members in their capacity as such.

15.2 APPOINTMENT OF COMPANY TAX ADVISER

In connection with its formation and on a continuing basis thereafter, the Members hereby appoint as the Company's tax adviser the individual or firm of Sheheen, Hancock & Godwin.

The Manager may change the Company's tax adviser from time to time.

15.3 COOPERATION WITH COMPANY TAX ADVISER

The parties shall cooperate with the Company's tax adviser to the maximum reasonable extent to ensure adequate Company tax planning and compliance.

15.4 COMPANY TAX RETURNS

On a timely basis each year, the Company shall accurately complete and file its federal tax return and all applicable state returns.

15.5 COMPANY PROVISION OF TAX INFORMATION TO MEMBERS

As soon as reasonably possible after the close of each of its taxable years, the Company shall provide each Member with completed federal and state tax forms and with all other documents and information relevant to the federal and state tax liabilities of the Member as a Member of the Company; PROVIDED, that each Member shall have sole responsibility for preparing and timely filing the Member's federal and state tax returns and for paying the Member's taxes, and the Company shall have no responsibility or liability with respect to these matters.

15.6 COMPANY COMPUTATION AND RECORDING OF MEMBERS' CONTRIBUTIONS, CAPITAL ACCOUNTS AND ADJUSTED TAX BASES

The Company shall compute on a current basis and in accordance with applicable U.S. Treasury Department regulations the contributions and capital accounts of the Members and their adjusted tax bases in their Company interests.

The Company shall maintain current and accurate records concerning Members' contributions, capital accounts and adjusted tax bases and, promptly after the request of any Member, shall make these records available to the Member.

15.7 PLANNING OF INDIVIDUAL TRANSACTIONS

Before undertaking any major transaction involving the Company or any Member in the Member's capacity as a Member:

(a) The Company and each affected Member shall consult with one or more partnership tax experts concerning the tax implications of the transaction; and

(b) The Company and affected Members shall make any tax elections and shall take any other actions necessary or appropriate in the circumstances to ensure tax compliance and maximum lawful tax avoidance.

The issue of the fairness of the transaction to the Company and to the Members shall be subject to arbitration under Section 19.

15.8 TAX DISTRIBUTIONS

If any Member requires a distribution of all or any portion of the Member's share of Company profits in order to pay the Member's federal or other taxes on the Member's share of these profits for any taxable year, the Company shall, to the extent that its financial condition reasonably permits, make this distribution to the Member on a timely basis; PROVIDED, that as a condition for the distribution, the Company may, under reasonable conditions of confidentiality, require the Member to disclose to the Company's tax adviser relevant information concerning the Member's tax and financial affairs.

15.9 TAX MATTERS PARTNER

Robert Puchalski shall serve as the Company's tax matters partner for purposes of unified administrative and judicial federal tax proceedings under Internal Revenue Code section 6231 (a) (1).

SECTION 16 COMPANY DISSOLUTION, WINDING-UP AND LIQUIDATION; LIQUIDATION DISTRIBUTIONS

16.1 DEFINITION OF COMPANY DISSOLUTION, ETC.

For purposes of this Agreement, the following terms shall have the following meanings:

16.1.1 DISSOLUTION

The dissolution of the Company shall mean the cessation of its normal business activities and the beginning of the process of winding up its business and internal affairs and of liquidating it.

16.1.2 WINDING-UP

The winding-up of the Company shall mean the process of concluding its existing business activities and preparing for its liquidation.

16.1.3 LIQUIDATION

The liquidation of the Company shall mean the sale or other disposition of its assets and the distribution of its assets (or the distribution of the proceeds of the sale or other disposition of its assets) to its creditors and to the Members.

16.2 EVENTS CAUSING DISSOLUTION

The Company shall be dissolved:

(a) Upon the affirmative vote of Members holding seventy-five (75%) percent of Member votes; PROVIDED, that upon any such dissolution, Members holding less than the required number of votes may seek damages and other relief in arbitration under Section 19 for any injury unfairly resulting to them or likely to result from the dissolution;

(b) Upon the issuance of an order of dissolution by a court or by the Secretary of State; or

(c) Upon the issuance of an order of dissolution by an arbitrator under Section 19.

