

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Georgetown County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2019-CP-22-00961
Appellate Case No. 2020-001167

Kevin Greene,
as Attorney in Fact for and on behalf of
Eleanor Greene Wragg,

Respondent,

v.

Palmetto Prince George Operating, LLC
d/b/a Prince George Healthcare Center;
Palmetto Health Care, LLC;
Murray Forman, Individually; and
Richard Porter, Individually,

Defendants.

Of whom Palmetto Prince George Operating, LLC
d/b/a Prince George Healthcare Center;
Palmetto Health Care, LLC; and
Richard Porter, Individually, are the

Appellants.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2200961

Kevin Greene et al
PLAINTIFF(S)

Palmetto Prince George Operating Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Defendant Palmetto Health Care, LLC's Motion to Stay filed 3/25/2020 is DENIED.

The Defendant Richard Porter's Motion to Stay Action and Compel Arbitration filed 3/27/2020 is DENIED.

The Defendant Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare's Motion to Stay and Compel Arbitration filed 3/27/2020 is DENIED.

PURSUANT to South Carolina Supreme Court Order 2020-04-22-01(c)(4), these motions were decided without oral arguments and after review of the defendants' motions and plaintiff's memorandum filed 6/15/2020.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2020.

Kevin Greene Attorney In Fact
Matthew Oliver Riddle for Palmetto Prince George Operating Llc, Richard Porter, Palmetto Health Care Llc, Prince George Healthcare Center
Eleanor Greene Wragg

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Kevin Greene , plaintiff, et al VS Palmetto Prince George Operating Llc , defendant, et al
Case Number: 2019CP2200961
Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-06-17 09:26:08 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2200961

Kevin Greene et al
PLAINTIFF(S)

Palmetto Prince George Operating Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The defendants' "Motion to Alter, Amend, and/or Reconsider Order Regarding Defendants' Motion to Compel Arbitration" filed 6/29/2020 is DENIED.

PURSUANT to South Carolina Supreme Court Order 2020-04-22-01(c)(4), the motion is decided without oral arguments and after review of defendants' motion, Memorandum of Defendants Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center and Richard Porter filed 6/16/2020 and 6/29/2020, Memorandum of Defendant Palmetto Health Care, LLC filed 6/16/2020 and 6/29/2020 and Memorandum of Defendant Palmetto Prince George Operation, LLC d/b/a Prince George Healthcare filed (as exhibit) on 6/29/2020.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/16/2020 .

Kevin Greene Attorney In Fact
Matthew Oliver Riddle for Palmetto Prince George Operating Llc, Richard Porter, Palmetto Health Care Llc, Prince George Healthcare Center
Eleanor Greene Wragg

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Kevin Greene , plaintiff, et al VS Palmetto Prince George Operating
Llc , defendant, et al
Case Number: 2019CP2200961
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-07-16 12:50:00 page 3 of 3

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

C/A NO.: 2019-CP-__-____

Kevin Greene, as Attorney in Fact for)
and on behalf of Eleanor Greene Wragg,)

Plaintiff,)

SUMMONS

vs.)

Palmetto Prince George Operating, LLC)
d/b/a Prince George Healthcare Center;)
Palmetto Health Care LLC; Murray Forman,)
Individually; and Richard Porter,)
Individually,)

Defendants.)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on THE DERRICK LAW FIRM, at its office at Post Office Box 28, Conway, South Carolina, 29528, within Thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

DATED this 4th day of October, 2019.

The Derrick Law Firm

s/ S. Taylor Hooven
 Dirk J. Derrick, Esquire (11278)
 S. Taylor Hooven, Esquire (103451)
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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

C/A NO.: 2019-CP-__-____

Kevin Greene, as Attorney in Fact for
and on behalf of Eleanor Greene Wragg,**COMPLAINT**

Plaintiff,

(Jury Trial Requested)

vs.

Palmetto Prince George Operating, LLC
d/b/a Prince George Healthcare Center;
Palmetto Health Care LLC; Murray Forman,
Individually; and Richard Porter,
Individually,

Defendants.

Plaintiff, Kevin Greene, as Attorney in Fact for and on behalf of Eleanor Greene Wragg, by and through counsel undersigned, complaining of the above-named Defendants would respectfully show to this Honorable Court as follows:

1. That Plaintiff is a resident and citizen of Horry County, South Carolina.
2. That Eleanor Greene Wragg is a resident and citizen of Horry County, South Carolina.
3. Upon information and belief, that Defendant Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center is a limited liability company formed under the laws of the State of Delaware with its principal place of business located in Georgetown County, South Carolina, and, at all times relevant to the matters complained of, was authorized to conduct and did in fact conduct business in the State of South Carolina at a nursing care and rehabilitation facility named Prince George Healthcare Center located at 901 Maple Street, Georgetown, SC 29440.

4. Upon information and belief, that Defendant Palmetto Health Care LLC, is a limited liability company formed under the laws of the State of Delaware and, at all times relevant to the matters complained of, owned, controlled, and/or possessed an interest in Defendant Palmetto Prince George Operating LLC d/b/a Prince George Healthcare Center.

5. Upon information and belief, that Defendant Murray Forman is a resident of the State of New York, Queens County, and, at all times relevant to the matters complained of, owned, controlled, and/or possessed an interest in Defendant Palmetto Prince George Operating LLC d/b/a Prince George Healthcare Center.

6. Upon information and belief, that Defendant Richard Porter is a resident of the State of South Carolina, Georgetown County, and, at all times relevant to the matters complained of, managed, supervised, administered, and/or exercised control over day-to-day operations of the nursing care and rehabilitation facility named Prince George Healthcare Center located at 901 Maple Street, Georgetown, SC 29440.

7. That Defendants, severally and/or jointly, had the right and/or power to direct and control employees and/or agents providing services at Prince George Healthcare Center and were in the business of delivering care for a fee through community residential care facilities, skilled nursing facilities, rehabilitative facilities, and health care facilities and they are personally, jointly, and severally liable for the acts and omissions committed as alleged herein.

8. That Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the residency of Eleanor Greene Wragg.

9. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.

10. That this Honorable Court has jurisdiction over the subject matter of this action,

has jurisdiction over the parties to this action, and venue is properly laid in Georgetown County, South Carolina.

GENERAL FACTUAL ALLEGATIONS

11. Upon information and belief, that at all times relevant to the matters complained of, Prince George Healthcare Center held a license from the State of South Carolina to operate, maintain, and/or represent itself as a nursing home facility.

12. Upon information and belief, that in order to obtain said license, Prince George Healthcare Center applied to the South Carolina Department of Health and Environmental Control certifying under oath that it would ensure compliance with South Carolina Regulation 61-17 and further understood in order to maintain a license to operate it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Eleanor Wragg's injury.

13. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to maintain written policies and procedures to assure that residents avoided developing pressure-related wounds unless a particular resident's clinical condition demonstrated that development of such wounds was unavoidable.

14. Eleanor Wragg's clinical condition during her residency at Prince George Healthcare Center did not demonstrate that development of pressure-related wounds was unavoidable.

15. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to maintain written policies and procedures to address treatment of existing pressure-related wounds.

16. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of Eleanor Wragg during her residency at the subject facility.

17. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to have an adequate number of licensed nurses on duty so as to meet the total nursing needs of Eleanor Wragg while a resident at the subject facility.

18. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to provide staff members the necessary training to perform the duties for which they were responsible, including those duties owed to Eleanor Wragg during her residency at the subject facility.

19. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to provide training to direct care staff members at least annually on, among other topics, prevention of pressure-related wounds.

20. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to take an interdisciplinary approach to decrease the risk of pressure-related wounds presented to Eleanor Wragg.

21. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to institute

measures to prevent and treat wounds that were consistent with Eleanor Wragg's clinical condition, risk factors, and goals, including but not limited to changes in body position in accordance with Eleanor Wragg's care plan; institution of skin care measures for bony prominences and weight-bearing parts to prevent discomfort and the development of pressure areas; and prompt replacement of soiled or wet bed linen or clothing with clean, dry linen and clothing after being soiled.

22. Prince George Healthcare Center, in its operation as a nursing home facility, at all times relevant to the events complained of, was required by South Carolina regulation to institute treatment, procedures, wound care reports (dictated or written into the record after treatments, procedures, or wound care) to include at least a description of findings; techniques utilized to perform treatments and procedures; specimens removed, if applicable; and name of provider.

23. At all times relevant to the matters complained of, Prince George Healthcare Center was held out by Defendants as a skilled nursing care and rehabilitation facility able to competently provide the care required by Eleanor Wragg and required to be provided by the laws, regulations, and mandates of the State of South Carolina, the Department of Health and Environmental Control, and the United States of America.

SPECIFIC FACTUAL ALLEGATIONS

24. The foregoing paragraphs 1 – 23 are incorporated by reference as if restated fully verbatim here.

25. On or about November 27, 2017, Eleanor Wragg was admitted as a resident to Prince George Healthcare Center.

26. At the time of her admission to Prince George Healthcare Center, Eleanor Wragg's skin was intact and no pressure ulcers were identified on her body.

27. Upon information and belief, Prince George Healthcare center failed to timely identify Eleanor Wragg's risk for pressure ulcer development.

28. Upon information and belief, Prince George Healthcare Center failed to implement necessary pressure ulcer preventive interventions.

29. Upon information and belief, Prince George Healthcare Center failed to implement and provide proper treatment protocols for Eleanor Wragg to prevent development of pressure ulcers.

30. During the period of her residency at Prince George Healthcare Center, Eleanor Wragg developed pressure ulcers.

31. During the period of her residency at Prince George Healthcare Center, Eleanor Wragg's pressure ulcers deteriorated.

32. As a result of these pressure ulcers, Eleanor Wragg experienced and continues to experience pain and discomfort and required extensive medical treatment and continues to require wound care measures and interventions.

FOR A FIRST CAUSE OF ACTION
(Negligence)

33. The foregoing paragraphs 1 – 32 are incorporated by reference as if restated fully verbatim here.

34. Upon information and belief, Prince George Healthcare Center, at all times relevant to the events complained of, was licensed under the laws of the State of South Carolina and was required to provide reasonable and prudent nursing home care to Eleanor Wragg.

35. Defendants had an obligation to employ nursing assistants, nurses, and other staff who were qualified and in number sufficient to render reasonable care to a patient in Eleanor Wragg's condition and in accordance with federal and state regulations.

36. Defendants had a duty to ensure that care and services were rendered effectively and safely and precautions taken for residents such as Eleanor Wragg to prevent, among other things, development of pressure sores.

37. Defendants undertook the duty to render nursing care to Eleanor Wragg in accordance with the prevailing and acceptable professional standards of care for nursing homes and their employees and agents in the national community and as further required by the laws and regulations of the State of South Carolina and the United States of America.

38. While Eleanor Wragg was under the Defendants' care, and after Defendants undertook the duties described herein, Defendants departed from prevailing and acceptable professional standards of care and treatment of Eleanor Wragg and were thereby negligent, careless, grossly negligent, reckless, and/or in violation of the duties owed to Eleanor Wragg, and are otherwise liable for one or more of the following acts or omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to timely identify Eleanor Wragg's risk for pressure ulcer development;
- b. In failing to implement all necessary pressure ulcer preventive interventions and wound healing measures;
- c. In failing to initiate appropriate wound tracking measures;
- d. In failing to properly inform the attending physician of changes in Eleanor Wragg's condition;
- e. In failing to implement and provide proper treatment protocols to prevent development and subsequent worsening of pressure ulcers;
- f. In failing to observe regulatory measures regarding patient health and

safety; and

g. In any such other and further ways as discovery in this matter might reveal or as may be shown at trial.

