

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge,  
and  
Grace Gilchrist Knie, Circuit Court Judge,

**RECEIVED**

APR 16 2019

SC Court of Appeals

Case No. 2017-CP-32-2813  
Appellate Case No. 2019-000547

Tommy Taylor, .....

Respondent,

v.

Novant Health, Inc., .....

Appellant.

**DOCUMENTS IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS APPEAL**

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# **Exhibit A**

(Order dated July 18, 2018)



for the maintenance or replacement of the device and required him to submit pre-payment of funds exceeding \$100,000.00.

3. Mr. Taylor asserts that Defendant unlawfully required him, and members of the proposed class of Medicare recipients, to prepay for medical procedures and/or devices that are covered by Medicare. As a result of Defendant's alleged illegal actions and/or omissions, Mr. Taylor alleges he and others similarly situated have sustained actual damages, psychological harm, mental anguish, emotional distress, and consequential damages.

4. Defendant Novant denies any illegal actions and asserts in response that there was no concerted effort to violate Medicare processes and procedures.

5. Mr. Taylor served Defendant with Interrogatories and Requests for Production on December 21, 2017. After being afforded an extension of time, Defendant responded on March 9, 2018, and objected to essentially every interrogatory and request for production with boilerplate objections. Plaintiff attempted to resolve the discovery issues with Defendant prior to filing his Motion to Compel, but the efforts were unsuccessful. Within one week of hearing, Defendant produced certain documents, but did not (1) supplement its discovery responses to identify which documents are responsive to which request(s), (2) provide a privilege log detailing the nature of the privileges it asserts and the bases for the privileges asserted, or (3) identify which, if any, objections remain after the recent production.

### CONCLUSIONS

I reach the following conclusions:

1. This was a hearing to decide Plaintiff's Motion to Compel responses to Plaintiff's First Set of Interrogatories Nos. 1, 2, 4, 5, 6, 10, 11, 15, 19, 21, 23, and 24 and Plaintiff's Requests for Production Nos. 1, 6-13, 16-17, 19-20, 26-27, 29, 30, 32-35, and 37-61.

2. South Carolina has a broad scope of discovery. *Samples v. Mitchell*, 329 S.C. 105, 108, 495 S.E.2d 213, 215 (Ct. App. 1997). The scope and conduct of discovery are within the sound discretion of the trial court and will only be reversed where that discretion has been abused. *Palmetto Alliance v. South Carolina Public Service Commission*, 282 S.C. 430, 434, 319 S.E.2d 695, 698 (1984). Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. S.C. R. Civ. P. 26(b)(1). Any party may request another party “to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents...within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served.” S.C. R. Civ. P. 34(a)(1).

3. Plaintiff’s First Set of Interrogatories Nos. 1, 2, 4, 5, 6, 10, 11, 15, 19, 21, 23, and 24 and Plaintiff’s Requests for Production Nos. 1-14, 16-17, 19-20, 26-27, 29, 30, 32-35, and 37-61 (“Plaintiff’s Discovery”) are overly broad in geographic extent and time period and are properly limited to Defendant’s facilities physically located in North Carolina and for the five-year period covering the years before the date of Plaintiff’s requests. Defendant is ordered to produce the requested information, for each of Defendant’s medical facilities located in North Carolina for a period covering 5 years from the date the Plaintiff’s discovery was served. Any patient’s name in the documents that are found to be responsive to Plaintiff’s requests must be redacted prior to Defendant’s production of documents.

4. In addition, Defendant is ordered to supplement its responses to the entirety of Plaintiff’s discovery to (1) update its response to each Interrogatory and Request for Production at issue; (2) whether any objections remain and, if so (3) restate each objection with the specificity required by the Rules; and (4) identify which documents are responsive to which Request(s).

5. Defendant is also ordered to produce a privilege log meeting the requirements of South Carolina Rule\ of Civil Procedure 26(b)(5) for all materials that Defendant asserts are subject to privilege. Defendant shall describe the nature of the documents, communications, or things not produced or disclosed that will enable Plaintiff to assess the applicability of the privilege or protection.

Plaintiff's Motion to Compel, therefore, is GRANTED, in part, and DENIED, in part. Defendant shall produce the interrogatory responses and requested documents as ordered above to Plaintiff's counsel within forty-five (45) days of the date of the filing of this Order.

IT IS THEREFORE ORDERED:

Plaintiff's Motion to Compel is GRANTED, in part, and DENIED, in part.

AND IT IS SO ORDERED.

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The Honorable Alex Kinlaw, Jr.  
Judge, Thirteenth Judicial Circuit

\_\_\_\_\_, SC  
\_\_\_\_\_, 2018



Lexington Common Pleas

**Case Caption:** Tommy Taylor VS Novant Health Inc

**Case Number:** 2017CP3202813

**Type:** Order/Compel

So Ordered

s/Alex Kinlaw, Jr., #2763

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# **Exhibit B**

(Novant's Rule 60 Motion for Relief  
from an Order dated September 4, 2018)



3. Novant informed Plaintiff that the NeoLegacy System or future procedures to maintain the NeoLegacy System may not be covered by Medicare. [Complaint ¶9].

4. Plaintiff raised the money to prepay for the procedure to replace the battery in the NeoLegacy System and paid to have the battery in his NeoLegacy System replaced. [Complaint ¶16]

5. After the procedure was performed, Novant refunded amount of the estimate of the hospital bill that was paid prior to the procedure.<sup>1</sup>

On August 4, 2017, with the above facts describing his situation and personal claims, Plaintiff filed a complaint against Novant alleging that the case should proceed as a class action with the class of plaintiffs defined to be:

The Class consists of Medicare recipients that have sought and/or received treatment from Defendant and who have been required to prepay for medical treatment covered by Medicare, have been required to pay out of pocket for medical treatment covered by Medicare, or have been incorrectly informed by Defendant that medically necessary procedures were not covered by Medicare.

[Complaint ¶22].

On or about December 21, 2017, Plaintiff served Novant with his First Set of Requests for Production and First Set of Interrogatories.

Without ever having moved to certify a class, Plaintiff's Interrogatories seek to discover the following:

- (a) [T]he name, telephone number and address of any patient or potential patient of Defendant who was a Medicare or Medicaid recipient and was informed by Defendant that he or she would have to prepay for any medical treatment, medical equipment, or any medical service or good to be provided by Defendant. [Interrogatory #1]

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<sup>1</sup> Plaintiff's Complaint failed to allege that that Novant refunded the amount of the estimate of the hospital bill that was paid prior to the procedure; however, this fact is not in dispute between Novant and Plaintiff.

- (b) [t]he names and addresses of any Medicare or Medicaid recipient who has received medical treatment, medical equipment, or prescription medication from Defendant, in the last 10 years, who has: . . . (b) Been demanded by Defendant to personally remit payment for medical treatment properly paid by Medicare or Medicaid. [Interrogatory #2]
- (c) [A]ll electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was refunded monies by Defendant as a result of being charged and demanded to prepay for medical treatment, equipment, medication, or devices. [Interrogatory #6]
- (d) [A]ll electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was refunded monies by Defendant as a result of being charged and demanded to prepay for medical treatment, equipment, medication, or devices. [Interrogatory #7]
- (e) [T]he name, telephone number and address of all individuals that were Medicare recipients and were denied medical treatment or equipment by Defendant since January 1, 2007 because they were unable to prepay for treatment. [Interrogatory # 21]

In addition to his Interrogatories, Plaintiff's Requests for Production seek the production of the following documents:

- (a) [A]ll electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was improperly charged by Defendant for medical treatment. [Request to Produce #6]
- (b) [A]ll electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was refunded monies by Defendant as a result of being charged and demanded to prepay for medical treatment, equipment, medication, or devices. [Request to Produce #7]

On or about March 9, 2018, Novant filed a Motion for Protection from Discovery on the grounds that Plaintiff's discovery is an overbroad, unduly burdensome and expensive fishing expedition, which seeks to discover confidential and proprietary information and documentation

having nothing to do with Plaintiff or the facts and circumstances of Plaintiff's claims. Novant's Motion for Protection from Discovery requested that the Court limit Plaintiff's discovery to the facts and circumstances of Plaintiff's personal claims.

On or about March 27, 2018, Plaintiff filed a Motion to Compel Novant to respond to his discovery requests.

On July 28, 2018, the Court issued an order compelling Novant to respond to Plaintiff's First Set of Interrogatories Nos. 1, 2, 4, 5, 6, 10, 11, 15, 19, 21, 23, and 24 and Plaintiff's Requests for Production Nos. 1, 6-13, 16-17, 19-20, 26-27, 29, 30, 32-35, and 37-61. The Court limited Novant's obligation to respond to these discovery requests to Novant's medical facilities located in North Carolina for a period of five (5) years from the date Tommy Taylor served his discovery. The same day, the Court entered an order denying Novant's Motion for Protection from Discovery.