16.3 EFFECTIVE DATE OF DISSOLUTION OF COMPANY BY VOTE OF MEMBERS

The dissolution of an Company by vote of the Members shall be effective on the date specified in that vote or, if the Members do not specify a date, then on the date of completion of the vote.

16.4 DETERMINATION OF DATE FOR DELIVERY OF CERTIFICATE OF CANCELLATION AND FOR EFFECTIVE DATE OF CERTIFICATE

The date on which the Company shall deliver a certificate of cancellation to the Secretary of State for filing and the effective date of this certificate shall be determined by the affirmative vote of Members holding seventy-five (75%) percent of the Member votes.

16.5 CESSATION OF COMPANY'S LEGAL EXISTENCE

Unless a court or administrative authority duly and finally determines otherwise, the Company shall cease to exist as a legal entity on the effective date set forth in the certificate of cancellation.

16.6 WINDING-UP OF COMPANY

After the Company is dissolved, the person or persons responsible for winding it up shall as expeditiously as reasonably possible:

(a) Wind up its business and internal affairs; and

(b) Cause its liquidation.

During the wind-up period, the Company shall accept no new business except to the extent necessary to dispose of existing inventory.

16.7 COMPLIANCE WITH THE LAWS OF THIS STATE APPLICABLE TO ENTITY DISSOLUTIONS AND LIQUIDATION

The Company shall make no distribution to Members or others in connection with its liquidation until it has complied with all applicable laws and regulations of this State (including tax laws and regulations) relating to its dissolution and liquidation.

16.8 DISPOSITION OF KNOWN AND UNKNOWN CLAIMS AGAINST COMPANY

Promptly after the dissolution of the Company, the Company shall take all reasonable measures under the laws of this State to dispose of (and, to the extent reasonable, to bar) known and unknown claims against the Company.

16.9 DISTRIBUTIONS UPON COMPANY LIQUIDATION

Upon completion of the Company's winding-up but, if reasonably possible, on or before the date of termination of the Company's legal existence, the Company shall (subject to any applicable provisions of section 704 (b) of the Internal Revenue Code and other applicable federal and state law) distribute its assets as follows:

First, the Company shall pay (or shall make adequate provision to pay) its creditors.

Second, the Company shall distribute its assets to Members in satisfaction of its liabilities for distributions to them under Section 4.

Third, the Company shall distribute its assets to Members for the return of their contributions.

Fourth, the Company shall distribute its assets to Members in accordance with their right to share in distributions of its assets under Section 4.

16.10 DUTY TO CONSULT TAX ADVISER IN CONNECTION WITH COMPANY DISSOLUTIONS, ETC.

Before the Members begin the wind-up and liquidation of the Company, the Company and the Members shall consult with their respective tax advisers and shall structure and implement the liquidation in a manner that is as fair as possible to each Member from a tax viewpoint.

SECTION 17 ASSIGNMENTS OF COMPANY INTERESTS

Except as otherwise provided in this Agreement:

17.1 DEFINITION OF ASSIGNMENT

For purposes of this Agreement, an assignment means a transfer by a Member of all or any portion of the Member's Company interest to another person.

17.2 NO ASSIGNEE RIGHT TO PARTICIPATE IN THE MANAGEMENT OF THE COMPANY

No person receiving an Assignment shall, solely by reason of the Assignment, have any right to participate in the business and affairs of the Company by any means, including participation by voting, by access to Company information, or by initiating lawsuits or arbitrations; PROVIDED, that, to the extent permissible under the Company Act, an assignee may initiate an arbitration on behalf of the Company in accordance with the provisions of the Company Act.

17.3 NO ASSIGNEE LIABILITY FOR CERTAIN OBLIGATIONS OF ASSIGNOR

No assignee shall be liable for obligations of an assignor of which the assignee was unaware and which the assignee could not ascertain from this Agreement.