39. Further, upon information and belief, Defendants breached a duty owed to Eleanor Wragg by failing to assign sufficient and qualified staff to ensure that all necessary care was delivered to Eleanor Wragg.

40. Upon information and belief, Defendants breached a duty owed to Eleanor Wragg by failing to ensure that the proper treatment and standard of care was delivered to Eleanor Wragg.

41. Upon information and belief, Defendants breached a duty owed to Eleanor Wragg by failing to properly train, monitor, and supervise the staff necessary to provide a reasonably prudent standard of care to Eleanor Wragg.

42. As a direct and proximate result of the negligent, careless, grossly negligent, reckless omissions or commissions committed by Defendants and their agents, and as a direct and proximate result of departures from the professional standards of care by Defendants and their agents, servants, and/or employees, Eleanor Wragg suffered from severe debilitating injuries which precipitated a substantial decline in her health and wellness; emotional distress; protracted and continued pain and suffering; physical injuries; humiliation; medical bills; and other damages to be proven at the trial of this matter, the likes of which no person ought be required to endure, for all of which Plaintiff is entitled to recover in an amount to be determined by the enlightened conscience of a fair and impartial jury.

FOR A SECOND CAUSE OF ACTION
(Negligence *per se*)

43. The foregoing paragraphs 1 – 42 are incorporated by reference as if restated fully verbatim here.

44. Defendants, their agents, employees, and/or servants, are long-term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

45. The federal and state regulations combine to form minimum standards of care which Defendants, at all times relevant to the events complained of, were required to meet and exceed in order to ensure proper treatment of residents, including, specifically, Eleanor Wragg.

46. Eleanor Wragg was, at all times relevant to the events complained of, a member of the class of persons contemplated by certain federal and state regulations and for whose benefit and protection those regulations were enacted.

47. Defendants failed to abide by the standards, rules, and regulations promulgated by the United States of America and the State of South Carolina in their care and treatment of Eleanor Wragg.

48. Defendants were accordingly negligent *per se* insofar as their treatment of and care for Eleanor Wragg failed to meet or exceed the minimum standards of care imposed by state and federal regulatory authorities.

49. As a direct and proximate result of Defendants' negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules, and regulations promulgated by the United States of America and the State of South Carolina, Eleanor Wragg suffered severe injuries and damages as described above for which Defendants are liable to Plaintiff in an amount to be determined by the enlightened conscience of a fair and impartial jury.

WHEREFORE, Plaintiff prays this Court enter judgment against Defendants jointly and severally for actual damages, special damages, consequential damages, and punitive damages, all

in an amount determined by a jury at the trial of this action, and for the costs of this action and for such other and further relief as this Honorable Court deems just and proper.

The Derrick Law Firm

s/ S. Taylor Hooven

Dirk J. Derrick, Esquire (11278)

S. Taylor Hooven, Esquire (103451)

Attorneys for the Plaintiff

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October 4, 2019
Conway, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CASE NO.: 2019-CP-22-00961
	)	
Kevin Greene, as Attorney in Fact for	)	
and on behalf of Eleanor Greene	)	
Wright,	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS PALMETTO PRINCE
	)	GEORGE OPERATING LLC D/B/A PRINCE
	)	GEORGE HEALTHCARE CENTER;
Palmetto Prince George Operating LLC	)	PALMETTO HEALTHCARE LLC; MURRAY
d/b/a Prince George Healthcare Center;	)	FORMAN, INDIVIDUALLY AND RICHARD
Palmetto Healthcare LLC; Murray	)	PORTER'S ANSWER TO PLAINTIFF'S
Forman, Individually and Richard	)	COMPLAINT
Porter, Individually,	)	
	)	
Defendants.	)	

**TO: DIRK J. DERRICK, ESQUIRE AND S. TAYLOR HOOVEN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF:**

Defendants Palmetto Prince George Operating LLC d/b/a Prince George Healthcare Center; Palmetto Healthcare LLC; Murray Forman, Individually and Richard Porter, Individually answer the Complaint asserted against them by Plaintiff as follows:

1. The Defendants deny each and every allegation that is not specifically admitted.
2. The Defendants lack sufficient information to form a belief as to the allegations of Paragraphs 1 and 2 and therefore deny the same and demand strict proof thereof.
3. The Defendants admit only so much of the allegations contained in Paragraph 3 of Plaintiff's Complaint as alleges that the Defendant Palmetto Prince George Operating LLC is a limited liability company formed under the laws of the State of Delaware. The Defendants deny the remaining allegations and demand strict proof thereof.
4. The Defendants admit only so much of the allegations contained in Paragraph 4 as alleges that Defendant Palmetto Healthcare, LLC is a limited liability company formed under the

laws of the State of Delaware. The Defendants deny the remaining allegations and demand strict proof thereof.

5. The Defendants lack sufficient information to form a belief as to the allegations of Paragraph 5 and therefore deny the same and demand strict proof thereof.

6. The Defendants admit only so much of the allegations contained in Paragraph 6 as alleges that Defendant Richard Porter is the Administrator of Prince George Healthcare Center. The Defendants deny the remaining allegations and demand strict proof thereof.

7. The Defendants deny the allegations contained in Paragraphs 7 and 8 of Plaintiff's Complaint.

8. The allegations contained in Paragraph 9 of Plaintiff's Complaint contain statements or conclusions of law to which no response is necessary. To the extent a response is necessary, the allegations of the expert's affidavit are specifically denied.

9. The Defendants admit only so much of the allegations contained in Paragraph 10 as alleges that venue is proper in Georgetown County.

10. The Defendants lack sufficient information to form a belief as to the allegations of Paragraph 11 and therefore deny the same and demand strict proof thereof.

11. The allegations contained in Paragraphs 12 and 13 of Plaintiff's Complaint contain statements or conclusions of law to which no response is required. To the extent a response is required, the Defendants admit only so much of these paragraphs as may be construed to allege that the Defendants had a duty to comply with applicable State and Federal laws as they directly relate to the care and treatment of Eleanor Greene Wragg during her residency. All remaining and inconsistent allegations are denied.

12. The Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Complaint.

13. The allegations contained in Paragraphs 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Complaint contain statements or conclusions of law to which no response is required. To the extent a response is required, the Defendants admit only so much of these paragraphs as may be construed to allege that the Defendants had a duty to comply with applicable State and Federal laws as they directly relate to the care and treatment of Eleanor Greene Wragg during her residency. All remaining and inconsistent allegations are denied.

SPECIFIC FACTUAL ALLEGATIONS

14. As to the allegations of Paragraph 24, the Defendants reiterate and reallege each of their previous responses as set forth fully herein.

15. The Defendants crave reference to the medical records regarding any allegations set forth in Paragraphs 25 and 26 of Plaintiff's Complaint and deny any allegations that are inconsistent therewith.

16. The Defendants deny the allegations contained in Paragraph 27, 28 and 29 of Plaintiff's Complaint.

17. The Defendants crave reference to the medical records regarding any allegations set forth in Paragraphs 30 and 31 of Plaintiff's Complaint and deny any allegations that are inconsistent therewith.

18. The Defendants lack sufficient information to form a belief as to the allegations of Paragraph 32 and therefore deny the same and demand strict proof thereof.

FIRST DEFENSE TO THE FIRST CAUSE OF ACTION (NEGLIGENCE)

19. As to the allegations of Paragraph 33, the Defendants reiterate and reallege each of their previous responses as set forth fully herein.

20. The allegations contained in Paragraphs 34 and 35 of Plaintiff's Complaint contain statements or conclusions of law to which no response is required. To the extent a response is required, the Defendants admit only so much of these paragraphs as may be construed to allege that the Defendants had a duty to comply with applicable State and Federal laws as they directly relate to the care and treatment of Eleanor Greene Wragg during her residency. All remaining and inconsistent allegations are denied.

21. The Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Complaint.

22. The allegations contained in Paragraph 37 of Plaintiff's Complaint contain statements or conclusions of law to which no response is required. To the extent a response is required, the Defendants admit only so much of this paragraph as may be construed to allege that the Defendants had a duty to comply with applicable State and Federal laws as they directly relate to the care and treatment of Eleanor Greene Wragg during her residency. All remaining and inconsistent allegations are denied.

23. The Defendants deny the allegations contained in Paragraphs 38, 39, 40, 41 and 42 of Plaintiff's Complaint.

FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(NEGLIGENC PER SE)

24. As to the allegations of Paragraph 43, the Defendants reiterate and reallege each of their previous responses as set forth fully herein.

25. The allegations contained in Paragraph 44 of Plaintiff's Complaint contain statements or conclusions of law to which no response is required. To the extent a response is required, the Defendants admit only so much of this paragraph as may be construed to allege that the Defendants had a duty to comply with applicable State and Federal laws as they directly

relate to the care and treatment of Eleanor Greene Wragg during her residency. All remaining and inconsistent allegations are denied.

26. The Defendants deny the allegations contained in Paragraphs 45, 46, 47, 48 and 49 of Plaintiff's Complaint.

FOR A SECOND DEFENSE

27. **FURTHER ANSWERING THE COMPLAINT AND AS A SECOND DEFENSE**, these Defendants allege the Complaint fails in whole or in part to state facts sufficient to constitute a cause of action and, therefore, this action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

28. **FURTHER ANSWERING THE COMPLAINT AND AS A THIRD DEFENSE**, these Defendants would show that the care and treatment of Plaintiff was within the standard of care required of skilled facilities and providers in the field, for which reason these Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

29. **FURTHER ANSWERING THE COMPLAINT AND AS A FOURTH DEFENSE**, any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Complaint were due to and caused by the Plaintiff's physical and medical health infirmities and disease process, and these Defendants plead such physical and medical health infirmities and disease process as a complete bar to this action.

FOR A FIFTH DEFENSE

30. **FURTHER ANSWERING THE COMPLAINT AND AS A FIFTH DEFENSE**, these Defendants submit the injuries and damages for which Plaintiff seeks recovery were due to and proximately caused by the intervening negligence, recklessness, willfulness,

wantonness, and fault of a party or parties other than these Defendants. Such intervening negligence, recklessness, willfulness, wantonness, and fault were the sole cause of the injuries and damages for which Plaintiff seeks recovery and, therefore, Plaintiff may not recover against these Defendants.

FOR A SIXTH DEFENSE

31. **FURTHER ANSWERING THE COMPLAINT AND AS A SIXTH DEFENSE**, these Defendants allege the injuries and damages for which Plaintiff seeks recovery were due to and proximately caused by the sole negligence, recklessness, willfulness, wantonness, and fault of third parties for whom these Defendants are not liable. Therefore, the acts or fault of third parties are the real, efficient and proximate cause of the injuries for which Plaintiff seeks recovery, and, therefore, Plaintiff cannot recover against these Defendants.

FOR A SEVENTH DEFENSE

32. **FURTHER ANSWERING THE COMPLAINT AND AS A SEVENTH DEFENSE**, these Defendants allege any injuries or damages sustained by the Plaintiff were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness ("negligence") of the Plaintiff, combining, concurring and contributing with the negligence of these Defendants, if any, without which contributory negligence, the Plaintiff's alleged injuries and damages would not have been incurred or sustained. Should the negligence of the Plaintiff be determined to be greater than that of these Defendants if any, the Plaintiff is entitled to no recovery. If the negligence of the Plaintiff be determined to be not greater than that of these Defendants, if any, the Plaintiff's recovery is to be reduced by the percentage of Plaintiff's fault.