Novant has attempted to comply with the Court's Order Granting the Motion to Compel. Novant has expended more than 139 hours in an effort to respond to Requests for Production #6 and #7 alone. [Wendi Bennett Affidavit ¶ 4, a copy is attached hereto as Exhibit A]. To fully comply with the Court's order would ultimately require Novant to expend more than 39,000 working hours and incur in excess of \$1,000,000 in costs. [Bennett Affidavit ¶18]. Due to the excessive burden responding to the Court's order requires Novant to shoulder, Novant respectfully requests this Court relieve Novant from the Order Granting Plaintiff's Motion to Compel because it is inequitable to require Novant to sustain such an undue burden and expense in responding to Plaintiff's baseless discovery requests.

#### **STANDARD OF REVIEW**

Whether to grant or deny a motion pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure is within the sound discretion of the Court. *Coleman v. Dunlap*, 306 S.C. 491,

494, 413 S.E.2d 15, 17 (1992). A party seeking to set aside a judgment pursuant to Rule 60(b), SCRCF, has the burden of presenting evidence entitling him to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (1991).

### ARGUMENT

The Court may set aside a prior order if it is no longer equitable that the order have prospective application. *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003) (citing Rule 60(b)(5), SCRCF). Rule 60(b), SCRCF, is based on the Court's historical power of equity to modify its decrees in light of subsequent conditions. *Id.* (quoting *Mr. G v. Mrs. G*, 320 S.C. 305, 311, 465 S.E.2d 101, 107 (Ct.App.1995)).

It is no longer equitable to require Novant to fully comply with the Court's Order Granting Plaintiff's Motion to Compel. In attempting to respond to Plaintiff's discovery requests, Novant has expended more than 139 employee working hours investigating Plaintiff's requests since the Court issued the Order on July 18, 2018. Novant recently came to the conclusion that to fully respond to the Order would cost in excess of \$1,000,000. [See Wendi Bennett Affidavit ¶ 18].

In its efforts to respond to Plaintiff's Request for Production #6, Novant found that approximately 2,143,560 Medicare or Medicaid patients were treated in its North Carolina facilities in the past 5 years. [W. Bennett Affidavit ¶ 7]. A response to Plaintiff's Request for Production #6 requires Novant to determine which of these patients were "improperly" charged. [*Id.*]. To determine which of the over 2 million patients were allegedly "improperly" charged would require Novant to review of each of the 2,143,560 patient files. [*Id.*]. It is simply not possible for Novant to comply with the Court's Order and formulate an accurate response to this request without sustaining an incredible financial loss and expending tens of thousands of

working hours. [*Id.*; W. Bennett Affidavit ¶ 18]. A complete and accurate response to this Request would fundamentally alter Novant's business operations.

Plaintiff is unaware of whether any patient file containing the information he seeks actually exists. During Plaintiff's deposition he admitted that he is unaware of any other patient that was improperly billed. At the hearing on the Motion to Compel, Plaintiff's counsel admitted that he was unaware of any other patient that was improperly billed. Therefore, this search through Novant's records is truly a fishing expedition that Plaintiff has requested Novant finance on his behalf.

Similar to Plaintiff's Request for Production #6, it would be inequitable for Novant to be required to fully comply with the Court's Order and search its records to accurately respond to Plaintiff's Request for Production #7. Plaintiff's Request for Production #7 requests the records of all Medicare and Medicaid patients who received a refund after prepayment. As a preliminary matter, it must be noted that it is in no way a violation of the Medicare or Medicaid billing guidelines for a patient to prepay for medical treatment in certain circumstances. While investigating a potential response to Plaintiff's Request for Production #7, Novant found that approximately 40,000<sup>2</sup> Medicare or Medicaid patients paid for medical treatment before the date medical services were rendered or on the same day services were rendered. [W. Bennett Affidavit ¶ 9]. Novant does not have the capability of filtering this list to exclude patients who paid for service after it was rendered, but on the same day. [*Id.*]. Therefore, the 40,000 patients that have been identified by Novant may not have even actually prepaid for service, but rather simply paid on the same day the service was rendered. [*Id.*]. After Novant identified approximately 40,000 patients who paid before the date medical services were rendered or on the same day services were rendered, Novant next found that approximately 13,832 of the patients

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<sup>2</sup> The approximately 40,000 patients identified by Novant does not include patients whose claims were processed by Medicare administration contractors. [*Id.*].

who paid before the date medical services were rendered or on the same day services were rendered were refunded money at some point after services were rendered. [W. Bennett Affidavit ¶ 12]. Therefore, a proper and accurate response to Tommy Taylor's Request for Production #7, requires at a minimum that Novant physically review each of the 13,832 patient files to (1) determine whether the patient paid before or after the services were rendered and (2) evaluate the basis for issuing a refund to the patient. [W. Bennett Affidavit ¶ 13]. Once this process is complete, Novant will then need to redact all of the confidential medical information from these patient's medical records prior to producing the record to Tommy Taylor. [*Id.*].

Novant believes it would take at least 14,000 hours to respond to Tommy Taylor's Request for Production #7 and that it would cost Novant approximately \$350,000 to complete this request. [W. Bennett Affidavit ¶ 14].

If Novant were required to respond to Request for Production #6 it would be required to first review the remainder of the 40,000 patients identified in its initial investigation. It would take approximately 25,000 working hours and cost Novant approximately \$625,000 to review the remainder of the 40,000 patients who have been initially identified. [W. Bennett Affidavit ¶ 16]. Therefore, a partial response to Requests for Production #6 and #7 would cost in excess of \$1 million dollars. This nearly \$1 million dollar search only constitutes the cost of a review of a small fraction of the more than 2 million Medicare and Medicaid patient files that Plaintiff has requested Novant investigate in response to his discovery requests.

The combination of the time and cost of the search and the fact that neither Plaintiff, nor his counsel are aware of any responsive information that may be found in the search should lead the Court to use its discretion to find that Novant's compliance with the Order Granting the Motion to Compel is no longer equitable and Novant must be relieved from the Order.

**CONCLUSION**

Based on the forgoing, Novant requests the Court find that its compliance with the Order Granting the Motion to Compel is no longer equitable and that Novant is relieved from the Order due to the recently discovered undue burden that formulating a response places on Novant.

Pursuant to Rule 11, SCRPC, Novant hereby certifies that consultation with Plaintiff on this Motion would serve no useful purpose.

s/Katon E. Dawson Jr.

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*Attorneys for Defendant Novant Health, Inc.*

Columbia, South Carolina  
September 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No.: 2017-CP-32-2813
	)	
Tommy Taylor,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>AFFIDAVIT OF WENDI BENNETT</b>
	)	
Novant Health Inc.,	)	
	)	
Defendant.	)	

I, Wendi Cardwell Bennett, hereby depose and state under penalty of perjury under the laws of the State of South Carolina that the following is true and correct:

1. I am over 18 years of age, have personal knowledge of the facts expressed in this Affidavit and am competent to give the testimony herein.

2. I have been employed by Novant Health, Inc. ("Novant") since 1998 and currently work as the Director of Patient Finance.

3. I have worked with Novant's Information and Technology Department, and the following Novant employees in an effort to comply with the Court's Order granting Tommy Taylor's Motion to Compel:

- (i) Leslie Robinson -- Senior Director Charge Integrity
- (ii) Karen Simpson -- Manager RCS Applications
- (iii) Dee Stuart -- Manager RCS Applications
- (iv) Angie Wilson -- Revenue Cycle Business Analyst Lead
- (v) Daniel Pulliam -- Business Reporting Analyst Sr.
- (vi) Dave D'Ingillo -- Revenue Cycle Process Support Data Manager
- (vii) Vicki Zachary -- Revenue Cycle Analyst Lead

4. In conjunction with the individuals named above, more than One Hundred and Thirty-Nine (139) hours have been spent in an effort to respond to Requests for Production 6 and 7 alone.

5. Although the Court's Order limited Tommy Taylor's Requests for Production to Novant's medical facilities located in North Carolina for a period of five (5) years from the date Tommy Taylor served his discovery, Novant is unable to respond to the following Requests For Production without incurring substantial additional costs and expending thousands of additional working hours:

- 6. Produce all electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was improperly charged by Defendant for medical treatment.
- 7. Produce all electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was refunded monies by Defendant as a result of being charged and demanded to prepay for medical treatment, equipment, medication, or devices.

6. Additionally, Novant is working to produce a response to the following Interrogatory, but is unable to formulate a response at this time without incurring substantial additional costs and expending thousands of additional working hours:

- 1. Give the name, telephone number and address of any patient or potential patient of Defendant who was a Medicare or Medicaid recipient and was informed by Defendant that he or she would have to prepay for any medical treatment, medical equipment, or any medical service or good to be provided by Defendant. Include:
  - a. The date of the communication;
  - b. Why the patient was instructed he or she would have to prepay;
  - c. The medical service being provided;

- d. The name, address and telephone number of the employee or agent of Defendant that communicated the information to the patient.