17.4 CONTINUING LIABILITY OF ASSIGNOR FOR CERTAIN OBLIGATIONS

Notwithstanding an assignor's making an Assignment, the assignor shall remain liable for the assignor's obligations to make contribution to the Company and to return Unlawful Distributions received by the assignor.

17.5 NO ASSIGNEE LIABILITY FOR COMPANY OBLIGATIONS

No assignee as such shall be liable for any obligations of the Company solely by reason of the Assignment.

SECTION 18 TERM OF AGREEMENT; TERMINATION; SURVIVAL OF CERTAIN RIGHTS AND DUTIES, ETC.

18.1 TERM

Subject to the provision of Sections 18.2 through 18.4, the term of this Agreement shall begin on the Effective Date (as defined in Section 1.1) and, unless earlier terminated by the parties, shall terminate:

(a) If the Company is terminated by vote of the Members on the effective date of the certificate of cancellation of the Company's articles of organization;

(b) If the Company is terminated by decree of a duly authorized judicial or administrative authority, on the date of termination of the Company's existence as determined by that authority; or,

(c) If no clear date is established under Sections 18.1 (a) or (b) and if the Members can agree on no such date, by determination of an arbitrator under Section 19.

18.2 SURVIVAL OF ACCRUED RIGHTS, ETC.

Rights, duties and liabilities accrued by the parties under this Agreement before its termination shall continue in full force and effect after its termination.

18.3 ARBITRATION OF MATTERS RELATING TO COMPANY'S WINDING-UP, ETC.

Notwithstanding the termination of this Agreement, any party may, after that termination, initiate an arbitration under Article 19 to determine and enforce rights and duties of the party relating to:

(a) Matter arising before and during the Company's winding up;

(b) The Company's liquidation; and

(c) Matters arising after the cancellation of the Company's Articles.

SECTION 19 ARBITRATION OF COMPANY DISPUTES

19.1 MANDATORY ARBITRATION OF CERTAIN DISPUTED MATTERS

Any dispute between or among the parties relating to Arbitrable Matters (as defined in Section 19.2) shall be exclusively and finally resolved by arbitration by a single arbitrator (the "Arbitrator") without recourse to any court.

19.2 DEFINITION OF ARBITRABLE MATTER

Arbitrable Matters shall include only the following types of matters:

How to construe and enforce the provisions of this Section (including any matter concerning the scope of these provisions);

Whether the purchase price or the other terms of purchase of a Member's Company interest pursuant to the terms of this Agreement are fair to the Company and to the Members;

Any claim by a Member in the Member's capacity as a Member against any other Member in that other Member's capacity as a Member;

Whether any action by the Company or by the Members is (a) contrary to this Agreement or (b) seriously unfair to any Member;

Whether the expulsion of a Member under Section 6.9 is fair;

Whether a vote by majority Members concerning the Company's dissolution is fair to minority Members; and

Any other matter that, in the Arbitrator's view, is appropriate for decision under this Section.

19.3 EXCLUSIONS FROM DEFINITION OF ARBITRABLE MATTER

Arbitrable Matters shall not include:

(a) Routine business matters of the Company;

(b) Matters requiring urgent judicial relief; or

(c) Matters involving the enforcement of orders under this Section 19.

19.4 RULES GOVERNING ARBITRATION

Except as otherwise provided in this Section, any arbitration (an "Arbitration") under this section shall be governed by the Rules of Commercial Arbitration of the American Arbitration Association ("AAA").

19.5 NOTICE OF ARBITRATION

Any Member may initiate an Arbitration of any Arbitrable Matter. The initiating Member shall do so by providing written notice of the Arbitration to the other Members. The notice shall bear a current date, shall state the name of the initiating Member and shall briefly state the matter to be arbitrated.

19.6 SELECTION OF ARBITRATOR

If, within 15 business days after all the parties entitle to notice of an Arbitration have received that notice, the Members have not agreed among themselves as to the identity of the Arbitrator or the site of the Arbitration, the Company shall immediately refer these matters for resolution by the AAA office located in the city of Camden, South Carolina, or the AAA office nearest thereto. That office may resolve these matters without liability and in its sole discretion.