FOR AN EIGHTH DEFENSE

33. **FURTHER ANSWERING THE COMPLAINT AND AS AN EIGHTH DEFENSE**, these Defendants plead the applicable provisions of the South Carolina Non Economic Damage Awards Act of 2005 (§15 32 200, et seq.) and §15 38 15, as such provisions may be applicable in this case.

FOR A NINTH DEFENSE

34. **FURTHER ANSWERING THE COMPLAINT AND AS A NINTH DEFENSE**, these Defendants allege that any award of punitive damages to Plaintiff would violate the constitutional safeguards provided to these Defendants by the Due Process Clause of the Fourteenth Amendment of the Unites States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded to Plaintiff.

FOR A TENTH DEFENSE

35. **FURTHER ANSWERING THE COMPLAINT AND AS A TENTH DEFENSE**, any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Complaint could not be avoided, and these Defendants plead an unavoidable accident as a complete bar to this action.

FOR AN ELEVENTH DEFENSE

36. **FURTHER ANSWERING THE COMPLAINT AND AS AN ELEVENTH DEFENSE**, these Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

FOR A TWELFTH DEFENSE

37. **FURTHER ANSWERING THE COMPLAINT AND AS A TWELFTH DEFENSE**, these Defendants plead the procedures and limitations of punitive damages as provided in S.C. Code Ann. § 15-32-520.

FOR A THIRTEENTH DEFENSE

38. **FURTHER ANSWERING THE COMPLAINT AND AS A THIRTEENTH DEFENSE**, these Defendants allege that this matter is subject to binding arbitration.

WHEREFORE, having fully answered Plaintiff's Complaint, these Defendants pray that the same be dismissed with costs and for such other and further relief as this Court may deem to be just and proper.

TURNER PADGET GRAHAM & LANEY P.A.

By: s/R. Gerald Chambers, Jr.
R. Gerald Chambers, Jr. (SC Bar # 12065)
Email: gchambers@turnerpadget.com
P. O. Box 1473
Columbia, SC 29202
Telephone: (803) 227-4201

**ATTORNEY FOR DEFENDANTS
PALMETTO PRINCE GEORGE OPERATING
LLC D/B/A PRINCE GEORGE
HEALTHCARE CENTER; PALMETTO
HEALTHCARE LLC; MURRAY FORMAN,
INDIVIDUALLY AND RICHARD PORTER,
INDIVIDUALLY**

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
PALMETTO PRINCE GEORGE	)	DEFENDANT PALMETTO HEALTH
OPERATING, LLC D/B/A PRINCE	)	CARE, LLC'S MOTION TO STAY
GEORGE HEALTHCARE CENTER;	)	
PALMETTO HEALTH CARE, LLC,	)	
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

TO: DIRK J. DERRICK AND S. TAYLOR HOOVEN, ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Palmetto Health Care, LLC, hereinafter referred to as "this Defendant", by and through its undersigned attorneys, *subject to and without waiving its objections to personal jurisdiction*, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Palmetto Prince George Operation, LLC D/B/A Prince George Healthcare ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.
D. Jay Davis, Jr.
Matthew O. Riddle
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com;
mriddle@ycrlaw.com
Attorneys for the Defendant
Palmetto Health Care, LLC

Charleston, South Carolina

Dated: March 25, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANT PALMETTO PRINCE
PALMETTO PRINCE GEORGE	)	GEORGE OPERATING, LLC D/B/A
OPERATING, LLC D/B/A PRINCE	)	PRINCE GEORGE HEALTHCARE'S
GEORGE HEALTHCARE CENTER;	)	MOTION TO STAY ACTION AND
PALMETTO HEALTH CARE, LLC,	)	COMPEL ARBITRATION
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

TO: DIRK J. DERRICK AND S. TAYLOR HOOVEN, ATTORNEYS FOR PLAINTIFF:

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

This Defendant further requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions or discovery filed or served by Plaintiff while the current motion is pending. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

Matthew O. Riddle

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com;

mriddle@ycrlaw.com

*Attorneys for the Defendant Palmetto Prince George
Operation, LLC D/B/A Prince George Healthcare*

Charleston, South Carolina

Dated: March 27, 2020

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE ARBITRATION AGREEMENT

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

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

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

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

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

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

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

Mendal Greene 11/2/17
Resident/Representative Signature Date

Mendal GREENE
Printed Name of Resident/Representative

Angela Burns 11/2/17
Authorized Agent of Facility Date

Angela Burns, AR
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative
FFS019 South Carolina Arbitration Agreement (6/2009)

Page 1 of 1

DEFENDANT'S
EXHIBIT

A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANT RICHARD PORTER'S
PALMETTO PRINCE GEORGE	)	MOTION TO STAY ACTION AND
OPERATING, LLC D/B/A PRINCE	)	COMPEL ARBITRATION
GEORGE HEALTHCARE CENTER;	)	
PALMETTO HEALTH CARE, LLC,	)	
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

TO: DIRK J. DERRIK AND S. TAYLOR HOOVEN, ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Richard Porter (hereinafter referred to as "this Defendant"), by and through his undersigned attorneys, *subject to and without waiving his objections to personal jurisdiction*, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action and compelling arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This Motion is based on the terms and provisions of a valid and binding Arbitration Agreement executed at the time of Eleanor Wragg's admission to the above-named skilled nursing facility Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center. (See Arbitration Agreement attached as **Exhibit A**). The Arbitration Agreement is expressly binding on all parties and requires that Plaintiff's claims be submitted to arbitration.

This Defendant further requests that this Honorable Court specifically stay any further requirement to file any responsive pleading as well as any requirement to respond to any motions or discovery filed or served by Plaintiff while the current motion is pending. This Motion is supported by the attached Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

Matthew O. Riddle

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com;

mriddle@ycrlaw.com

Attorneys for Richard Porter

Charleston, South Carolina

Dated: March 27, 2020

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

FIFTEENTH JUDICIAL CIRCUIT

C/A NO.: 2019-CP-22-00961

Kevin Greene, as Attorney in Fact for
and on behalf of Eleanor Greene Wragg,

Plaintiff,

**PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS'
MOTION TO STAY ACTION AND
COMPEL ARBITRATION**

vs.

Palmetto Prince George Operating, LLC)
d/b/a Prince George Healthcare Center;)
Palmetto Health Care LLC; Murray Forman,)
Individually; and Richard Porter,)
Individually,)

Defendants.

TO: THE HON. BENJAMIN H. CULBERTSON AND D. JAY DAVIS, ESQ., COUNSEL
FOR DEFENDANTS:

COMES NOW, Plaintiff, by and through counsel undersigned, and submits this Memorandum of Law in Opposition to Defendants' Motions to Stay Action and Compel Arbitration ("Motions").¹ As grounds for opposition, Plaintiff contends the applicable statutory and case law render the Arbitration Agreement void *ab initio* and invalid as against Eleanor Wragg and Plaintiff; that the Arbitration Agreement is unenforceable as against Eleanor Wragg and Plaintiff; that the terms of the Arbitration Agreement do not bind Eleanor Wragg as a non-signatory to the Agreement; and on other grounds as set forth more fully in this Memorandum.

¹ Defendants Palmetto Prince George Operating, LLC d/b/a Prince George Health Care Center and Richard Porter each filed a Motion to Stay Action and Compel Arbitration, and Defendant Palmetto Health Care LLC filed a Motion to Stay Action. Since the grounds asserted in these Motions for the requested relief are identical and very broad, this Memorandum is intended as a response in opposition to all of them.

Plaintiff respectfully prays this Honorable Court deny Defendants' Motions and permit this matter to proceed in the Court of Common Pleas for Georgetown County.

I. STATEMENT OF FACTS

On November 27, 2017, Mrs. Eleanor Greene Wragg ("Eleanor Wragg") was admitted to Prince George Healthcare Center ("PGHC") for rehabilitation services following a three-day stay at Tidelands Memorial Hospital Georgetown ("Tidelands"). Previously, she was admitted to Tidelands with stroke-like symptoms and altered mental status. *See* Tidelands Medical Records (attached as **Exhibit A**).

She was admitted to PGHC with a diagnosis of, among other issues, "metabolic encephalopathy," and, in the Clinical Admission Assessment conducted on November 27, 2017, PGHC providers noted her "cognitive skills for daily decision making" were "moderately impaired," meaning her "decisions were poor [and she] required reminders, cues, and supervision in planning, organizing, and correcting daily routines." *See* PGHC Records (attached as **Exhibit B**). At some point at or near Eleanor Wragg's admission to PGHC, Defendants had Wendal Greene, Eleanor Wragg's biological son, sign an Arbitration Agreement. *See* Arbitration Agreement (attached as **Exhibit C**). Defendants also had Wendal Greene sign a separate Admission Agreement. *See* Admission Agreement (attached as **Exhibit D**).

Eleanor Wragg's signature does not appear anywhere on the Arbitration Agreement. *See* Ex. C. Furthermore, there is no evidence demonstrating Wendal Greene was vested with power to act as Eleanor Wragg's Attorney-in-Fact, or that he otherwise had the authority to make binding decisions on Eleanor Wragg's behalf regarding the waiver of her right to trial by jury, her ability to enter into contracts, or any other legally binding arrangements.

II. STANDARD OF REVIEW

“A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement.” *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019) (citation omitted). Arbitration is a matter of contract, and South Carolina courts must determine the validity or enforceability of an arbitration agreement based on the principles of state-specific contract law, even those agreements governed by the Federal Arbitration Act (FAA). *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 538, 541, 542 S.E.2d 360, 365 (2001). State-specific contract law principles “[remain] applicable if that law, whether legislative or judicial, arose to govern issues concerning the validity, revocability, and enforceability of all contracts, generally.” *Id.* at 541, 542 S.E.2d at 365 (citing *Perry v. Thomas*, 482 U.S. 483, 492 n. 9 (1987)). However, “a presumption *against* arbitration arises where the party resisting arbitration is a non[-]signatory to the written agreement to arbitrate.” *Wilson*, at 337-38, 827 S.E.2d at 173 (citation omitted) (emphasis in original).

Here, Defendants cannot satisfy their threshold burden of demonstrating the Arbitration Agreement in this case is valid and enforceable as against Eleanor Wragg and Plaintiff. Moreover, because neither Eleanor Wragg nor Plaintiff signed the agreement, there is a presumption **against** arbitration. Defendants’ Motions thus should be denied.

III. ARGUMENT

1. The Arbitration Agreement Is Invalid and Unenforceable Because Wendal Greene Did Not Have Authority to Act as Eleanor Wragg’s Agent to Bind Her to Its Terms.

“Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control.” *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App.

2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). “Actual authority” is defined as “such authority as a principal intentionally confers on the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess.” *Black’s Law Dictionary* 33 (5th ed. 1979). Such authority can be express or implied. *Id.*

Conversely, “apparent agency” involves a putative principal’s holding out of another as having authority to act as her agent. *See generally, e.g., Froneberger*, at 47, 748 S.E.2d at 630. South Carolina law requires proof of three elements to establish apparent agency: “(1) that the purported principal consciously or impliedly represented another to be [her] agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party’s detriment.” *Id.* (quoting *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991)) (internal quotation marks omitted). “The first element of apparent agency can be established by either: (1) affirmative conduct or (2) conscious and voluntary action.” *Froneberger*, at 47, 748 S.E.2d at 630 (citations omitted). Here, Wendal Greene was neither an actual agent nor an apparent agent for Eleanor Wragg.