7. As to Tommy Taylor's Request for Production #6, Novant does not have a method of sorting for an "improper" charge in its system. Novant does not believe that it improperly charges any of its patients. Therefore, Novant is not capable of determining whether an individual was "improperly" charged without conducting an individual review of each Medicare or Medicaid patient file for the past five years. Novant treated approximately 2,143,560 Medicare or Medicaid patients in its North Carolina hospitals in the past 5 years. Novant would need to review each of these patient records to respond to Tommy Taylor's Request for Production #6 and Interrogatory #1.

8. Regarding Tommy Taylor's Interrogatory # 1 and Request for Production #7, Novant is not capable of producing a response to this request without an individual examination of thousands of patient records. Tommy Taylor's Request for Production #7 seeks the production of redacted medical records for patients who were properly billed by Novant. Novant does not believe that it is improper for a Medicare or Medicaid patient to prepay for a medical procedure in certain circumstances. Pursuant to Medicare and Medicaid's Rules and Regulations, an individual may prepay for medical treatment for a multitude of reasons. For example, a Medicare patient may prepay for the following:

- (i) Certain experimental procedures;
- (ii) Certain procedures related to experimental devices granted a Humanitarian Device Exception by the FDA;
- (iii) Certain cosmetic surgeries;
- (iv) Certain Elective procedures;
- (v) A repetitive procedure (such as a mammogram) that is performed more than the number of allowable instances;
- (vi) Acupuncture;

- (vii) Treatment that is deemed to not be medically necessary;
- (viii) Hearing aids or related exams; and
- (ix) Routine foot care.

9. After more than 139 hours of investigation, Novant has determined that approximately 40,000 Medicare or Medicaid patients paid for medical treatment before the date medical services were rendered or on the same day services were rendered. The approximately 40,000 patients identified by Novant does not include patients whose claims were processed by Medicare administration contractors. If the search included patients covered by Medicare administration contractors, then the number of patients would be much higher. Additionally, if a patient paid for medical services on the date the service was rendered, but after the performance of the service, then Novant's internal records system identified that patient in this search. Novant does not have the capability of filtering this list to exclude patients who paid for service after it was rendered, but on the same day. Therefore, the 40,000 patients that have been identified by Novant may not have even actually prepaid for service, but rather simply paid on the same day the service was rendered. Without an individual review of each of the 40,000 patient files, Novant is unable to determine whether a patient actually pre-paid for services rendered.

10. As to Tommy Taylor's request for the medical records of Medicare or Medicaid patients who received a refund, Novant properly refunds a patient's prepayment in several circumstances, including but not limited to: (1) instances when a patient has overpaid for a procedure; (2) when Novant becomes aware of other available insurance coverage; (3) when a third-party carrier agrees to pay for the medical services that were rendered; (4) when a service was expected to be provided to a patient, but was ultimately not rendered to the patient; (5) when Novant receives an additional unexpected insurance payment for a service; and (6) when a

patient elects to prepay for a service and have the bill submitted to their insurer after the service is rendered.

11. In an effort to respond to Tommy Taylor's Request for Production #7, Novant first identified approximately 40,000 patients who paid before the date medical services were rendered or on the same day services were rendered.

12. Next, Novant found that approximately 13,832 of the patients who paid before the date medical services were rendered or on the same day services were rendered were refunded money at some point after services were rendered.

13. A proper and accurate response to Tommy Taylor's Request for Production #7, requires at a minimum that Novant physically review each of the 13,832 patient files to (1) determine whether the patient paid before or after the services were rendered and (2) evaluate the basis for issuing a refund to the patient. Once this process is complete, Novant will then need to redact all of the confidential medical information from these patient's medical records prior to producing the record to Tommy Taylor.

14. Novant believes it would take at least 14,000 hours to respond to Tommy Taylor's Request for Production #7 and that it would cost Novant approximately \$350,000 to complete this request.

15. As to Tommy Taylor's Request for Production #6, Novant would be required to review in excess of 40,000 Medicare or Medicaid patient records and evaluate each charge to that patient.

16. Novant believes it would take approximately 25,000 hours to respond to Tommy Taylor's Request for Production #6 and that it would cost Novant \$625,000 to complete this request.

17. Novant is not capable of producing the information requested by Tommy Taylor's Requests for Production #6 and #7 without expending at least 39,000 working hours and spending in excess of \$975,000.

18. In conjunction with responding to Requests for Production #6 and #7, the formulation of a response to Interrogatory #1 would cause Novant to spend in excess of \$1,000,000 to respond to Tommy Taylor's discovery requests.

FURTHER AFFIANT SAYETH NAUGHT.

*Wendi Cardwell Bennett*  
Wendi Cardwell Bennett  
Director Patient Finance  
Novant Health, Inc.

SWORN and subscribed to before me  
this 31 day of August, 2018.

Christie M. Norris (L.S.)  
Notary Public for State of North Carolina  
Notary Name (printed): Christie M. Norris  
My Commission Expires: 9-18-19

CHRISTIE M. NORRIS  
NOTARY PUBLIC  
Mecklenburg County  
North Carolina  
My Commission Expires September 18, 2019

# **Exhibit C**

(Mr. Taylor's Rule 37, SCRCF Motion  
for Sanctions dated September 17, 2018)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	Civil Action No.: 2017-CP-32-02813
Tommy Taylor,	)	
	)	
Plaintiff,	)	<b>MOTION FOR SANCTIONS</b>
	)	
vs.	)	
	)	
Novant Health, Inc.,	)	
	)	
Defendant.	)	

You will please take notice that Plaintiff moves for an order pursuant to Rule 37, SCRPC, sanctioning Defendant for violating the Court’s Order on Plaintiff’s Motion to Compel. On July 18, 2018, the Court granted Plaintiff’s Motion, instructing Defendant to produce interrogatory responses and requested documents to Plaintiff’s counsel within forty-five (45) days of July 18, 2018. See Ex. 1, Order of July 18, 2018. The Court limited the scope of the subject discovery requests to Defendant’s medical facilities located in North Carolina for a period covering 5 years from the date Plaintiff’s discovery was served. The Court further instructed that names of patients should be redacted.

Plaintiff’s counsel consented to Defendant’s request for an extension of time to respond to Interrogatories 6, 19 and 23. Plaintiff’s counsel further consented to Defendant’s requests for an extension of time to respond to Requests for Production 20, 21, 37, 42 and 45. However, Defendants have violated the Court’s Order by refusing to properly respond to Interrogatory No. 11 and Request for Production No. 47.

Rule 37 of the South Carolina Rules of Civil Procedure provides sanctions for a party’s failure to comply with a Court Order. Defendant has willfully violated the Court’s Order of July 18, 2018. Plaintiff requests this Honorable Court to impose sanctions, in its discretion. Plaintiff further requests attorneys’ fees and costs necessitated by the filing of this motion. Pursuant to

Rule 11, SCRCP, counsel attempted to resolve these matters prior to filing this Motion.  
However, counsel has been unsuccessful.

MIKE KELLY LAW GROUP, LLC

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Columbia, South Carolina  
September 17, 2018

# **Exhibit D**

(Order Regarding Novant's Rule 60 Motion for Relief from an Order and Mr. Taylor's Motion for Sanctions dated February 22, 2019)

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY LEXINGTON ) 2017-CP-32-02813

Tommy Taylor, )  
 )  
 ) Plaintiff, )  
 vs. )  
 ) Order Regarding Defendant's Rule 60 Motion for  
 ) Relief from an Order and Plaintiff's Motion for  
Novant Health, Inc. ) Sanctions  
 )  
 ) Defendant. )  
 )  
 )

Hearing Date: December 19<sup>th</sup>, 2018, @ 2:00 p.m.  
Hearing Judge: Grace Gilchrist Knie  
Counsel for Plaintiff/s: Bradley D. Hewett  
Counsel for Defendant/s: Katon E. Dawson, Jr., David D. Summer, Jr.,  
& Richard J. Rivera  
Court Reporter: Steven E. LeBlanc

This matter was before the court on Wednesday, December 19<sup>th</sup>, 2018, at 2:00 p.m., in Lexington County, SC, the Eleventh Judicial Circuit, upon (1) Defendant's Motion to Compel filed on August 27<sup>th</sup>, 2018; (2) Defendant's Rule 60 Motion for Relief from an Order, filed on September 4<sup>th</sup>, 2018; (3) Plaintiff's Motion for Sanctions, filed on September 17<sup>th</sup>, 2018; and (4) Plaintiff's Motion for Class Certification, filed on September 18<sup>th</sup>, 2018. Attorney Bradley D. Hewett was present representing the interests of Plaintiff. Defendant was represented by Attorneys Katon E. Dawson, Jr., David B. Summer, Jr., and Richard J. Rivera. Steven E. LeBlanc was the court reporter.