19.7 NO APPEAL, ETC.

No Member shall appeal to any court an order of an Arbitrator under this Section 19. The Company or any Member may enter any such order in any court of competent jurisdiction.

19.8 ALLOCATIONS OF COSTS, FEES, ETC.

The Arbitrator may allocate among the Members the costs, fees and other expenses relating to an Arbitration in any manner that the Arbitrator shall determine to be appropriate in his or her absolute discretion; PROVIDED, that if the Arbitrator determines that a party has initiated an Arbitration without a reasonable basis for doing so, the Arbitrator shall assess against that party the costs of the other parties relating to the Arbitration, including the reasonable attorneys' fees.

19.9 AWARDING OF LITIGATION COSTS TO PREVAILING PARTY

If, in a suit in law or equity, any party seeks judicial review of any issue arising in an Arbitration under this Section, an Arbitrator under this Section may allocate to the losing party in that suit all costs reasonably incurred by the prevailing party.

SECTION 20 GENERAL PROVISIONS

20.1 ENTIRE AGREEMENT

This Agreement contains the entire agreement among the parties concerning its subject matter and replaces all other agreements among them, whether written or oral, concerning this subject matter.

20.2 AMENDMENTS

No amendment of this Agreement shall be valid unless set forth in a writing signed by all parties.

20.3 INCORPORATION OF EXHIBITS

All exhibits identified in the Agreement as exhibits to the Agreement are hereby incorporated into the Agreement and made integral parts of it.

20.4 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of South Carolina without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of the State of South Carolina or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

20.5 FORUM FOR LITIGATION; ACCEPTANCE OF PERSONAL JURISDICTION

If any party sues another party in a suit under or relating to this Agreement, the party bringing the suit shall do so in the courts of the State of South Carolina. The parties hereby irrevocably accept the personal jurisdiction of those courts in any such suit.

20.6 ASSIGNMENTS AND DELEGATIONS

Excepting powers previously granted to the Manager herein, no party shall assign any of its rights or delegate any of its duties under this Agreement to any third party except with the consent of the other parties to the Agreement, which consent these other parties shall not unreasonably withhold.

20.7 CAPTIONS

All captions in this Agreement are for convenience only and shall be deemed irrelevant in construing any provision of the Agreement.

20.8 NOTICES

All notices under this Agreement shall be in writing and shall be delivered to a party at the party's address as stated on the first page of this Agreement. A party may change this address upon reasonable notice to the other parties. Notices provided under this Agreement shall be deemed to be received when actually received.

20.9 MEANING AND CONSTRUCTION OF "INCLUDING" AND "PERSON"

The terms "including" and "includes" as used in this Agreement shall denote partial definitions. The term "person" as used in this Agreement shall mean a natural person or an entity as the context shall require.

20.10 NUMBER AND GENDER

As the context shall require:

The use of the singular in this Agreement shall denote the plural and vice versa; and
The use of a particular gender shall denote another gender.

20.11 WAIVERS

No delay of or omission by a party in the exercise of any right, power or remedy accruing to the party as a result of any breach or default by another party under this Agreement:

(a) Shall impair any such right, power or remedy accruing to the party;

(b) Shall be construed as a waiver of or acquiescence by the party in any such breach or default or of any similar breach or default occurring later.

No waiver by a party of any single breach or default under this Agreement shall be

construed as a waiver by the party of any other breach or default occurring before or after that waiver.

20.12 SEPARABILITY OF PROVISIONS

Each provision of this Agreement (a "Provision") shall be deemed separable. If any (a) Provision or (b) the application of any Provision to any person or circumstance shall be held invalid or unenforceable in any jurisdiction, the Provision shall be ineffective:

(a) Only in that jurisdiction;

(b) Only to the extent that it has been expressly held to be invalid or unenforceable in that jurisdiction; and

(c) Without invalidating any other provision of the Agreement or the application of the Provision itself to persons or circumstances other than those to which it was held invalid or unenforceable in the jurisdiction in question.

20.13 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts. Each of these counterparts when so executed shall be deemed to be an original and all such counterparts taken together shall constitute one and the same agreement.