With respect to actual agency, Defendants have produced no document, writing, or other evidence demonstrating Eleanor Wragg’s intent to confer upon Wendal Greene the power to act as her agent to decide whether to waive her right to trial by jury. He therefore possessed no actual authority to act in such manner. Further, Defendants have produced no evidence of Wendal Greene’s implied authority. There is nothing that shows Eleanor Wragg, through want of ordinary care, allowed Wendal Green to believe he possessed the power to waive her right to jury trial, nor have Defendants produced any evidence indicating he believed he possessed that power. Wendal Greene was not Eleanor Wragg’s actual agent, and thus could not bind her to the terms of the Arbitration Agreement in this matter.

Likewise, an analysis of apparent agency also fails. Satisfaction of the first element requires “affirmative conduct” or “conscious and voluntary action,” *see Froneberger, supra*. Here, there is no evidence Eleanor Wragg held Wendal Greene out to any person affiliated with Defendants as her agent to make decisions about her right to access the courts or to trial by jury. Excerpted pages from Eleanor Wragg’s PGHC medical record indicate that upon her admission her Cognitive Skills for Daily Decision Making were “Moderately Impaired – [her] decisions were poor; [she] required reminders, cues, and supervision in planning, organizing, and correcting daily routines.” *See* Ex. B.² On the date of her admission to PGHC, Eleanor Wragg lacked the ability to hold Wendal Greene out as her agent for the purpose of deciding whether to waive her right to jury trial.

Ultimately, there is no evidence Eleanor Wragg conferred upon Wendal Greene any authority, either expressly or impliedly, to act as her agent to waive her right to a jury trial. For the foregoing reasons, this Court should deny Defendants’ Motions to Stay Action and Compel Arbitration.

2. The Arbitration Agreement is Invalid and Unenforceable Because Wendal Greene Lacked Authority Under the South Carolina Adult Health Care Consent Act to Bind Eleanor Wragg to the Terms of Said Agreement.

Defendants assert the Arbitration Agreement here is enforceable against Eleanor Wragg under the laws of the State of South Carolina. Since there was no principal-agent relationship between Eleanor Wragg and Wendal Greene, Defendants must base their contentions on the authority conferred by the South Carolina Adult Health Care Consent Act (“the Act”).

The Act is a statutory provision that, broadly speaking, vests certain individuals with authority to make decisions about certain aspects of health care on behalf of “adults who are

² *See also Thompson v. Pruitt Corp.*, 416 S.C. 43, 54-6, 784 S.E.2d 679, 685-86 (Ct. App. 2016) (noting, *inter alia*, purported principal’s “incapacity prevented her from ‘consciously or impliedly’ representing another to be her agent”).

‘unable to appreciate the nature and implications of their condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner.’” *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 351, 755 S.E.2d 450, 453 (2014) (quoting S.C. Code Ann. § 44-66-20(8) (defining “unable to consent”)). The person in whom the Act vests power to make these decisions is commonly called a “surrogate,” and the Act sets forth explicitly those matters over which a surrogate may be vested with decision-making power.³ See generally S.C. Code Ann. §§ 44-66-10 *et seq.* (2002 and Supp. 2012).

“The question of [a surrogate’s] authority to execute [an arbitration agreement] is one of statutory interpretation requiring [courts] to determine the nature and scope of authority granted a surrogate by the Adult Health Care Consent Act (Act).” *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 453 (2014) (citation omitted). When construing a statute, all sections of the same general statutory law should be read together. *Id.* at 350-51, 755 S.E.2d at 453 (citing *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 629 S.E.2d 624 (2006)).

For the reasons below, jointly, severally, or in the alternative, the Arbitration Agreement at issue in the present case is unenforceable as against Eleanor Wragg and Plaintiff because Wendal Greene lacked capacity under the Act to bind her to its terms.

- A. The plain language of the Act did not confer upon Wendal Greene the authority to waive or otherwise abandon Eleanor Wragg’s right to a jury trial, therefore the Arbitration Agreement in this case is invalid and unenforceable against Eleanor Wragg and Plaintiff.

The Act codifies the persons to whom authority may be given to make health care decisions on behalf of a person who is unable to consent to medical care. Code section 44-66-20 sets out definitions applicable to the Act. In that section, “health care” is defined as:

a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or

³ The term “surrogate” is used repeatedly by the *Coleman* court to identify a person vested with decision-making power under the Act. See *Coleman*, 407 S.C. 346, 755 S.E.2d 450 (2014).

complaint, whether of physical or mental origin. Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

S.C. Code Ann. § 44-66-20(1).

The Act grants a surrogate the power to make “decisions concerning health care” on behalf of a patient who is unable to make those decisions on her own. In defining “health care,” the Act makes abundantly clear that the decision-making authority conferred in section 44-66-30(A) extends only as far as the definition of “health care” permits.⁴ Thus, where a patient is unable to make her own decisions, a surrogate’s power make decisions extends only as far as those matters embraced in the definition of “health care.” To that end, nothing in the Act can reasonably be construed as conferring upon a surrogate the unilateral authority to waive an unable patient’s right to pursue a trial by jury or the right to access courts.

In maintaining the Arbitration Agreement at issue here is enforceable, Defendants attempt to read authority into the Act that does not exist; they would have the phrase “decisions concerning health care” construed in a far broader manner than the Act explicitly provides. In essence, Defendants would interpret the Act as granting a surrogate the power to dispose of another person’s fundamental right to a trial by jury.⁵ The Act’s plain text lends absolutely no support for this contention, and neither does South Carolina case law. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016) (“[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims

⁴ The Supreme Court of South Carolina in *Coleman*, discussed *infra*, held that the Act confers authority to make health care decisions and decisions regarding binding the unable person to the responsibility to pay for the health care decided.

⁵ *See, e.g., Pinckney v. Green*, 67 S.C. 309, 310-11, 45 S.E. 202, 202-03 (1903). Plaintiff notes parenthetically that permitting waiver of the right to trial by jury and access to courts in the fashion detailed in this Memorandum of Law would amount to an exceedingly inequitable (and likely Constitutionally impermissible) unknowing, involuntary waiver of said rights.

by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.") Defendants' stance is untenable, and to adopt their position is to trample the limits of authority actually granted by the Act.

Therefore, assuming *arguendo* the Act vested Wendal Greene with power to make health care decisions for Eleanor Wragg, the Act did not vest him with authority to make decisions on matters beyond those defined in code section 44-66-20(1). Accordingly, Wendal Greene had no authority under the Act to waive or otherwise abandon Eleanor Wragg's right to a jury trial. The Arbitration Agreement in this case is thus unenforceable against Eleanor Wragg and Plaintiff. This Court should therefore deny Defendants' Motions to Stay Proceedings and to Compel Arbitration.

- B. Wendal Greene did not have the requisite capacity to bind Eleanor Wragg to the terms of the Arbitration Agreement, and the Arbitration Agreement is not merged into the Admission Agreement, therefore it is unenforceable against Eleanor Wragg and Plaintiff.

In addressing a factually similar matter to the one presented here, the Supreme Court of South Carolina in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), affirmed the denial of a defendant's motion to compel arbitration. (Copy of *Coleman* attached hereto as **Exhibit E**).

The *Coleman* court examined whether a surrogate had the capacity, acting on her unable sister's behalf, to bind her unable sister to an arbitration agreement.⁶ *Coleman*, 407 S.C. at 350, 755 S.E.2d at 452 (2013). There, a health care facility asserted that an arbitration agreement signed by a surrogate bound the surrogate's sister – and by extension the sister's estate, heirs, and executors – to its terms.

In examining the text of the Act, the *Coleman* court noted the Act effectively "gives

⁶ References to "her sister" or "the sister" are for continuity's sake. In *Coleman*, the "sister" died, and her estate was the real party in interest, represented by the "surrogate."

[surrogates] two types of authority,” first being the power to “consent, on behalf of [an unable person], to the provision or withholding of medical care including placement in a facility which provides such care.” *Id.* at 352, 755 S.E.2d at 453. The second is the power “to make certain financial decisions on behalf of [an unable person], decisions that [obligate the unable person] to pay for services rendered.” *Id.* The court acknowledged “the surrogate’s authority extends **primarily** to traditional health care decisions, and **only secondarily** to the financial decisions necessitated by those decisions,” and the hierarchy of authority is borne out in other provisions of the Act. *Id.* at 353, 755 S.E.2d at 454 (emphasis added).

The court recognized the surrogate in *Coleman* “was presented with two documents” at her sister’s admission to the facility, one a “RESIDENTIAL ADMISSION AND FINANCIAL AGREEMENT,” the other an “AGREEMENT FOR ARBITRATION.” *Id.* While assent to the Admission and Financial Agreement was a condition for the sister’s admission, assent to the arbitration agreement was not. *Id.* Moreover, the court noted the arbitration agreement “contained no provision for medical, nursing, or health care services to be provided for [the sister], and did not require any financial commitment to pay for such services.” *Id.* The arbitration agreement in *Coleman* “concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and [the surrogate or her sister] should issues arise in the future.” *Id.* at 354, 755 S.E.2d at 454.

Because the arbitration agreement did not implicate either of the surrogate’s two tiers of authority granted under the Act, the *Coleman* court found the surrogate lacked the capacity to bind her sister to the terms of a document which involved neither health care nor financial terms of payment for such care. The *Coleman* court thus held the arbitration agreement was not binding on

either the surrogate or her sister. *Id.*⁷

Here, as in *Coleman*, the Arbitration Agreement does not describe any health services to be rendered by PGHC or its staff, whether they be therapeutic services, nursing services, rehabilitation services, or the like. *See* Ex. C. Nor does the Arbitration Agreement here set forth any payment schedule, any authorization to bill insurance, any consent to treat, any obligation of payment, nor any other financial matter comprised within a surrogate's authority under the Act.

Moreover, as in *Coleman*, the Arbitration Agreement (Ex. C) and the Admission Agreement (Ex. D) are separate documents, distinct in every respect. A plain reading of the Arbitration Agreement reinforces this proposition: the first sentence of the last paragraph of the states it "shall survive any termination or breach of this Agreement or the Admission Agreement." *See* Ex. C. The use of the disjunctive "or" clearly indicates the separateness of the two documents.

Further, even assuming Eleanor Wragg's admission to PGHC was conditioned on acceptance of the terms in the separate Admission Agreement, there is no mention or other reference to the Arbitration Agreement in the twelve (12) pages of the Admission Agreement. *See* Ex. D. In fact, page twelve (12) of the Admission Agreement notes "this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understanding or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties." Ex. D, p. 12. There is no clause, no phrase, no suggestion incorporating the Arbitration Agreement into the Admission Agreement.⁸

Finally, there is no term in either document conditioning Eleanor Wragg's admission to PGHC upon her (or anyone else's) assent to be bound by the Arbitration Agreement. Defendants

⁷ *Accord Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016).

⁸ As the enforceability of the Admission Agreement is not at issue, it is assumed for the sake of argument that Wendal Greene was vested with authority under the Act to bind Eleanor Wragg to the terms of the Admission Agreement.

may argue that language in the final paragraph of the Admission Agreement incorporates by implication the Arbitration Agreement as part of the “other Admissions materials.” See Ex. D, p. 12. That argument is misplaced. At its absolute best, this clause is ambiguous. It does not define with any degree of specificity what exactly these “other Admissions materials” are, nor does the Arbitration Agreement include language indicating its incorporation as an exhibit, supplement, or addendum to the Admission Agreement. See Ex. C. As with most any contract, ambiguity in a contractual clause should be construed against the drafter, in this case, PGHC.⁹

As in *Coleman*, the Arbitration Agreement in this case does not implicate *any* authority the Act may have granted Wendal Greene, nor is the Arbitration Agreement incorporated into the Admission Agreement.¹⁰ Accordingly, Wendal Greene lacked capacity to bind Eleanor Wragg to the Arbitration Agreement’s provisions. The Arbitration Agreement is thus unenforceable against Eleanor Wragg and Plaintiff, and this Court should deny Defendants’ Motions to Stay Proceedings and to Compel Arbitration.