**PROCEDURAL BACKGROUND:**

Plaintiff filed the Summons and Complaint with the Clerk of Court, Court of Common Pleas on August 4<sup>th</sup>, 2017, commencing this action. Defendant filed its Answer on October 13<sup>th</sup>, 2017. Defendant filed its Motion to Compel on August 27<sup>th</sup>, 2018. Defendant filed its Rule 60 Motion for Relief from an Order and Affidavit of Wendi Bennett on September 4<sup>th</sup>, 2018. Plaintiff filed its Motion for Sanctions on September 17<sup>th</sup>, 2018. This motion and Defendant's Rule 60 Motion relate to a prior proceeding in which Plaintiff filed a Motion to Compel Responses to Interrogatories and Requests for Production on July 2<sup>nd</sup>, 2018. An Order to Compel and Protective Order was issued by the Honorable Alex Kinlaw, Jr., on July 18<sup>th</sup>, 2018. These two Motions relate to Judge Kinlaw's Order of July 18, 2018.

Plaintiff filed its Motion for Class Certification and Memorandum in Support of Motion for Class Certification, Appointment of Lead Class Counsel and Class Representatives on September 18<sup>th</sup>, 2018.

Plaintiff filed a Memorandum in Opposition of Defendant's Rule 60 Motion for Relief on December 17<sup>th</sup>, 2018. Defendant filed a Memorandum in Opposition to Plaintiff's Motion for Class Certification on December 18<sup>th</sup>, 2018. Plaintiff filed its Memorandum in Support of Motion for Sanctions on December 18<sup>th</sup>, 2018.

At the hearing, the parties resolved Defendant's Motion to Compel and submitted a Proposed Consent Order to the Court. Plaintiff also requested that the Court continue its Motion for Class Certification until all pending discovery disputes were resolved. The Motion for continuance was granted by the Court on the issue of Class Certification.

**LAW:**

The rights of discovery provided by the rules of procedure give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Samples v. Mitchell*, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987)). “The entire thrust of the discovery rules involve full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* at 113, 495 S.E. 2d at 217 (citing *State Highway Dep’t v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)).

Rule 37 of the South Carolina Rules of Civil Procedure provides sanctions for a party’s failure to comply with a Court Order. The selection of a sanction for discovery violations is within the trial court’s discretion, but the sanction should be aimed at the specific conduct of the party sanctioned. *Griffin Grading & Clearing, Inc. v. Tire Service Equip. Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). In determining the appropriateness of a sanction, the court should consider such factors as: (1) the precise nature of the discovery and the discovery posture of the case; (2) willfulness; and (3) the degree of prejudice. *Id.* at 199, 511 S.E. 2d at 719. Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery. *Samples*, 329 S.C. at 114, 495 S.E.2d at 217. Further, a failure to exercise discretion amounts to an abuse of discretion and is an error of law. *Id.* at 112, 495 S.E. 2d at 216. Under Rule 37(b)(2)(C), SCRCF, when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action. *McNair v. Fairfield County*, 379 S.C. 462, 465, 665 S.E.2d 830, 832 (Ct. App. 2008) (citing *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003)).

**ARGUMENTS OF COUNSEL:**

Plaintiff is seeking sanctions and forthwith compliance with Judge Kinlaw's July 18<sup>th</sup>, 2018 Order due to Defendant's refusal to produce information responsive to Interrogatory No. 11 and Request for Production No. 47. Plaintiff contends that Defendant has refused to provide any responsive information which Plaintiff contends is in direct contradiction of discovery rules and a court order. Plaintiff also contends that Defendant continues to improperly withhold the properly requested information. Plaintiff further contends the time has passed for Defendant to seek a stay, have the court revise, or seek relief from the July 18, 2018 Order, which are the proper ways to challenge an unpalatable result. Plaintiff argues Defendant has intentionally chosen to ignore, and continues to disregard, the court's July 18, 2018 Order instructing Defendant to provide the interrogatory response and requested documents to Plaintiff's counsel within forty-five (45) days of July 18, 2018. On September 4, 2018, Defendant provided supplemental responses to Interrogatory 11 and Request for Production 47, only to continue in its objection to providing the ordered information.

Plaintiff therefore argues that the only issue before this Court is the appropriate sanction to: (1) compel Defendant's immediate compliance with the July 18, 2018 Order by providing the responsive information to Plaintiff's counsel without further delay and (2) deter such defiant behavior in the future.

It is Defendant's position that Defendant is entitled to relief from Judge Kinlaw's prior order granting Plaintiff's Motion to Compel on the grounds that it is no longer equitable to enforce the order due to the undue burden the order places on Defendant to formulate a response to Plaintiff's discovery requests. In support of the Rule 60 Motion for Relief, Defendant filed an

affidavit from Ms. Wendi Bennett. Ms. Bennett's affidavit outlines the extreme burden that Defendant discovered it will incur if required to fully respond to Plaintiff's discovery.

**CONCLUSION:**

The Court acknowledges and appreciates the amount of research and preparation for the hearing by counsel, as well as, the professionalism of counsel in their presentations to the Court. After consideration of the record, memoranda, arguments of counsel, and the applicable law, the Court finds as follows:

That Defendant's Motion for Relief from an Order made pursuant to Rule 60 of the SCRCP filed with the Court on September 4th, 2018, should be and is therefore denied; and further

That all provisions of the Order issued by Judge Alex Kinlaw, Jr., on July 18<sup>th</sup>, 2018, shall remain in full force and effect; and further

That Defendant shall forthwith, within 10 days of the date of the issuance of this Order, comply with the terms and conditions of Judge Kinlaw's July 18<sup>th</sup>, 2018 Order; and further

That Plaintiff's Motion for Sanctions, made pursuant to Rule 37 of the SCRCP filed with the Court on September 17<sup>th</sup>, 2018, should be and is therefore granted. Plaintiff shall be awarded reasonable attorney's fees and costs associated with and incurred by counsel in the preparation for, and appearance at, the hearing held on or about June 26th, 2018, regarding the Plaintiff's Motion to Compel, and in the preparation for, and appearance at, the hearing held on December 19<sup>th</sup>, 2018, regarding the Motion for Sanctions. The issue of the amount attorney's fees and costs shall be heard by the trial judge for this action prior to the commencement of the trial, and shall be awarded as deemed appropriate by the trial judge in this matter.

**IT IS SO ORDERED.**

/s/Grace Gilchrist Knie  
Honorable Grace Gilchrist Knie  
Presiding Judge, Eleventh Judicial Circuit

February 22, 2019  
Spartanburg, South Carolina



Lexington Common Pleas

**Case Caption:** Tommy Taylor VS Novant Health Inc  
**Case Number:** 2017CP3202813  
**Type:** Order/Sanctions

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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# **Exhibit E**

(Novant's Motion for Reconsideration  
dated March 4, 2019)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No.: 2017-CP-32-2813
	)	
Tommy Taylor,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>DEFENDANT NOVANT HEALTH,</b>
	)	<b>INC.'S MOTION TO RECONSIDER</b>
Novant Health Inc.,	)	
	)	
Defendant.	)	
	)	

Defendant Novant Health, Inc. ("Novant"), by and through undersigned counsel, hereby moves the Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an Order altering, amending, or vacating the Court's Order denying the Rule 60 Motion for Relief and granting Plaintiff Tommy Taylor's ("Plaintiff") Motion for Sanctions entered on February 22, 2019.

Regarding the Court's denial of Novant's Rule 60 Motion for Relief, Novant requests the Court alter, amend, or vacate the order because:

- 1. The Court's denial of Novant's Rule 60 Motion for Relief requires Novant to conduct discovery that is beyond oppressive and unduly burdensome.**

Novant requests the Court alter, amend, or vacate its order as it relates to its grant of Plaintiff's Motion for Sanctions, made pursuant to Rule 37 of the SCRCF, on the following grounds:

- 1. The Court improperly sanctioned Novant for failure to produce documents because the Court's prior order permitted Novant to restate objections instead of producing the objectionable information; and**
- 2. The Court's order fails to address the validity of the objections Novant asserted in compliance the Court's prior order.**

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The discovery dispute that Novant is requesting the Court reconsider is about whether the Plaintiff—who filed a class action without any knowledge of whether there were any members of his alleged class—is entitled to compel Novant to spend more than one million dollars (\$1,000,000) and 39,000 working hours (in 10 days) to search through confidential medical records in an effort to determine whether Plaintiff’s alleged class even exists.

On August 4, 2017, Plaintiff filed his Complaint as a purported class action against Novant. Plaintiff’s alleges a class consists of the following individuals:

All eligible Medicare recipients who sought medical treatment at any of Novant’s medical facilities and:

- a. were required to pre-pay for medical treatment covered by Medicare;
- b. to pay out-of-pocket for medical treatment(s) covered by Medicare; or
- c. who were wrongly informed by Defendant that medically necessary treatment(s) was not covered by Medicare.