In witness of their acceptance of the above terms and conditions, the parties, in their capacities as Members and Manager, by themselves or by their duly authorized representatives, have duly signed and dated this Agreement as follows:

 Oct. 9, 2009
Amy Puchalski, Member

 09/30/09, 2009
Jamie Curley, Member

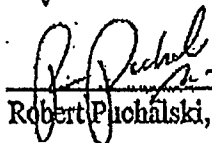
 10/8/09, 2009
Robert Puchalski, Manager of SCENT Land Holdings, LLC

EXHIBIT "A"

<u>Member</u>	<u>Contribution</u>	<u>Fair Market Value</u>
Amy Puchalski	Building lots in Darlington/Richland Co.	\$110,000.00
Jamie Curley		

Agreement”), which is attached as Exhibit “A” to this motion for summary judgment and a second motion for summary judgment, which I am contemporaneously filing in this matter.

5. As of May 9, 2010 and at all other times relevant hereto, Robert Puchalski was the Company’s manager.

6. The Operating Agreement entitles me, as a member of the Company, to, among other things, view any financial information in the Company’s possession or control and to inspect and copy any documents and other media in the Company’s possession or control.

7. In December 2009 and 2010, my husband, Dr. Orville Dyce, made numerous oral and written requests to Dr. Puchalski to provide me the fundamental documents pertaining to the closing for South Carolina ENT, Allergy & Sleep Medicine, P.A.’s (“SCENT”) new office building such as a lease and the loan documents themselves. A copy of an email sent from Dr. Dyce to Robert Puchalski requesting the lease and fundamental loan documents dated March 3, 2010 is attached hereto and incorporated herein as Exhibit “B.”

8. Robert Puchalski refused to provide me such requested information.

9. In March 2010, Robert Puchalski sought to compel the members to obtain a loan for the benefit of the Company.

10. When I was not provided with certain information related to the proposed loan, I declined to authorize the proposed loan.

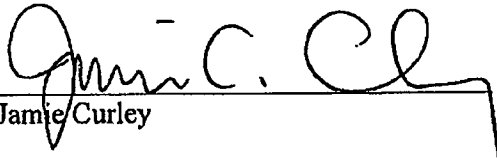
11. On or about March 12, 2010, Robert Puchalski purported to hold a telephonic meeting of the Company’s members where he purported to require the Company’s members to make a capital contribution to the Company. A copy of the meeting notice is attached hereto and incorporated herein by reference as Exhibit “C.”

12. The Operating Agreement does not authorize telephonic meetings.

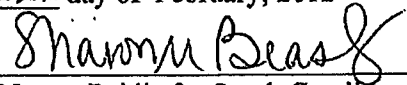
13. The Operating Agreement does not authorize capital calls.
14. The Operating Agreement does not require its members to contribute money to the Company upon the request of the manager.
15. I did not participate in the unauthorized capital call.
16. I did not make a written promise to the Company to contribute money to the Company.
17. My husband, Dr. Orville Dyce, was a shareholder of SCENT.
18. I was not an employee of SCENT or a shareholder of SCENT.
19. Robert Puchalski terminated by husband from SCENT on or about May 9, 2010.
20. Article 1.10 of the Operating Agreement provides, in part, that "Members" of the Company "are individuals who are either physicians employed by or in partnership with South Carolina ENT, Allergy and Sleep Medicine, P.A. or their spouse."
21. The Operating Agreement provides, in pertinent part, that a "Member shall be dissociated only upon the occurrence of one of the following events. . . the Member, or Member's spouse is no longer employed by or a shareholder of' SCENT. Therefore, as of May 9, 2010, I was dissociated from the Company.
22. I am entitled to have my distributional interest purchased by the Company.
23. The Company, through its manager Robert Puchalski and/or remaining member, Amy Puchalski, did not deliver a purchase offer to me to purchase my distributional interest in the Company within thirty (30) days of May 9, 2010.
24. The Company still has not delivered a purchase offer to me to purchase my distributional interest in the Company.

25. Robert Puchalski's conduct was unfair, oppressive and unfairly prejudicial to me by, among other things, trying to force me to contribute capital to the Company and not delivering a purchase offer to me once I was dissociated from the Company.