C. Alternatively, Wendal Greene was inferior in priority to Eleanor Wragg’s husband as concerns decision-making power under the Act, and therefore Wendal Greene’s acts on behalf of Eleanor Wragg cannot be binding on her or on Plaintiff.

Assuming for the sake of argument, and without in any way conceding, Wendal Greene acted with authority consistent with the powers the Act affords to a surrogate, this Court should nevertheless deny Defendants’ Motions because Wendal Greene was not the proper individual to make decisions on Eleanor Wragg’s behalf under the Act.

Code section 44-66-30(A) lists persons able to act as surrogates in a descending “order of priority.” Fourth (4th) on that list is “an adult child of the patient, or if the patient has more than

⁹ See *Thompson*, at 52-54, 784 S.E.2d at 684-85 (citations omitted).

¹⁰ Even if the Arbitration Agreement were incorporated into the Admission Agreement, it still would not be binding on Eleanor Wragg or Plaintiff.

one adult child, a majority of the adult children who are reasonably available for consultation.” S.C. Code Ann. § 44-66-30(A)(4). Third (3rd) on that list, and consequently higher in priority, is “a spouse of the patient” S.C. Code Ann. § 44-66-30(A)(3).

The PGHC medical records show Eleanor Wragg’s spouse, Mr. Wesley Wragg, was listed as “Responsible Party” and “Primary Financial Contact” for Eleanor Wragg.¹¹ See Ex. B. There is no evidence that Mr. Wragg was not reasonably available to make decisions for Eleanor Wragg, that he was unwilling to make such decisions, nor that he himself was unable to consent per the Act. See S.C. Code Ann. § 44-66-30(D) (noting circumstances where surrogate priority must not be given). Therefore, by operation of the Act’s express priority rules, Mr. Wragg, not Wendal Greene, had the authority to make decisions under the Act.

Although Plaintiff does not concede the point, even if the Act *did* confer upon a surrogate the authority to decide matters affecting an unable patient’s right to trial by jury, Wendal Greene was not the proper surrogate, and so could not bind Eleanor Wragg to the Arbitration Agreement. Therefore it is unenforceable against Eleanor Wragg and Plaintiff. Respectfully, this Court should deny Defendants’ Motions to Compel Arbitration and to Stay Proceedings.

D. Alternatively, the Arbitration Agreement is unenforceable because there is no proper certification of Eleanor Wragg’s status as “unable to consent,” and therefore Wendal Greene had no authority to act on her behalf.

Assuming again for the sake of argument, and without in any way conceding, that Wendal Greene was the proper surrogate acting within bounds of the Act’s grant of authority, Defendants’ Motions should nevertheless be denied because Eleanor Wragg was not “unable to consent” as defined by the Act.

The Act describes in great detail the requirements for a patient to be considered “unable to

¹¹ Mr. Wragg passed away in or about May 2020.

consent.” Code section 44-66-20(8) defines a patient who is “unable to consent” as one who is:

unable to appreciate the nature and implications of the patient’s condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. . . .

Moreover, a patient is not deemed “unable to consent” until certification measures are met.

These certification measures are described in the Act:

A patient’s inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient’s inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient’s record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient’s health.

S.C. Code Ann. 44-66-20(8).

The record is void of certification from any health care professional, much less two licensed physicians, that Eleanor Wragg was unable to consent to medical care on her admission to PGHC on November 27, 2017. Because a patient is deemed “unable to consent” only upon proper certification as provided in the Act, and since no such certification has been demonstrated, Eleanor Wragg was not legally “unable to consent.” The Act thus *could not* have vested power in Wendal Greene because section 44-66-30(A) confers decision-making authority to a surrogate only “where a patient is unable to consent.”

Therefore, and in the alternative, because the Act never vested decision-making authority in Wendal Greene, his signature on the Arbitration Agreement could not then and cannot now bind either Eleanor Wragg or Plaintiff, and this Court should accordingly deny Defendants’ Motions to Compel Arbitration and to Stay Proceedings.

[continued on next page]

3. Eleanor Wragg Is Not Bound as a Third-Party Beneficiary to the Terms of the Arbitration Agreement Because the Arbitration Agreement is Unenforceable Against Her.

“A third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Thompson v. Pruitt Corp.*, 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016) (quoting *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 34, 340, 611 S.E.2d 485, 488 (2005)) (copy of *Thompson* attached as **Exhibit F**). It is axiomatic, however, that “there can be no third-party beneficiary unless a valid contract exists.” *Id.* (citation omitted).

In *Thompson*, the Court of Appeals discussed whether a nursing home resident (“Mom”), who suffered from dementia at her admission, could be bound to an Arbitration Agreement signed by her son (“Son”), purportedly on her behalf but outside of her presence. *Id.* at 48, 784 S.E.2d at 682. One of the arguments advanced was that Mom “was a third-party beneficiary of the [arbitration agreement] executed by Son in either his representative or individual capacity and [Mom’s] third-party beneficiary status made the [arbitration agreement] binding on her estate.” *Id.* at 56, 784 S.E.2d at 687.

The *Thompson* court disagreed. It noted, to the extent the nursing home’s argument alleged a valid contract existed between Mom and the nursing home, that “[Mom] could not be the third-party beneficiary of the alleged” contract because one cannot be both a third-party beneficiary and a first-party contractor. *Id.* at 57, 784 S.E.2d at 687. In any event, the court had already established the arbitration agreement was not a valid contract between Mom and the nursing home because Son was not authorized to execute the Arbitration Agreement on Mom’s behalf. *Id.*

Concerning the nursing home’s argument that a valid, binding contract allegedly existed between Son individually and the nursing home, the court recognized the principle that “a third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third

party is attempting to enforce the contract containing the arbitration agreement.” *Id.* (citation omitted). It went on to note the *Thompson* plaintiff “[was] not attempting to enforce the [arbitration agreement] on behalf of [Mom’s] estate.” *Id.* The plaintiff instead asserted tort claims against the nursing home “arising out of the patient-provider relationship created by the separate Admission Agreement.” *Id.* The court likewise observed Mom’s “diminished mental capacity prevented her from assenting to the [arbitration agreement’s] terms,” and ultimately ruled Mom’s estate could not be bound by the arbitration agreement. *Id.*

Similarly, in the instant case, any argument that Eleanor Wragg is bound as a third-party beneficiary must also fail. The foregoing pages demonstrate Wendal Greene lacked the authority to bind Eleanor Wragg to the Arbitration Agreement in this case. Moreover, and perhaps most significantly, the Arbitration Agreement is not a contract to which she is a contracting party. Furthermore, as in *Thompson*, Plaintiff in this case is not seeking to enforce the terms of the Arbitration Agreement, but is rather asserting tort claims against Defendants arising out of “the patient-provider relationship” detailed in the Admission Agreement at issue here. There is likewise no evidence Eleanor Wragg (or anyone acting on her behalf with appropriate authority) assented to the terms of the Arbitration Agreement.

Therefore, Eleanor Wragg is not and cannot be a third-party beneficiary to an “agreement” that does not bind her and is not sought to be enforced by Plaintiff. This Court should thus deny Defendants’ Motions to Stay Proceedings and to Compel Arbitration.

4. Eleanor Wragg Is Not Equitably Estopped From Denying the Arbitration Agreement’s Enforceability Under Either Federal or State-Specific Law Because She Obtained No Benefit From Its Terms.

The *Thompson* court also addressed whether Mom, as a non-signatory to the contract, was equitably estopped from denying the enforceability of the arbitration agreement. The nursing

home argued Mom “benefitted from the Arbitration Agreement because she was admitted to [the nursing home], received medical care, and became capable of enforcing the [arbitration agreement].” *Thompson*, at 58, 784 S.E.2d at 687.¹²

The court examined the equitable estoppel question first under Federal substantive law. It noted that in matters implicating Arbitration Agreements, equitable estoppel can act to prevent “a party . . . from asserting that the lack of his signature on a written contract precludes enforcement” of an arbitration provision contained in the contract “when [the party] has consistently maintained that other provisions of the same contract should be enforced to benefit him.” *Thompson*, at 59, 784 S.E.2d at 688 (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012)). Seizing on what it had previously established, the court noted again the arbitration agreement “[was] not incorporated into the Admission Agreement; therefore [the assertion that Mom] received benefits under the Admission Agreement” was of no importance. *Id.* at 60, 784 S.E.2d at 688. “The two agreements [were] independent of one another,” and the arbitration agreement’s execution was not a condition precedent to Mom’s admission into the nursing home. *Id.*

Moreover, the court recognized “any possible benefit emanating from the [arbitration agreement] alone is offset by [its] requirement that [Mom] waive her right to access to the courts and her right to a jury trial.” *Id.* Accordingly, the court concluded “equitable estoppel under federal substantive law [had] no application” to the *Thompson* matter.

¹² The *Thompson* court noted a “recent conflict” between the United States Supreme Court and the State Courts of South Carolina regarding “the application of state law in determining whether a non-signatory is bound by an arbitration agreement.” *Thompson*, at 58-59, 784 S.E.2d at 687-88 (citations omitted). This apparent conflict is of no import to the determination of whether equitable estoppel acts upon Eleanor Wragg and/or Plaintiff in this case, as under both Federal and South Carolina substantive law the doctrine does not apply.

The court then addressed equitable estoppel under South Carolina state law. For a party to be estopped, the required elements are:

(1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts.

Thompson, at 60, 784 S.E.2d at 688 (citation and emphases omitted).

The court noted again Mom's mental capacity prior to admission to the nursing home "prevented her from forming the intent or having the requisite knowledge to mislead" the nursing home "or to assent to the [arbitration agreement's] terms. *Id.* at 60, 784 S.E.2d at 689. It also dismissed the nursing home's attempt to work around Mom's incapacity by attributing to Mom the Son's and the plaintiff's alleged misrepresentations about Son's authority to enter into the arbitration agreement on Mom's behalf. *Id.* at 60-61, 784 S.E.2d at 689. The *Thompson* court refused to hold Mom's estate "responsible for any possible misrepresentations Son or [the plaintiff] may have made in their individual capacities." *Id.* at 62, 784 S.E.2d 690.¹³

Likewise, equitable estoppel is not applicable in this case, neither under federal nor state-specific substantive law. As in *Thompson*, the Arbitration Agreement and the Admission Agreement in this case are completely separate and are not "merged" into a single contract. Eleanor Wragg's assent to the Arbitration Agreement was not made a condition precedent to her admission, nor is any benefit conferred upon her by its terms. Moreover, Plaintiff in this matter is

¹³ The *Thompson* court also briefly addressed the nursing home's inability to establish the elements required to obtain the benefit equitable estoppel, noting the nursing home "failed to show how [it] has changed [its] position for the worse based on Son's representation that he was acting on Mother's behalf when he signed the [Arbitration Agreement]." *Thompson*, at 61-62, 784 S.E.2d 689 (citation omitted). Likewise, Defendants have made no showing entitling them to similar equitable relief.

seeking to obtain relief for breaches of the standards of care implied in the Admission Agreement; Plaintiff is not seeking to enforce other terms in the Arbitration Agreement. Accordingly, Eleanor Wragg has not benefitted from the Arbitration Agreement and is not acting inequitably by contesting the enforceability of its provisions.