During Plaintiff’s deposition, he admitted to having no knowledge of any individual who could be a member of the class he seeks to represent:

Q. Do you have any personal knowledge of any individual who was a patient at a Novant facility prepaying for care in which they believe was covered by Medicare?

A. I'm not aware of any. I don't know.

(Plaintiff Tommy Taylor’s August 22, 2018 Deposition 185:20-24; Exhibit A).

On December 21, 2017, Plaintiff started his fishing expedition and served Novant with his first set of requests for production and his first set of interrogatories.

On February 1, 2018, Novant served Plaintiff with its first set of interrogatories and first set of requests for production.

On March 9, 2018, Novant provided written responses to Plaintiff's discovery requests and filed a Motion for Protection from Discovery on the grounds that Plaintiff's discovery requests were nothing more than a fishing expedition.

On March 27, 2018, Plaintiff filed a Motion to Compel Novant to produce certain documents and respond to certain interrogatories.

A hearing was held on Plaintiff's Motion to Compel and Novant's Motion for Protection from Discovery on June 26, 2018.

Following the hearing, the Court issued separate orders denying Novant's Motion for Protection from Discovery and granting Plaintiff's Motion to Compel in part and denying the Motion to Compel in part.

On July 6, 2018—*after the hearing on Plaintiff's Motion to Compel and Novant's Motion for Protective Order*—Plaintiff responded to Novant's discovery requests for the first time. Plaintiff's responses to Novant's interrogatories further demonstrate that Plaintiff has no knowledge as to whether any other person in his alleged class actually exists:

12. Please identify all written communications between You and any citizen and/or resident who participated in the same malignant hypertension clinical trial sponsored by CVRx who were allegedly informed and required by this Defendant to pre-pay or pay out-of-pocket for the maintenance, replacement, and/or removal of their device following the failure of CVRx to secure FDA approval.

Plaintiff's Response: **None.**

(Plaintiff's Response to Defendant's Interrogatory No. 12, **Exhibit B**).

On September 4, 2018, Novant produced additional documents and supplemented its discovery responses in compliance with the Court's order granting the Motion to Compel in part. That same day, Novant filed a Rule 60 Motion for Relief from an Order. Novant's Rule 60 Motion for Relief requested relief from the Court's prior order granting Plaintiff's Motion to Compel on the grounds that it is no longer equitable to enforce the order due to the undue burden

it places on Novant to formulate a response to Plaintiff's discovery requests and Plaintiff has absolutely no evidence that his alleged class exists.

In support of the Rule 60 Motion for Relief, Novant filed an affidavit from Ms. Wendi Bennett. A copy of Ms. Bennett's affidavit is attached hereto as Exhibit C. Ms. Bennett's affidavit outlines the extreme burden that Novant discovered it will incur if required to comply with the Court's order. Specifically, Ms. Bennett's affidavit stated that Novant would be required to spend in excess of \$1,000,000 and 39,000 working hours to comply with the order. In addition in support of the Rule 60 Motion for Relief, Novant submitted portions of Plaintiff's deposition transcript and Plaintiff's discovery responses which were not available to Novant or the Court at the time of the hearing on the Motion to Compel.

On September 14, 2018, Novant again supplemented its discovery responses and produced additional documents. In addition to restating its objections—as directed by the Court—Novant produced its Billing and Collections Guidelines, Investigation Policies, Reporting of Wrongdoing Policy, Corporate Compliance Plans, Coverage Basics Guidelines, Annual Reports from 2010 to 2017, tax returns and Code of Ethics.

On September 18, 2018, Plaintiff filed a Motion for Class Certification relying entirely on a false interpretation of Ms. Bennett's affidavit. It cannot be ignored that Plaintiff filed a class action complaint without any actual knowledge of a class.

On December 19, 2018, the Court held arguments on Plaintiff's Motion for Sanctions and Novant's Motion for Relief pursuant to Rule 60. At the close of arguments the Court took both motions under advisement. The Court was also scheduled to hear Plaintiff's Motion for Class Certification; however, Plaintiff requested the Court continue the matter to a later date. The Court granted Plaintiff's request and the hearing on the Motion for Class Certification was continued to a later term of court.

On February 15, 2019, Plaintiff withdrew his Motion for Class Certification. As of the filing of this motion, Plaintiff—who filed his class action complaint in August 2017—has no pending motion for class certification in a matter that is on the trial roster in Lexington County beginning the week of March 18, 2019. Plaintiff has no motion for class certification and no knowledge of an actual class, yet Plaintiff demands that Novant conduct a million dollar fishing expedition on his behalf.

On February 22, 2019, the Court issued an order denying Novant’s Rule 60 Motion and granting Plaintiff’s Motion for Sanctions.

Novant moves the Court to alter, amend, or vacate its order denying Novant’s Rule 60 Motion and granting Plaintiff’s Motion for Sanctions.

#### **STANDARD OF REVIEW**

It is proper for the Court to view a Rule 59(e) motion not only as a vehicle to “‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

#### **ARGUMENT**

##### **I. The Court’s order requires Novant to conduct discovery that is beyond oppressive and unduly burdensome.**

Novant respectfully requests the Court reconsider its denial of Novant’s Rule 60 Motion for Relief on the grounds that the Court’s Order requires Novant to spend more than one million dollars (\$1,000,000) and 39,000 working hours (in 10 days) to search through confidential medical records in an effort to determine whether Plaintiff’s alleged class even exists. The requirements of the Court’s Order are impractical and timely compliance appears to be impossible, in light of the affidavit of Wendy Bennett (Exhibit C). Additionally, since the hearing on the Motion to Compel, new information obtained through Plaintiff’s discovery responses and deposition testimony demonstrates that Plaintiff has no evidence to support his

class claims and, therefore, Plaintiff's discovery requests are nothing more than a fishing expedition.

Rule 60 of the South Carolina Rules of Civil Procedure permits the Court to consider the equity of a prior order and set aside a prior order if it is no longer equitable. *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003) (citing Rule 60(b)(5), SCRCPP).

The Court's order granting Plaintiff's Motion to Compel is not equitable and Rule 60 permits the Court to relieve Novant from this inequitable order. There is no evidence that the Court's prior order is equitable, and it would be an abuse of discretion for the Court to find otherwise.

Ms. Bennett's affidavit provides the following details related to the extreme circumstances that the Court's inequitable order imputes upon Novant:

1. The Court's Order requires Novant to review 2,143,560 patient records to determine whether any of those individuals were incorrectly charged. [W. Bennett Affidavit ¶ 7].
2. The Court's Order requires Novant to review the approximately 40,000 files of patients who either paid before service was rendered or paid on the day services were rendered. This search would take approximately 25,000 working hours and cost Novant approximately \$625,000. [W. Bennett Affidavit ¶ 16].
3. The Court's Order requires Novant to physically review 13,832 patient files to (1) determine whether the patient paid before or after the services were rendered and (2) evaluate the basis for issuing a refund to the patient. [W. Bennett Affidavit ¶ 13]. This review will cost Novant approximately \$350,000 and take approximately 14,000 working hours. [W. Bennett Affidavit ¶ 14].

Ms. Bennett's affidavit demonstrates that a complete response to Plaintiff's discovery requests would cost Novant in excess of \$1 million dollars. Novant obtained this information

after investigating Plaintiff's requests for 139 working hours. *This information was not available to Novant at the time of the hearing on Plaintiff's Motion to Compel, because it would have been impractical and inequitable for Novant to spend 139 working hours to comply with discovery requests that are patently objectionable.* Thus, it was only after the hearing on the Motion to Compel that Novant was made aware of the extent of the burden the Court's Order placed upon it. Prior to the hearing on the Motion to Compel, Plaintiff had failed to respond to Novant's discovery requests and Novant was unaware that Plaintiff had no information to support his alleged class. Prior to the hearing on the Motion to Compel, Novant had not taken Plaintiff's deposition and learned that Plaintiff has no knowledge of any members of his alleged class. This new information, necessitated Novant filing its Rule 60 Motion for Relief.

The Court's order denying Novant's Rule 60 Motion for Relief makes no finding as to the newly available information and the inequity of the cost to Novant and Plaintiff's request for information that he has admitted may not exist. Novant respectfully requests the Court reconsider its denial of Novant's Rule 60 Motion for Relief in light of the information that was made available to Novant for the first time following the hearing on the Motion to Compel.

In reconsidering Novant's Rule 60 Motion for Relief, Novant requests the Court consider the combination of the cost of the review of the patient records and the fact that Plaintiff is not aware of any responsive information that may be found in the review of the patient records. Consideration of these facts requires the Court to use its discretion and find that Novant's compliance with the Order Granting the Motion to Compel is not equitable.

To deny Novant any relief and require it to conduct a million dollar fishing expedition would be an abuse of the Court's discretion. Moreover, the Court's Order requires Novant to conduct this million dollar fishing expedition in ten (10) days. *See Biltrite Bldg. Co. V. Adams*, 193 S.C. 142, 7 S.E.2d 857, 861 (1940) ("It must be assumed that the exercise of the discretion

lodged in the circuit judge will prevent an abuse of this privilege in an attempt to embark upon a ‘fishing excursion’ or to pry into the private concerns of the adversary.”).