FURTHER DEPONENT SAYETH NAUGHT.


Jamie Curley

SWORN to before me this
22nd day of February, 2012


Notary Public for South Carolina
My Commission Expires: 2/19/13

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

SEP 5 2008

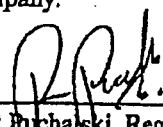
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

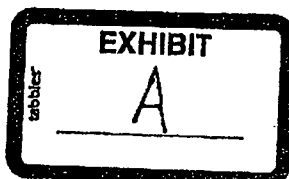
STATE OF SOUTH CAROLINA
SECRETARY OF STATE
MARK HAMMOND
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

SCENT LAND HOLDINGS, L.L.C.

The undersigned deliver the following articles of organization to form a South Carolina limited liability company pursuant to §33-44-202 and §33-44-203 of the 1976 South Carolina Code, as amended.

1. Name. The name of the limited liability company which complies with § 33-43-105 of the South Carolina Code of 1976 as amended is SCENT Land Holdings, L.L.C.
2. Designated Office. The office of the initial designated office of the limited liability company in South Carolina is 1165 Highway 1 South, Lugoff, South Carolina 29078.
3. Registered Agent and Office. The initial registered agent for service of process of the limited liability company is Robert Puchalski, and the street address for service of process is 1165 Highway 1 South, Lugoff, South Carolina 29078. The undersigned hereby consents to the appointment as registered agent of the Limited Liability Company.


Robert Puchalski, Registered Agent
4. Organizer. The name and address of the sole organizer is Robert Puchalski, 3 Puddle Lane, Camden, South Carolina 29020.
5. Term. This company is to be a term company expiring on December 31, 2038, or as otherwise extended or terminated.
6. Management. The management of the L.L.C. is vested in a Manager or Managers and the names and addresses of the Managers are Robert Puchalski and Orville Dyce, 1165 Highway 1 South, Lugoff, South Carolina 29078.
7. No Personal Liability. The members of the company are not liable for its debts and obligations under Section 33-44-303(c) of the South Carolina Code, as



080918-6389 FILED: 09/16/2008
SCENT LAND HOLDINGS, L.L.C.

Filing Fee: \$110.00 ORIG

Mark Hammond

South Carolina Secretary of State

amended.

8. **Effective Date.** These Articles of Organization will be effective when endorsed for filing by the Secretary of State.
9. **Optional Provisions.** Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability operating agreement.

A: Pursuant to S.C. Code Ann. §33-44-301(c), in order to bind the limited liability company, all documents relating to real property, including without limitation all leases, deeds, mortgages, assignments, security agreements, and other documents of security, conveyance, transfer, or liens, must be signed on behalf of the limited liability company by Robert Puchalski and Orville Dyce, to bind the company to any agreement set forth herein.

10. **Signature of organizer.**



Robert Puchalski

Date: September 10, 2008.

From: orville dyce [mailto:odyce@yahoo.com]
Sent: Wednesday, March 03, 2010 3:18 PM
To: robert puchalski
Cc: Bruce Armon; Jamie Dyce
Subject: Fw: Closing Scheduled

Bob:

Neither Jamie nor I will attend a closing until after our information request has been satisfied and the business points arising from the loan have been resolved. You will not see either of us at 4:00. Please see comments in green below.

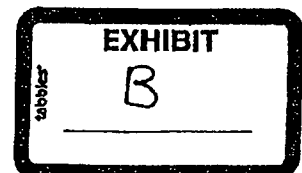
----- Forwarded Message -----

From: Robert Puchalski <rpuchalski@southcarolinaent.com>
To: orville dyce <odyce@yahoo.com>; Jamie <curleyjamie@hotmail.com>; alpuchalski@gmail.com
Cc: Bruce Armon <barmon@saul.com>; Ed White <ed.white@nelsonmullins.com>;
gus.dixon@nelsonmullins.com; Theresa Williams <twilliams@southcarolinaent.com>
Sent: Wed, March 3, 2010 2:46:04 PM
Subject: RE: Closing Scheduled

Just opened your email this PM. Thank you for engaging us and giving SCENT Land Holdings the individual attention it deserves in this critical time. Please see comments in red.