Furthermore, there is no evidence that Eleanor Wragg misrepresented, intentionally or unintentionally, any material fact germane to the Arbitration Agreement, and considering her “moderately impaired” ability to make decisions for herself, *see* Ex. B, she could not have formed the requisite intent to be equitably estopped on this issue. Also, again as in *Thompson*, there is no basis upon which to hold Eleanor Wragg or, by extension, Plaintiff, responsible for any alleged “misrepresentation” that Wendal Greene may have made by signing the Arbitration Agreement. This Court should follow *Thompson* and refuse to charge Eleanor Wragg with responsibility for any alleged misrepresentation made by anyone else in an individual capacity.

Consequently, the doctrine of equitable estoppel does not bar Eleanor Wragg or Plaintiff in this case from asserting the unenforceability of the Arbitration Agreement. This court should therefore deny Defendants’ Motions to Stay Proceedings and Compel Arbitration.

IV. CONCLUSION

WHEREFORE, in light of the foregoing arguments, and considering there is a presumption against arbitration where a non-signatory contests the enforceability of an Arbitration Agreement, Plaintiff respectfully requests this Honorable Court declare the subject Arbitration Agreement **invalid** and **unenforceable** as against Eleanor Wragg and Plaintiff. By way of specific relief, Plaintiff prays the Court:

- (1) DENY the Motions of the several Defendants to Stay Proceedings; and

- (2) **DENY** the Motions of the several Defendants to Compel Arbitration; and
- (3) Order that this matter proceed forward in the Court of Common Pleas for Georgetown County; and --
- (4) Issue all such other and further relief as the Court deems just and proper.

Respectfully submitted,

The Derrick Law Firm

s/ S. Taylor Hooven
Dirk J. Derrick, Esquire (11278)
S. Taylor Hooven, Esquire (103451)
Attorneys for the Plaintiff
Post Office Box 28
Conway, South Carolina 29528
Telephone: 843-248-7486
Facsimile: 843-248-7510
taylor@derricklawfirm.com

June 15, 2020
Conway, SC

Georgetown Memorial Hospital

DISCHARGE SUMMARY

Pt. Status: DIS IN

Rpt#: 1127-0065

PT DOBAGE: [REDACTED]/1941 \ 76

PATIENT: WRAGG, ELLA GREEN

MEDICAL RECORD #: M000907925

ACCOUNT #: G00007070630

ADMISSION DATE: 11/24/17

ATTENDING PHYSICIAN: PHILIPP II, RICHARD ANDRE DISCHARGE DATE: 11/27/17

DATE OF ADMISSION:
11/24/2017.DISCHARGE DATE:
11/27/2017.PRIMARY CARE PHYSICIAN:
Kristi Miller, FNP.CHIEF COMPLAINT:
Confusion.

DISCHARGE DIAGNOSES:

1. Metabolic encephalopathy.
2. Urinary tract infection with E. coli and beta hemolytic strep B.
3. Atrial fibrillation with rapid ventricular response.

SECONDARY DIAGNOSIS:

Type 2 diabetes.

IMAGING:

Brain MRI which shows no acute abnormalities. Moderate to advanced changes of aging. Multiple old lacunes within the basal ganglia and pons.

BRIEF HISTORY OF PRESENT ILLNESS:

Ms. Wragg is a 76-year-old female with a history of prior strokes, hypertension, diabetes which is non-insulin-dependent in addition to chronic atrial fibrillation on Pradaxa, who presented to the emergency room because of confusion. Her son had seen her earlier in the day, however when he went in the evening to see her again, she was inappropriately answering questions and could not walk. She was brought to the emergency room with concerns for a TIA. Please see dictated history and physical for further details on presentation.

HOSPITAL COURSE:

She was admitted to the hospitalist service with a TIA but also in a-fib with RVR. There was concern that she had an embolic event on this, as she is on Pradaxa at home and has been taking this. However, she was brought to the stepdown unit and her atrial fibrillation was managed and rate control was established once again and she remained so through the hospitalization. She does have chronic atrial fibrillation and did have atrial fibrillation rhythm however. Her urine culture did result with E. coli and she was started on broad-spectrum antibiotics for this. Sensitivities did result that the E. coli

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ROA 052

Georgetown Memorial Hospital

DISCHARGE SUMMARY

PAGE 2

PATIENT: WRAGG, ELLA GREEN

MEDICAL RECORD #: M000907925

Rep#: 1127-0065

Pt. Status: DIS IN

was pansensitive without any resistance to any agents. She did have beta hemolytic strep as well, however, this was only 10 to 20,000 colonies. Her mentation improved. Her encephalopathy resolved through his hospitalization. Her electrolytes were corrected during this stay and physical therapy did evaluate her and she was accepted at PGV for further strengthening and rehabilitation.

On exam at the time of discharge, temperature 96.2, pulse of 99 and blood pressure 131/97. She is awake, oriented to person, place. She in fact is asking to go back home from the hospital, however she does need further strengthening. She states she is eating well, has not had any difficulties. She is urinating well also without any difficulties. She otherwise has no abdominal pain. She will be discharged to PGV for further rehabilitation.

ACTIVITY:

As tolerated per therapist.

DIET:

She is to maintain an ADA diet.

DISCHARGE MEDICATIONS:

Per universal medication form.

DISCHARGE INSTRUCTIONS:

Should she have any further needs, contact the medical director of the facility. If urgent, return to the emergency room.

Time taken for patient was greater than 30 minutes for evaluation, assessment and discharge planning with case management.

CC: KRISTI MILLER, FNP

MJR:8000006

D: 11/27/2017 11:30:24 T: 11/27/2017 11:36:49 DOCUMENT: 1026107

Page 1 of 1

Dictated by: MICHAEL RATZ MD

<Electronically signed by MICHAEL RATZ MD> 11/27/17 1828

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Georgetown Memorial Hospital

DISCHARGE SUMMARY

PAGE 3

PATIENT: WRAGG, ELLA GREEN

MEDICAL RECORD #: M000907925

Rep#: 1127-0065

Pt. Status: DIS IN

copy: PHILIPP II., RICHARD ANDREW
PHILIPP II., RICHARD ANDREW
RATZ, MICHAEL J

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ROA 054

Prince George Healthcare

Resident Face Sheet: ELEANOR WRAGG (Full Code)

Unit:	Indigo	Preferred Name:	
Room/Bed:		Attending:	Peter Maung - (843) 343-3188
Status:	Discharged	Email:	
Admit Date:	11/27/2017 02:54 PM (current)	Last Qualifying Hospital Stay:	11/24/2017 - 11/27/2017
Admitted From:	Hospital (current)	Referral Source:	
Discharged:	12/25/2017 07:19 AM	Discharged To:	
Primary Discharge Diagnosis:		Discharge Reason:	
		Condition on Discharge:	
Primary Payer:	Insurance RUGS - United Healthcare	Birth Date:	1941
SSN:		Age:	79
Medicare A #:	29A	Sex:	F
Medicare B #:	29A	Marital Status:	Married
Medicaid #:	801	Mother's Maiden Name:	
MR#:	139021-01	Religion:	
Pharmacy:	Remedi SeniorCare of Charlotte	Prev Occupation:	
Race:	Black, not of Hispanic Origin	Address:	507 SORRELL DR GEORGETOWN, SC 29440
Preferred Language:	ENGLISH	County:	GEORGETOWN
Is Responsible for Self:	No	Phone:	
Smoking Status:	Unknown If ever smoked	Military Svc:	
Service Connected Disability & %:	No 0.00%	Veteran Elig (10-5588):	No
VA Claims Number:		Last Branch of Service:	
Service Number:		Last Branch of Service Dates:	

Insurance Information:

Insurance	Group Name	Group #	Insured's ID #	Payer Address	Payer Phone
Insurance RUGS - United Healthcare			200	Claims Division, PO BOX 740819 Atlanta, GA 30374	Phone: (800) 227-7789
Insurance Part B - United Healthcare			200	Claims Division, PO BOX 740819 Atlanta, GA 30374	Phone: (800) 227-7789
Medicaid Co B			801		

Advanced Directives:

Directive	Copy On File?	Notes
Full Code		

Allergies:	Xarelto
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MatrixCare Report

Page 1 of 2

WRAGG, E. 000001

ROA 055

Prince George Healthcare

Resident Face Sheet: ELEANOR WRAGG (Full Code)

Unit:	Indigo	Preferred Name:	
Room/Bed:		Attending:	Peter Maung - (843) 343-3188
Status:	Discharged	Email:	

Diagnoses: G93.41 Metabolic encephalopathy Admission, R23.9 Unspecified skin changes, R21 Rash and other nonspecific skin eruption, Z23 Encounter for immunization, Z11.1 Encounter for screening for respiratory tuberculosis, E11.9 Type 2 diabetes mellitus without complications, E78.5 Hyperlipidemia, unspecified, I10 Essential (primary) hypertension, I48.91 Unspecified atrial fibrillation, N39.0 Urinary tract infection, site not specified

Alerts:

Face Sheet Notes: UHC POLICY #939366792
AUTH #A033729549
MEDICAID
SHORT TERM REHAB

Contacts

Relationship	Name	Responsibilities	Call Order	Phone/Email	Address	Notes
Son	Mr. WENDAL GREENE	Emergency Contact	1	Primary (843) 359-6928	GEORGETOWN, SC 29440	
Son	Mr. LADON WRAGG	Emergency Contact	2	Primary (843) 264-0987	GEORGETOWN, SC 29440	
Son	Mr. ERIC GREENE	Emergency Contact	3	Primary (610) 453-3128	SC	
Spouse	Mr. WESLEY WRAGG	Emergency Contact Responsible Party Primary Financial Contact Receive A/R Statement	4	Primary (843) 325-2727	GEORGETOWN, SC 29440	
Son	Kevin Green	Emergency Contact	5	Primary (843) 240-2412	507 Sorrell Street Georgetown, SC 29440	

Providers

Provider Name	Type	Contact	Phone/Email	Address
	Physician	Peter Maung MD	Primary (843) 343-3188 Fax (843) 824-9342 Email [redacted]@hotmail.com	9285 Medical Plaza Drive, Charleston, SC 29406
		-Attending		
Wild's	Funeral Home		Primary (843) 546-6901	130 N. Merriman Rd, Georgetown, SC 29440
Remedy SeniorCare of Charlotte	Pharmacy		Primary (843) 312-3469 Fax (311) 111-1111	7504 E Independence Blvd Suite 113, Charlotte, NC 28227

Prince George Healthcare Continuity of Care Document

Prince George Healthcare

WRAGG, ELEANOR

MRN:139021

Patient	ELEANOR WRAGG	Sex	Female
Date of birth	[REDACTED] 1941	Ethnicity	Not Hispanic or Latino
Race	Black or African American	Patient IDs	MRN:139021
Contact info	Primary Home: 901 Maple Street Georgetown, SC 294404333, US Tel: (843) 546-6101		
Preferred Language	ENGLISH		
Document Created:	January 17, 2020		
Performer (attending physician)	Peter Maung, MD		
Author	MatrixCare - Version 2019 R3		
Contact Info			
Emergency Contact	Mr. WENDAL GREENE [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 359-6929; ext=		
Emergency Contact	Mr. LADON WRAGG [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 264-0987; ext=		
Emergency Contact	Mr. ERIC GREENE [REDACTED] SC, US Tel: (610) 453-3128; ext=		
Emergency Contact	Mr. WESLEY WRAGG JR [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 325-2727; ext=		
Emergency Contact	Kevin Green 507 Sorrell Street Georgetown, SC 29440, US Tel: (843) 240-2412; ext=		
Agent	Mr. WESLEY WRAGG JR [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 325-2727; ext=		
Next of kin (Son)	Mr. WENDAL GREENE [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 359-6929; ext=		