These exceptional circumstances necessitate reconsideration by the Court. Accordingly, Novant respectfully requests the Court reconsider its order and grant Novant’s Rule 60 Motion for Relief.

**II. The Court improperly sanctioned Novant for failure to produce documents because the Court’s prior order permitted Novant to restate objections instead of producing the objectionable information.**

The Court’s Order incorrectly construed Novant’s opposition to Plaintiff’s Motion for Sanctions. The Court’s Order states that it Novant’s “position that it is entitled to relief from Judge Kinlaw’s prior order granting Plaintiff’s Motion to Compel” and makes no reference to consideration of Novant’s opposition to Plaintiff’s Motion for Sanctions based upon the language in the Order Granting the Motion to Compel providing Novant with the ability to continue to object to Plaintiff’s discovery requests.

Novant respectfully requests the Court reconsider its decision to sanction Novant on the grounds that Novant did not violate the Court’s Order when it restated its objections to Plaintiff’s discovery requests with the specificity required by the South Carolina Rules of Civil Procedure.<sup>1</sup>

The Court’s Order granting the Motion to Compel instructed Novant as follows:

4. In addition, Defendant is ordered to supplement its responses to the entirety of Plaintiff’s discovery to (1) update its response to each Interrogatory and Request for Production at issue; (2) whether any objections remain and, if so (3) restate each objection with the specificity required by the Rules; and (4) identify which documents are responsive to which Request(s).

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<sup>1</sup> The Court’s Order also incorrectly states that Novant only restated its objections to Plaintiff’s discovery requests. In compliance with the Court’s Order, Novant also produced its Billing and Collections Guidelines, Investigation Policies, Reporting of Wrongdoing Policy, Corporate Compliance Plans, Coverage Basics Guidelines, Annual Reports from 2010 to 2017, tax returns and Code of Ethics.

Paragraph 4 permits Novant to state whether an objection remains and restate any remaining objection with specificity. Thus, Novant restated its objections to Plaintiff's Request for Production #47 and Interrogatory #11—in compliance with the Court's direction to restate its objections. Specifically, Novant responded to Plaintiff's Interrogatory #11 as follows:

11. Does Defendant have a contract with Medicare, CMS, Medicaid, and/or any Medicare administration contractor? Provide the date each contract was executed for the past 10 years and a copy of all contracts executed within the past 10 years. Responses shall include all contracts with:
  - (a) Aetna Medicare HMO/PPO;
  - (b) Blue Medicare;
  - (c) Cigna HealthSpring;
  - (d) Medicare Advantage;
  - (e) Coventry Advantra PPO;
  - (f) Humana Medicare;
  - (g) Advantage;
  - (h) PACE of the Southern Piedmont;
  - (i) UHC Medicare Complete (formerly known as AARP Medicare Complete Evercare Secure Horizons)

**ANSWER:** Novant objects to the extent that this Interrogatory seeks documents containing information that is confidential in nature. Novant further objects because this Interrogatory seeks information neither relevant to this action, nor reasonably calculated to lead to the discovery of admissible evidence in this case. Plaintiff's complaint does not list any allegations concerning any of the entities in Interrogatories No. 11 a-i. Presently, Plaintiff has established no reasonable basis for obtaining confidential contractual agreements that do not relate to his individual claims. Plaintiff has not yet moved to certify a class, and Plaintiff does not represent any party other than himself. Therefore, the information requested in this Interrogatory is irrelevant and will not lead to the discovery of admissible evidence.

Similarly, Novant responded to Plaintiff's Request for Production # 47 as set forth below:

47. Provide a copy of all contracts, participation agreements, addendums, and supporting schedules between Defendant and the following that were executed and effective at any time since January 1, 2007:
  - a. Aetna Medicare HMO/PPO;
  - b. Blue Medicare;
  - c. Cigna HealthSpring;
  - d. Medicare Advantage;
  - e. Coventry Advantra PPO;

- f. Humana Medicare;
- g. Advantage;
- h. PACE of the Southern Piedmont;
- i. UHC Medicare Complete (formerly known as AARP Medicare Complete Evercare Secure Horizons);
- j. Medicare/CMS/Medicaid.

**RESPONSE:** Novant objects to this Request because this Request seeks information neither relevant to this action, nor reasonably calculated to lead to the discovery of admissible evidence in this case. Plaintiff is covered by a Palmetto GBA plan and, therefore, Novant's agreements with other Medicare administration contractors are not relevant to Plaintiff's individual claims. Plaintiff has not moved to certify a class and Plaintiff does not presently represent any other individuals; therefore, documents related to health insurance plans that do not relate to Plaintiff are not relevant to this action at this time.

Novant's responses to Interrogatory #11 and Request for Production #47 comply with the Order. In compliance with the Order, Novant updated its response to Interrogatory # 11 and Request for Production # 47. In compliance with the Order, Novant stated that its objections remained. In compliance with the Order, Novant stated its objection with the specificity required by the South Carolina Rules of Civil Procedure. If the Order did not intend for Novant to maintain the right to continue to object to the discovery requests seeking the production of confidential documents that are not relevant to Plaintiff's claims, then the Order would not have required Novant to (1) update its responses, (2) restate whether any objections remain, and (3) state any remaining objections with specificity. To hold otherwise renders Paragraph 4 of the Court's Order meaningless.

Novant requests the Court reconsider its ruling on Plaintiff's Motion for Sanctions and consider Novant's argument that the Court's prior Order permits Novant to continue to state its objections. Specifically, the Court's Order makes no finding as to the issue of whether Paragraph 4 subsumes the prior paragraphs and permits Novant to continue to object to Plaintiff's discovery requests. If the Court finds that Novant is not entitled to assert its objections and Paragraph 4 of the Court's prior order is meaningless, then Novant requests the

Court rule on the meaning of Paragraph 4 and provide Novant with the Court's interpretation of this apparently ambiguous paragraph. *See generally Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499-500, 649 S.E.2d 494, 502 (Ct. App. 2007) ("Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage." (citation omitted)).

Any sanction imposed by the Court should be aimed at the specific misconduct of the party sanctioned. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citation omitted). A sanction that is administered pursuant to Rule 37 is "harsh medicine that should not be administered lightly." *See generally Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The Court's Order granting Plaintiff's Motion for Sanctions does not provide a ruling as it relates to Novant's arguments related to the ambiguities in the Order Granting the Motion to Compel and Novant's ability to continue to object to Plaintiff's discovery requests. Novant's objections complied with the Court's Order, therefore, Novant requests the Court reconsider its ruling and deny Plaintiff's Motion for Sanctions.

**III. The Court's order does not address the validity of the objections Novant asserted in compliance the Court's prior order.**

The Court's order granting Plaintiff's Motion for Sanctions found that Novant failed to comply with the Court's Order granting the Motion to Compel. The Court's Order granting the Motion to Compel, required Novant to (1) update its responses, (2) restate whether any objections remain, and (3) state any remaining objections with specificity.

Novant respectfully requests the Court deny Plaintiff's Motion for Sanctions pursuant to Rule 37 based on the valid objections Novant raised in its responses to Plaintiff's Interrogatory # 11 and Request for Production #47. Alternatively, Novant respectfully requests the Court provide an explanation as to how Novant's objections failed to comply with the express language of the Order granting the Motion to Compel. Additionally, Novant requests the Court reconsider the objections Novant asserted in compliance with the Court's order granting the Motion to Compel and rule on the validity of these objections.

In reviewing Novant's objections, Novant requests that the Court consider the holding in *Oncology & Hematology Associates of South Carolina, LLC v. South Carolina Department of Health & Environmental Control*, 387 S.C. 380, 384-85, 692 S.E.2d 920, 923 (2010). The court in *Oncology & Hematology Associates of South Carolina, LLC* addressed similar discovery requests and found such discovery requests were improper and an abuse of the discovery process. Specifically, our Supreme Court addressed whether a health care provider should be required to produce all agreements and contracts between the health care provider and any other individual or entity related to the provision of certain health care services. 387 S.C. at 384-85, 692 S.E.2d at 923. Initially the health care provider refused to produce the requested agreements; however, the Administrative Law Court ("ALC") issued an order compelling the health care provider to respond to the discovery requests. On appeal, the Supreme Court reversed the ALC's order granting the motion to compel on the grounds that the requested agreements were not relevant to the resolution of the case. *Oncology & Hematology Assocs. of S.C., LLC*, 387 S.C. at 389, 692 S.E.2d at 925. In reaching this conclusion, the Court recognized that requests for confidential documents that do not aid in the resolution of the case were "abusive and beyond the pale," and this "scorched-earth approach" to discovery was an abuse of the discovery process. *Id.* 387 S.C. at 389, 692 S.E.2d at 925.