1. Neither Jamie nor I have been furnished with a proposed or executed lease of the building between the Practice and the Company. Please provide a copy to me. We will have a lease once the building is complete, since payments on the construction loan will be "rolled in" to the final loan payment. SCENT Land Holdings will not make a payment on the loan until SCENT moves in. Just like the Hartsville deal.

Regardless of what may have happened in the past, I am advised that it would be imprudent to sign a construction loan until a lease has been executed.



2. You have not been provided us with a proposed budget for the project. The estimated construction cost per the construction contract is \$1,471,316. Why is the loan for \$1,796,316? The land loan has been graciously rolled into the construction loan. Just like the Hartsville deal.

We need to see a budget and see precisely how the money is to be spent.

3. I don't understand why there appear to be two notes for the same amount, \$1,796,316. One of the notes calls for an explained initial advance of \$325,000. What is the purpose of this advance? I suspect it is a pay-off of the land note. The land was purchased in two increments (\$200K and \$125). We will ask the real estate attorney for SCENT Land Holdings, William Cox, this at closing.

We need to know prior to any proposed closing.

4. We will not permit the automatic transfer authorization of \$10,810.27 to the Company as proposed in the loan documentation. We will consider advances by joint check to the Company and Pyramid Contracting in the amount of any draw request which you and I both approve. We can discuss this at closing.

If there is to be a discussion, we can discuss prior to any closing. The proposed disbursement in the authorization is not acceptable. I don't think it is fair to anyone to wait on documents to be redone at a closing.

5. I don't see a proposed closing statement and would like to review one. Theresa has already sent it, but we just received another version from William Cox's office today. Theresa will forward this to you.

Still not seen.

6. You apparently forgot to tell me in all of your email correspondence that the Bank wants my personal guaranty. I am not prepared to provide it at the present time. I did indeed discuss this with you. This is just like the Hartsville deal. It is my understanding that you have personal guarantees on the Hartsville property and the Columbia land currently. If you recall, this is why the bank requested your personal tax returns..

I don't recall any discussion and am not prepared to guaranty the debt.

7. The authorization incorrectly states that you and I are the members of the Company. As you know, we are not members of the Company. We can review this at closing and make changes.

This is a pretty easy document to fix.

We have made the changes you required on the "receipt of information from SCENT Land Holdings". We have sent it back to you electronically and have offered courier services to expedite the execution of this document. Once executed, we will courier you this information or have it waiting for you at closing. As we have mentioned to you and Jamie in the past, this documentation is not voluminous and can be reviewed in a short time.

Thanks for reaching back. I will see you at 4 PM.

**NOTICE OF SPECIAL MEETING OF THE MEMBERS
OF
SCENT LAND HOLDINGS, LLC**

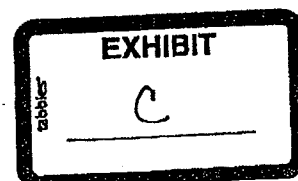
A Special Meeting of the Members of SCENT Land Holdings, LLC (the "Company") will be held on Friday, March 12, 2010 by teleconference, at 10:00am. The dial in number for the meeting is 888-543-4442, passcode 803-255-9559.

It is expected that the following items will be discussed and that action, if deemed appropriate, will be taken with respect to them:

1. Status of the building being constructed on Hwy. 601, Lugoff, SC.
2. The Mechanics Lien on the building and the situation that exists where the contractor and his subcontractors have not been paid for their work and have communicated to the Company that they are in a negative cash flow position as a result of their work on the building.
3. Damage to the contractor, the subcontractors and the Company if the contractor remains unpaid.
4. A capital call and other steps to finance and complete the building.

Date: March 11, 2010
Lugoff, South Carolina

Robert Puchalski, M.D.
Manager
SCENT Land Holdings, LLC



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Date: March 11, 2010
Lugoff, South Carolina

Robert Puchalski, M.D.
Manager
SCENT Land Holdings, LLC