Prince George Healthcare

WRAGG, ELEANOR
MRN:139021

Next of kin (Son)	Mr. LADON WRAGG [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 264-0987; ext=
Next of kin (Son)	Mr. ERIC GREENE [REDACTED] [REDACTED], SC, US Tel: (610) 453-3128; ext=
Next of kin (Spouse)	Mr. WESLEY WRAGG JR [REDACTED] GEORGETOWN, SC 29440, US Tel: (843) 325-2727; ext=
Next of kin (Son)	Kevin Green 507 Sorrell Street Georgetown, SC 29440, US Tel: (843) 240-2412; ext=
Document maintained by	Prince George Healthcare 901 Maple Street Georgetown, SC 294404333, US Tel: (843) 546-6101

France (George) Desjardins

Observation Detail List Report: WRAGG, ELEANOR (Full Code) MR#: 139021-01

Date	Observer Name	Observer Title	Observer ID
Admission/Quarterly - Palmetto Clinical Admission Documentation			
OBSERVATION INFORMATION			
Creator:	Kasey Keenan		
Observation Date:	11/27/2017 04:20PM	Date Recorded:	11/27/2017 04:20PM
Completed Date:	11/27/2017 04:25PM	Completed By:	Kasey Keenan
DESCRIPTION			
ADMISSION			
OBSERVATION DETAILS			
TRANSPORTATION			
Transported to the facility by:			
☒ Ambulance		☒ Transport Service	
☐ Private Vehicle		☐ Other	
Mode of Admission:			
☐ Wheelchair		☐ Ambulatory	
☒ Stretcher		☐ Other	
COGNITIVE/NEUROLOGICAL STATUS			
COGNITIVE/NEUROLOGICAL STATUS (MDS Section B)			
Completed by whom, date, and time. (If someone other than creator)			
Is Resident Comatose - Persistent vegetative state, no discernable consciousness? (B.1)			
☐ No		☐ Yes	
If yes, does resident respond to painful stimuli?			
☐ No		☐ Yes	
Memory (B.2) - Recall of what was learned or known.			
☒ Short-Term Memory Intact (able to recall 3 objects, last meal)		☐ Short-Term Memory Problem (#2)	
☒ Long-Term Memory Intact (accurate personal history, recalls job, family, past home)		☐ Long-Term Memory Problem (#2)	
Memory/Recall (B.3) - indicate what resident can recall.			
☒ Current Season		☐ Staff Names/Titles	
☒ That He/She Is In A Nursing Home		☐ None Of Above	
☐ Location Of Own Room			
Cognitive Skills For Daily Decision Making (B.4) - Accurate assessment may require conversations with staff and family who have direct knowledge of resident's ability over time.			
Cognitive Skills For Daily Decision Making (B.4) - Accurate assessment may require conversations with staff and family who have direct knowledge of resident's ability over time.			
☐ Independent - The resident's decisions in organizing daily routine and making decisions were consistent, reasonable, and organized reflecting lifestyle, culture, values.		☐ Modified Independence - The resident organized daily routine and made, safe decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations (#2)	

PalmettoCare Reporting User: Kasey Keenan

Last Page: 01/07/2019 04:25:00 PM

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WRAGG, E. 000332

ROA 059

Prince George Healthcare

Observation Detail List Report: WRAGG, ELEANOR (Full Code) MR#: 139021-01

- ☒ Moderately Impaired - The resident's decisions were poor; the resident required reminders, cues, and supervision in planning, organizing, and correcting daily routines. (#2)
- ☐ Severely Impaired - The resident's decision-making was severely impaired; the resident never (or rarely) made decisions. (#2,5)

Neurologic Status - Pupil Reaction

- ☒ Equal, Round, Reactive To Light
- ☐ Non-Reactive To Light
- ☐ Misshapen
- ☐ Unequal

Pupil Size - Right Eye

- 1 mm
- 2 mm
- ☒ 3 mm
- 4 mm
- 5 mm
- 6 mm
- 7 mm
- Other

Pupil Size - Left Eye

- 1 mm
- 2 mm
- ☒ 3 mm
- 4 mm
- 5 mm
- 6 mm
- 7 mm
- Other

Comments - Note specific information related to any of the above assessment elements.

COMMUNICATION AND HEARING PATTERNS

COMMUNICATION (MDS Section C) Completed by whom, date, and time. (if someone other than creator)

Hearing Appliances:

- ☐ Right
- ☐ Left
- ☐ Both
- ☒ None

Hearing (C.1) - With appliance, if used.

- ☒ Hears Adequately - Normal talk, TV, phone
- ☐ Hears in Special Situations Only - Speaker has to adjust tonal quality and speak distinctly (#4)
- ☐ Minimal Difficulty - When not in quiet setting (#4)
- ☐ Highly Impaired - Absence of useful hearing (#4)

Type and number of hearing appliance(s).

Communication Devices/Techniques (C.2)

- ☐ Hearing Aid Present And Used
- ☐ Other Receptive Communication Techniques Used - e.g. Lip reading)
- ☐ Hearing Aid Present And Not Used Regularly
- ☒ None Of Above

Describe other techniques, if used.

Modes of Expression (C.3)

- ☐ American Sign Language Or Braille
- ☐ Writes Messages To Express Or Clarify Needs
- ☐ Communication Board
- ☐ Other
- ☒ Speech

MatrixCare Report User: Wilson, Tracy

Run Date: 01/17/2020 09:26:13 AM

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WRAGG, E. 000333

ROA 060

ADMISSION AGREEMENT - SOUTH CAROLINA

RESIDENT NAME:

Eleanor Wragg

RESIDENT NUMBER:

DATE OF ADMISSION:

11/27/17

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

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

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.

2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds, or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aids and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.

3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.

4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.

5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

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

Original: Business File • Photocopy: Resident/Representative

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

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

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

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

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

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

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

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

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

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

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

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

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

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

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

III. FINANCIAL AGREEMENT

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

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☒-private) (☐-semi-private) accommodations, for a basic fee of \$ 255/210 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

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

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

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

Original: Business File • Photocopy: Resident/Representative

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

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

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

IV. TERMINATION

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

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

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

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

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

V. MEDICAID BENEFICIARIES

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

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

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

3. Non-Covered Services.

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

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

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

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

VI. MEDICARE BENEFICIARIES

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

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

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

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

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

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

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

VII. PRIVATE PAY/INSURANCE

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

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

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

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

5. Application/ Appeals. Resident and/or Representative authorize Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not

6. Not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remain responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VIII. NOTICES

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

SC 0

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

SC 0

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

IX. GOVERNING LAW

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

X. SEVERABILITY

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

XI. CAPTIONS

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

XII. MODIFICATIONS

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

XIII. WAIVER

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

XIV. RESIDENT

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

XV. ASSIGNABILITY

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

Original: Business File • Photocopy: Resident/Representative

XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

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

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

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

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

XVII. MISCELLANEOUS

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

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

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

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

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

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

XVIII. ENTIRE AGREEMENT

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

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

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

Signature of Resident

Date

Printed Name of Resident

Social Security Number

Witness Signature

Date

Printed Name of Witness

OR

Signature of Representative, if any

Date

Printed Name of Representative

Witness Signature

Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

Signature of Facility Official

Date

Printed Name of Facility Official & Title

Original: Business File • Photocopy: Resident/Representative

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS PALMETTO PRINCE
PALMETTO PRINCE GEORGE	)	GEORGE OPERATING, LLC D/B/A
OPERATING, LLC D/B/A PRINCE	)	PRINCE GEORGE HEALTHCARE
GEORGE HEALTHCARE CENTER;	)	CENTER AND RICHARD PORTER'S
PALMETTO HEALTH CARE, LLC,	)	MOTIONS TO STAY AND COMPEL
MURRAY FORMAN, INDIVIDUALLY;	)	ARBITRATION
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

TO: DIRK J. DERRICK AND S. TAYLOR HOOVEN, ATTORNEYS FOR PLAINTIFF:

COME NOW the Defendants Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center and Richard Porter, (collectively "Defendants" or the "Defendants") and submit the following Memorandum in Support of their Motions to Stay the Action and Compel Arbitration pursuant to the Federal Arbitration Act ("FAA") 9 U.S.C. § 1, et seq., and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

Plaintiff, acting as attorney-in-fact for Eleanor Wragg, has sued the Defendants for "Negligence" and "Negligence Per Se" arising out of Ms. Wragg's residency at Palmetto Prince George Operating, LLC's skilled nursing facility (hereinafter the "Facility" or "Prince George"). However, Ms. Wragg entered into an arbitration agreement with the Facility which covers all allegations raised in the Complaint. On March 27, 2020 and before responding to Plaintiff's discovery requests, the Defendants filed their Motions to Stay the Action and Compel

Arbitration. For the reasons set forth herein, the Defendants respectfully request that Plaintiff's Complaint be stayed and that this matter be compelled to arbitration pursuant to 9 U.S.C. §1, et seq.

FACTUAL BACKGROUND

Eleanor Wragg was admitted to the Facility on November 27, 2017 for skilled nursing care. She was 76 years old upon admission and came to the Facility for short term rehabilitation following a short stay at Georgetown Memorial Hospital. Upon admission to the Facility, Ms. Wragg's past medical history included type 2 diabetes mellitus, hyperlipidemia, hypertension, and unspecified atrial fibrillation. Ms. Wragg's age and condition necessitated family assistance for admission and she was admitted to Prince George with the assistance of her son, Mr. Wendal Greene.

In connection with Ms. Wragg's admission, Mr. Greene entered into a number of contracts with Prince George, which included the Admission Agreement and Arbitration Agreement, on behalf of Ms. Wragg. (See **Exhibits 1 and 2**, respectively, attached hereto). Mr. Greene also signed certain consents directly related to Ms. Wragg's residency and her receipt of nursing care, including a pneumococcal vaccination consent and an influenza immunization consent. (See **Exhibit 3**).

Based on the Admission Agreement and pursuant to the agreements set forth therein, Ms. Wragg was admitted to the Facility and received skilled nursing care and treatment. During her stay at the Facility, Ms. Wragg accepted the benefits of the contracts entered into on her behalf by her representative, Mr. Greene. Such benefits included, but are not limited to, Ms. Wragg's residency at the Facility and her receipt of the skilled nursing care provided therein. Plaintiff has never challenged any agreement's validity until now. Notably, Plaintiff does not assert that the

Admission Agreement is invalid or that Ms. Wragg entered the Facility unwillingly or without consent.

Upon admission, Mr. Greene explicitly represented that he was authorized to admit Ms. Wragg to the Facility and execute necessary documents on her behalf, including the Arbitration Agreement. Indeed, the very first provision of the Admission Agreement states that *all information provided to the Facility* is truthful and correct, including Mr. Greene's authority to bind his mother, Ms. Wragg, to certain agreements. (See **Ex. 1**). Mr. Greene signed the Admission Agreement on behalf of Ms. Wragg as her "Representative," as defined therein. The relevant provisions of the Arbitration Agreement state the following:

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

The Arbitration Agreement further provides:

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

Regarding Mr. Greene's authority to sign on behalf of his mother, the Arbitration Agreement states:

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

Moreover, the Arbitration Agreement states "It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assignees, personal representatives, guardians, or **any persons deriving their claims through or on behalf of Resident.**" (See **Ex. 2**) (emphasis added). By its terms, the Arbitration Agreement is binding on the Facility's "agents, employees, and servants" as well. (See **Ex. 2**). Defendant Porter was an employee of Prince George during the time period of Ms. Wragg's residency and, as such, is clearly an intended third party beneficiary of the Arbitration Agreement as outlined below.