Similar to the Court in *Oncology & Hematology Associates of South Carolina*, this Court should find that Novant's objections to Plaintiff's request for confidential documents that have no bearing on any of the claims presently at issue in this case is an abuse of the discovery process. Plaintiff's Medicare Plan was administered by Palmetto GBA. Plaintiff's Requests for Production #47 and Interrogatory #11 do not request the production of Novant's confidential agreement with Palmetto GBA. Rather, Plaintiff seeks Novant's confidential contracts with Medicare administrators that have no relationship to his individual claims. Plaintiff has produced no evidence that Novant's confidential agreements with the Medicare Administrators listed in his Request for Production #47 and Interrogatory #11 are relevant to this case. The confidential contracts that Plaintiff is requesting Novant produce will not aid in the resolution of this case. Plaintiff brought claims for negligence, negligence per se, fraud, and negligent misrepresentation. Plaintiff did not bring an action for breach of any of the contracts that he is requesting be produced by Novant. None of Plaintiff's claims have any rational relationship to the documents he is requesting from Novant in the contested discovery requests. Plaintiff has provided no argument to support his request for these contracts. Therefore, Novant's objection to the production of these confidential contracts on the grounds that the requested contracts are neither relevant to this action, nor reasonably calculated to lead to the discovery of admissible evidence in this case is valid and should be enforced by the Court.

Accordingly, the Court should reconsider its grant of Plaintiff's Motion for Sanctions on the grounds that Novant complied with the Order and asserted valid and enforceable objections to Plaintiff's request for the production of confidential contracts that have no rational relationship to Plaintiff's claims.

**CONCLUSION**

Based on the foregoing, Novant respectfully requests the Court amend its order and grant Novant's Rule 60 Motion for Relief. Further, Novant respectfully requests the Court deny Plaintiff's Motion for Sanctions, made pursuant to Rule 37.

s/Katon E. Dawson, Jr.

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*Attorneys for Defendant Novant Health, Inc.*

Columbia, South Carolina  
March 4, 2019

1 STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON  
2 COUNTY OF LEXINGTON ) PLEAS  
3 Tommy Taylor, )  
4 Plaintiff, )  
5 v. ) Case No.:  
6 Novant Health, Inc., ) 2017-CP-32-2813  
7 Defendant. )  
8  
9  
10  
11  
12

13 DEPOSITION OF: TOMMY TAYLOR  
14 DATE: August 21, 2018  
15 TIME: 10:01 a.m.  
16 LOCATION: 500 Taylor Street, Suite 400  
Columbia, SC  
17  
18 TAKEN BY: Counsel for the Defendant  
19 REPORTED BY: SHANNON EUBANKS, Court Reporter

20  
21 A. WILLIAMS ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC  
(843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC  
(803) 731-5224 (864) 234-7030 (704) 573-3919  
25



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO  
scheduledepo.com

1 Q. Okay. Do you know if she was still --  
2 if she still had the device in at the time when you  
3 got the letter notifying you of this transition to  
4 HDE status?

5 A. I did not know that, no.

6 Q. Okay.

7 A. I wasn't in direct contact with her,  
8 other than, she was concerned about me and was  
9 sending me some messages through Facebook, but I  
10 was never on the phone or never talked with her.

11 Q. I take it, you don't know whether or  
12 not --

13 A. I don't know.

14 Q. Let me just ask one more question. I  
15 think I know, but I want to make sure I ask it.

16 You don't know whether or not the  
17 device had already been explanted at the time in  
18 which you learned of this transition to HDE status?

19 A. I don't know.

20 Q. Do you have any personal knowledge of  
21 any individual who was a patient at a Novant  
22 facility prepaying for care in which they believe  
23 was covered by Medicare?

24 A. I'm not aware of any. I don't know.

25 Q. You've not spoken to any individual?

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
Tommy Taylor, )  
Plaintiff, )  
vs. )  
Novant Health, Inc., )  
Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2017-CP-32-2813

**PLAINTIFF'S RESPONSES TO  
DEFENDANT'S FIRST SET OF  
INTERROGATORIES**

TO: KATON E. DAWSON, JR., ESQUIRE, ATTORNEY FOR DEFENDANT:

**GENERAL OBJECTIONS AND QUALIFICATIONS**

This responding party has not fully completed his investigation of the facts relating to this case, discovery and preparation for trial. All the responses contained herein are based only upon such information and documents which are presently available to and specifically know to this responding party and disclose only those contentions which presently occur to such responding party. It is anticipated that further discovery, independent investigation, legal research, and analysis will supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein are set forth.

The following responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts which this responding party may later recall. Responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed and contentions are made. The responses contained herein are made in good faith effort to supply as much factual information and as much specification of legal contentions as are presently known, but in no way should be to the prejudice of Plaintiff in relation to further discovery, research or

communication(s).

**RESPONSE:**

None.

12. Please identify all written communications between You and any citizen and/or resident who participated in the same malignant hypertension clinical trial sponsored by CVRx who were allegedly informed and required by this Defendant to pre-pay or pay out-of-pocket for the maintenance, replacement, and/or removal of their device following the failure of CVRx to secure FDA approval.

**RESPONSE:**

None.

13. Please state with specificity the reasons that You believe that the proposed class is so numerous that joinder of all members is impracticable.

**RESPONSE:**

Named Plaintiff's factual allegations and legal theories of relief are contained in the Complaint. Defendant has refused to provide information on Medicare recipients that it has forced to prepay for medical care, denied medical treatment, or improperly required to pay out of pocket for expenses covered by Medicare. Named Plaintiff will supplement this response once Defendant properly complies with discovery requests. Defendant provides medical care to thousands of Medicare recipients, making the proposed class so numerous that joinder of all members is impracticable.

Plaintiff reserves the right to supplement or modify this response as discovery continues and Defendant has been ordered to supplement its discovery responses.

14. Please state with specificity the reasons that You believe there are questions of law or fact common to the proposed class in this matter.

**RESPONSE:**

Defendant failed to properly code, classify, or otherwise submit claims on behalf of Medicare recipients that resulted in Medicare/CMS, or contractors that provided claims processing services for Medicare/CMS, declining to pay for covered treatment.

**RESPONSE:**

No monies have been refunded, but remain in the Tommy Taylor Medical Fund.

24. Please identify how much, if any, money was pre-paid or paid out-of-pocket by Plaintiff from his own, personal funds (excluding charitable contributions and donations) towards the cost of maintaining, replacing, and/or removing the device from January 2015 to the present.

**RESPONSE:**

Plaintiff prepaid to Defendant over \$105,000.00. These monies were donated for use by Plaintiff and were not Plaintiff's personal funds.

25. Please identify whether Plaintiff has received and/or been eligible to receive Social Security Disability Income payments or Medicare benefits and if so, describe on what basis and for how long Plaintiff has received these benefits.

**RESPONSE:**

Plaintiff has received Medicare benefits since 2012 because of his medical condition.

Plaintiff has received Social Security Disability payments since 2013 because of his medical condition.

Respectfully Submitted,

MIKE KELLY LAW GROUP, LLC

BY: 

Brad D. Hewett  
bhewett@mklawgroup.com  
500 Taylor Street, 4<sup>th</sup> Floor  
Columbia, SC 29201  
803/726-0123 office  
Attorney for Plaintiff

Columbia, South Carolina  
July 10, 2018

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Tommy Taylor,

Plaintiff,

vs.

Novant Health, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

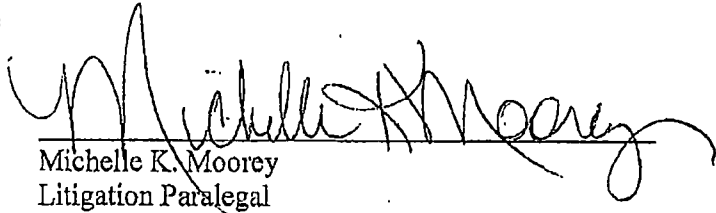
Civil Action No.: 2017-CP-32-2813

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of July, 2018, I caused a true and correct copy of the foregoing **Plaintiff's Responses to Defendant's First Set of Interrogatories** to be served upon the following individuals in the manner indicated below:

Katon E. Dawson, Jr., Esquire  
Parker Poe Adams & Bernstein, LLP  
1221 Main Street, Suite 1100  
Columbia, SC 29201  
Attorney for Defendant

- U.S. Mail (postage prepaid)
- Hand Delivery
- Federal Express
- Facsimile Transmission
- Email Transmission



Michelle K. Moorey  
Litigation Paralegal

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ELECTRONICALLY FILED - 2019 Jan 18 1:23 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3202813

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No.: 2017-CP-32-2813
	)	
Tommy Taylor,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>AFFIDAVIT OF WENDI BENNETT</b>
	)	
Novant Health Inc.,	)	
	)	
Defendant.	)	

I, Wendi Cardwell Bennett, hereby depose and state under penalty of perjury under the laws of the State of South Carolina that the following is true and correct:

1. I am over 18 years of age, have personal knowledge of the facts expressed in this Affidavit and am competent to give the testimony herein.

2. I have been employed by Novant Health, Inc. ("Novant") since 1998 and currently work as the Director of Patient Finance.

3. I have worked with Novant's Information and Technology Department, and the following Novant employees in an effort to comply with the Court's Order granting Tommy Taylor's Motion to Compel:

- (i) Leslie Robinson – Senior Director Charge Integrity
- (ii) Karen Simpson – Manager RCS Applications
- (iii) Dee Stuart – Manager RCS Applications
- (iv) Angie Wilson – Revenue Cycle Business Analyst Lead
- (v) Daniel Pulliam – Business Reporting Analyst Sr.
- (vi) Dave D'Ingillo – Revenue Cycle Process Support Data Manager
- (vii) Vicki Zachary – Revenue Cycle Analyst Lead

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4. In conjunction with the individuals named above, more than One Hundred and Thirty-Nine (139) hours have been spent in an effort to respond to Requests for Production 6 and 7 alone.

5. Although the Court's Order limited Tommy Taylor's Requests for Production 6 and 7 at Novant's medical facilities located in North Carolina for a period of five (5) years from the date Tommy Taylor served his discovery, Novant is unable to respond to the following Requests for Production without incurring substantial additional costs and expending thousands of additional working hours:

6. Produce all electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was improperly charged by Defendant for medical treatment.
7. Produce all electronic or written records within the past 10 years of any Medicare or Medicaid patient (including patients whose claims were processed by any Medicare administration contractor) that was refunded monies by Defendant as a result of being charged and demanded to prepay for medical treatment, equipment, medication, or devices.

6. Additionally, Novant is working to produce a response to the following Interrogatory, but is unable to formulate a response at this time without incurring substantial additional costs and expending thousands of additional working hours:

1. Give the name, telephone number and address of any patient or potential patient of Defendant who was a Medicare or Medicaid recipient and was informed by Defendant that he or she would have to prepay for any medical treatment, medical equipment, or any medical service or good to be provided by Defendant. Include:
  - a. The date of the communication;
  - b. Why the patient was instructed he or she would have to prepay;
  - c. The medical service being provided;

- d. The name, address and telephone number of the employee or agent of Defendant that communicated the information to the patient.

7. As to Tommy Taylor's Request for Production #6, Novant does not have a method of sorting for an "improper" charge in its system. Novant does not believe that it improperly charges any of its patients. Therefore, Novant is not capable of determining whether an individual was "improperly" charged without conducting an individual review of each Medicare or Medicaid patient file for the past five years. Novant treated approximately 2,143,560 Medicare or Medicaid patients in its North Carolina hospitals in the past 5 years. Novant would need to review each of these patient records to respond to Tommy Taylor's Request for Production #6 and Interrogatory #1.

8. Regarding Tommy Taylor's Interrogatory # 1 and Request for Production #7, Novant is not capable of producing a response to this request without an individual examination of thousands of patient records. Tommy Taylor's Request for Production #7 seeks the production of redacted medical records for patients who were properly billed by Novant. Novant does not believe that it is improper for a Medicare or Medicaid patient to prepay for a medical procedure in certain circumstances. Pursuant to Medicare and Medicaid's Rules and Regulations, an individual may prepay for medical treatment for a multitude of reasons. For example, a Medicare patient may prepay for the following:

- (i) Certain experimental procedures;
- (ii) Certain procedures related to experimental devices granted a Humanitarian Device Exception by the FDA;
- (iii) Certain cosmetic surgeries;
- (iv) Certain Elective procedures;
- (v) A repetitive procedure (such as a mammogram) that is performed more than the number of allowable instances;
- (vi) Acupuncture;

- (vii) Treatment that is deemed to not be medically necessary;
- (viii) Hearing aids or related exams; and
- (ix) Routine foot care.

9. After more than 139 hours of investigation, Novant has determined that approximately 40,000 Medicare or Medicaid patients paid for medical treatment before the date medical services were rendered or on the same day services were rendered. The approximately 40,000 patients identified by Novant does not include patients whose claims were processed by Medicare administration contractors. If the search included patients covered by Medicare administration contractors, then the number of patients would be much higher. Additionally, if a patient paid for medical services on the date the service was rendered, but after the performance of the service, then Novant's internal records system identified that patient in this search. Novant does not have the capability of filtering this list to exclude patients who paid for service after it was rendered, but on the same day. Therefore, the 40,000 patients that have been identified by Novant may not have even actually prepaid for service, but rather simply paid on the same day the service was rendered. Without an individual review of each of the 40,000 patient files, Novant is unable to determine whether a patient actually pre-paid for services rendered.

10. As to Tommy Taylor's request for the medical records of Medicare or Medicaid patients who received a refund, Novant properly refunds a patient's prepayment in several circumstances, including but not limited to: (1) instances when a patient has overpaid for a procedure; (2) when Novant becomes aware of other available insurance coverage; (3) when a third-party carrier agrees to pay for the medical services that were rendered; (4) when a service was expected to be provided to a patient, but was ultimately not rendered to the patient; (5) when Novant receives an additional unexpected insurance payment for a service; and (6) when a

patient elects to prepay for a service and have the bill submitted to their insurer after the service is rendered.

11. In an effort to respond to Tommy Taylor's Request for Production #7, Novant first identified approximately 40,000 patients who paid before the date medical services were rendered or on the same day services were rendered.

12. Next, Novant found that approximately 13,832 of the patients who paid before the date medical services were rendered or on the same day services were rendered were refunded money at some point after services were rendered.

13. A proper and accurate response to Tommy Taylor's Request for Production #7 requires at a minimum that Novant physically review each of the 13,832 patient files to determine whether the patient paid before or after the services were rendered and (2) evaluate the basis for issuing a refund to the patient. Once this process is complete, Novant will then need to redact all of the confidential medical information from these patient's medical records prior to producing the record to Tommy Taylor.

14. Novant believes it would take at least 14,000 hours to respond to Tommy Taylor's Request for Production #7 and that it would cost Novant approximately \$350,000 to complete this request.

15. As to Tommy Taylor's Request for Production #6, Novant would be required to review in excess of 40,000 Medicare or Medicaid patient records and evaluate each charge to that patient.

16. Novant believes it would take approximately 25,000 hours to respond to Tommy Taylor's Request for Production #6 and that it would cost Novant \$625,000 to complete this request.

17. Novant is not capable of producing the information requested by Tommy Taylor's Requests for Production #6 and #7 without expending at least 39,000 working hours and spending in excess of \$975,000.

18. In conjunction with responding to Requests for Production #6 and #7, the formulation of a response to Interrogatory #1 would cause Novant to spend in excess of \$1,000,000 to respond to Tommy Taylor's discovery requests.

FURTHER AFFIANT SAYETH NAUGHT.

Wendi Cardwell Bennett  
Wendi Cardwell Bennett  
Director Patient Finance  
Novant Health, Inc.

SWORN and subscribed to before me  
this 31 day of August, 2018.

Christie M. Norris (L.S.)  
Notary Public for State of North Carolina  
Notary Name (printed): Christie M. Norris  
My Commission Expires: 9-18-19

CHRISTIE M. NORRIS  
NOTARY PUBLIC  
Mecklenburg County  
North Carolina  
My Commission Expires September 18, 2019

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY LEXINGTON ) 2017-CP-32-02813

Tommy Taylor, )  
 )  
 ) Plaintiff, )  
 vs. )  
 ) Order Regarding Defendant's Motion for  
 ) Reconsideration  
Novant Health, Inc. )  
 ) Defendant. )  
 )  
 )  
 )

Hearing Judge: Grace Gilchrist Knie  
Counsel for Plaintiff/s: Bradley D. Hewett  
Counsel for Defendant/s: Katon E. Dawson, Jr., David D. Summer, Jr.,  
& Richard J. Rivera

A Rule 59(e) SCRCPP motion to reconsider and to alter or amend the Order issued by the Court on February 22nd, 2019, was filed with the Court on March 4<sup>th</sup>, 2019, on behalf of Defendant, Novant Health, Inc. and was properly served on The Court per Rule 59(g) SCRCPP. Pursuant to Rule 59(f), SCRCPP, the Court, in its discretion, may decide the motion without oral argument.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant's Motion, pursuant to Rule 59, SCRCPP, <sup>1</sup> is DENIED.

<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCPP.

AND IT IS SO ORDERED.

**IT IS SO ORDERED.**

*/s/Grace Gilchrist Knie*  
Honorable Grace Gilchrist Knie  
Judge, Seventh Judicial Circuit

March 21, 2019  
Spartanburg, South Carolina



Lexington Common Pleas

**Case Caption:** Tommy Taylor VS Novant Health Inc  
**Case Number:** 2017CP3202813  
**Type:** Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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