The Arbitration Agreement was executed by Mr. Greene as "Representative" of Ms. Wragg and Angela Burns, the Admissions Director for Prince George on behalf of Prince George. (See **Declaration of Angela Burns (facility admissions director), attached hereto as Exhibit 4**). Ms. Burns recalls reviewing and explaining the Arbitration Agreement to Mr. Greene to ensure he understood it before signing and believed Mr. Greene had the authority to sign it. (**Ex. 4**, pgs. 2-3). Ms. Wragg never repudiated or invalidated Mr. Greene's act of signing the Arbitration Agreement and never indicated to Ms. Burns that he lacked the authority to sign on her behalf. (**Ex. 4**, pgs. 2-3) Because the acts complained of by Plaintiff fall within the scope of the Arbitration Agreement, the Court should stay these proceedings, and compel this matter to arbitration. 9 U.S.C. § 3.

ARGUMENT AND CITATION TO AUTHORITY

I. POLICY IN FAVOR OF ARBITRATION

There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir.1997). Indeed, both federal and state policy favor arbitrating disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) (“The policy of the United States and this State is to favor arbitration of disputes.”). “This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Therefore, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *Id.*, 338 S.C. at 41, 524 S.E. 2d at 846 (internal quotations and citations omitted).

II. THE FEDERAL ARBITRATION ACT GOVERNS THE ARBITRATION AGREEMENT AND THE CLAIMS ASSERTED BY THE PLAINTIFF IN THE COMPLAINT

As an initial matter, the Arbitration Agreement, by its terms and by law, is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (holding that skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA). Under the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires

the enforcement of all arbitration agreements. Section 4 of the FAA provides, in pertinent part, as follows:

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added).

“By its terms, the (FAA) leaves no place for the exercise of discretion by a... court, but instead mandates that... courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). While a court a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not invalidate an arbitration agreement on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Kindred Nursing Centers Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1423, 197 L. Ed. 2d 806 (2017)(citing *AT & T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S.Ct. 1740, 179 L.Ed.2d 742).

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. As discussed and further described herein, such a binding and enforceable written agreement to arbitrate disputes exists in this case and Plaintiff's claims should compelled to arbitration.

III. THE ARBITRATION AGREEMENT IS VALID AND ENFORCEABLE

A. The Plain Language of the Agreement Binds Plaintiff

According to the plain language of the Arbitration Agreement and consistent with his actions during the admissions process, Wendal Greene represented himself to staff and admissions personnel at the Facility as his mother's representative with the authority to sign documents and enter agreements on her behalf.¹ It was clearly Mr. Greene's intention to bind Ms. Wragg according to the terms of the Admission Agreement and Arbitration Agreement. Moreover, Ms. Wragg evinced no intentions or directions to the contrary. Accordingly, the plain language of the Arbitration Agreement confirms that Mr. Greene was authorized to enter this Agreement binding his mother to arbitration, and the Agreement directly applies to the instant dispute. For these reasons, the Court should find this Agreement is valid and enforceable, and the present action must be stayed and compelled to arbitration.

This Court has recently found the plain language of arbitration agreements to support enforceability in at least two other cases with circumstances nearly identical to the case at bar. *See e.g. Macie Price v. THI of South Carolina at Magnolia Manor Inman, LLC et. Al*, 2018-CP-42-01054 (S.C. Com. Pls. August 7, 2018) (attached hereto as **Exhibit 5**); *Josephine Spears v. Rehab Center of Cheraw, LLC et al.* 2019-CP-13-00308 (January 10, 2020) (attached hereto as **Exhibit 6**). In both cases, the plaintiff was the wife of a resident at a skilled nursing facility in South Carolina. The resident's wife in each case executed an admissions agreement and an arbitration agreement *identical* to the ones in the case at bar, and as here represented to the facility that she had authority to enter these agreements on her husband's behalf. (See **Ex. 5**, p. 2-3; see **Ex. 6**, p. 1). Unlike the present case, the plaintiffs in *Price* and *Spears* later executed

¹ See **Ex. 2** "It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assignees, personal representatives, guardians, or **any persons deriving their claims through or on behalf of Resident.**" (emphasis added).

contradictory affidavits in opposition to the Defendants' motion to compel arbitration, disclaiming their authority to enter the agreements. Nevertheless, this Court found that the signatory plaintiffs' attestations of authority in the arbitration agreements prevailed over the contradictory affidavits, and bound plaintiffs in both cases to the terms of the agreements. The Court should reach the same conclusion in the present case, and enforce the Arbitration Agreement, particularly in the absence of any affidavits or other evidence to contradict the plain language of the Agreement.

Specifically, this Court determined in *Price* that "the terms of the Arbitration Agreement clearly apply to the instant dispute[.]" because it was clearly the intent of the wife to bind her husband (and herself, as personal representative) according to the plain language terms of the arbitration agreement. (See **Ex. 5**, p. 5). Likewise, in *Spears*, the arbitration agreement at issue contained an express attestation of authority to enter into the agreement on behalf of the resident identical to Plaintiff's attestation in the Arbitration Agreement noted above. As such, this Court in *Spears* held, in part, that the wife's authority to sign the arbitration agreement at issue was "valid on its face" by its plain language (and indeed the arbitration agreement as a whole was found to be valid on its face) and that the skilled nursing facility had no obligation whatsoever to inquire as to the signatory plaintiff's authority beyond her own attestation. (See **Ex. 6**, p. 4). As in *Price* and in *Spears*, Mr. Greene in this matter expressly attested to his own authority to enter into the Arbitration Agreement on behalf of his mother, Ms. Wragg. He has not submitted an affidavit or other evidence disclaiming his authority to enter such an agreement on his mother's behalf. Therefore, the Court should find that Plaintiff is bound by the plain language of the Arbitration Agreement and compel this matter to arbitration.

B. Mr. Greene Possessed the Apparent and Inherent Authority to Execute and Bind Ms. Wragg to the Arbitration Agreement, and should be Estopped from Denying the Validity of the Arbitration Agreement.

i. Agency Relationship - Apparent Agency Authority

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

Alternatively "[a]n agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties." *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145-146, 425 S.E.2d 764, 773 (Ct. App. 1992.) The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996).

In *Carraway v. Beverly Enters. Ala., Inc.*, 978 So. 2d 27 (Ala. 2007), the facts are substantially similar to the case at bar. There, the plaintiff was the brother of a resident of a

nursing home facility who executed a number of documents on his sister's behalf upon her admission to the facility, including an arbitration agreement. The brother signed the documents as his sister's authorized representative but did not have a power of attorney for his sister at the time. Nevertheless, as in this case, the admissions agreement in *Carraway* provided that plaintiff was his sister's legal representative for the purposes of admission as he was her next-of-kin and represented himself to be authorized to make health care decisions on her behalf. The arbitration agreement in *Carraway* was a separate document and was not a condition of admission to the facility. *Id.*

When signing the arbitration agreement, the brother in *Carraway* left the resident signature line blank and signed it as the "authorized representative" of his sister. Suit was later filed and the facility moved to compel arbitration, which the trial court granted. On appeal, the Alabama Supreme Court affirmed the trial court's decision holding, relevant here, that the resident's brother possessed the apparent authority to enter into the arbitration agreement on his sister's behalf, as evidenced by the fact that she never objected to him signing on her behalf and the arbitration agreement specifically provided that any person authorized by the resident may execute it on her behalf. *Id.* See also, *Tenn. Health Mgmt. v. Johnson*, 49 So. 3d 175 (Ala. 2010) (holding that a daughter possessed the apparent authority to enter into an arbitration agreement on her mother's behalf). Notably, the Supreme Court of Alabama's holding in *Carraway* was applied as "persuasive authority" by this Court in *Price, supra.* (Ex. 5, p. 8).

Clearly, in this matter, Mr. Greene held himself out as an agent for his mother without any indication to the contrary when he executed various admission documents on behalf of his mother, including the Arbitration Agreement. Based on his conduct, Ms. Burns believed he possessed the authority to execute all admissions documents on her behalf, including the

Arbitration Agreement. Therefore, it was Ms. Burns' and the Facility's reasonable and justified belief that Mr. Greene was his mother's authorized representative and had the authority to execute the documents on her behalf.

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

A holding to the contrary would contradict the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and a reasonable belief that the agent has been authorized to act.* Ms. Burns and the Facility had reason to believe that, by allowing Mr. Greene to sign the admissions paperwork, including the documents providing for Ms. Wragg's stay and the skilled nursing care provided at the Facility, Ms. Wragg cloaked her son with the authority to execute those documents. Further, Ms. Wragg did not repudiate or invalidate her son's actions. Instead, she accepted the benefits of the contracts with the Facility by remaining at the Facility and receiving skilled nursing care and services, thereby ratifying her son's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, the Facility was further justified in believing Ms.

Wragg had authorized her son to execute it. It is clear that an apparent agency relationship existed such that the Arbitration Agreement should be deemed enforceable.

ii. Inherent Agency Authority

Even if Mr. Greene lacked the actual or apparent authority to enter into the terms of the Arbitration Agreement, he still possessed sufficient inherent agency powers to render the agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” See, §§ 8A, 161 *Restatement (Second) of Agency* (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975) (*abrogated on unrelated grounds*) (examining whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987) (“[t]he powers of an agent are, prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”) (*citing Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established legal principle follows from one of the cardinal principles of agency law: that third parties, such as the Facility, should not be disadvantaged because they dealt with an agent rather than a principal. As set forth above, there is no dispute as to whether Mr. Greene was authorized to admit his mother to Prince George. To the extent Plaintiff takes issue with Mr. Greene's authority to bind his mother to the Arbitration

Agreement and the specific terms therein, such actions merely accompanied and were incidental to Mr. Greene's authority to admit his mother to the Facility. The Defendants should not be disadvantaged for acting in accordance with the express representations of Mr. Greene regarding his authority.

iii. Agency by Estoppel

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

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

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

(See **Ex. 5**, p. 9). Accordingly, the court concluded that the arbitration agreement was valid and enforceable.

Similarly, in *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) the United States District Court of South Carolina concluded the plaintiff was estopped from denying he had authority to bind his wife to arbitration. (Attached hereto as **Exhibit 7**). As in the present case, the husband in *McCutcheon* executed a number of documents on his wife's behalf upon her admission to a nursing home facility, including an admissions agreement and an arbitration agreement. As in this case, the admissions agreement in *McCutcheon* provided that the husband was his wife's legal representative for the purposes of admission, as he was her next-of-kin and represented himself as authorized to make health care decisions on her behalf. The court held:

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

Id. at *5.

Like in *Price* and *McCutcheon*, it would be disingenuous and inequitable to allow the Plaintiff in this case to assert that Mr. Greene was his mother's authorized agent as to the Admissions Agreement, but not the Arbitration Agreement. In the case at bar, Defendants had no knowledge or reason to believe that Mr. Greene was not Ms. Wragg's authorized agent for purposes of executing the Arbitration Agreement and other admissions paperwork. The Defendants relied on the affirmative representations of Mr. Greene in admitting his mother to the

Facility for the provision of the skilled nursing care. Additionally, the Arbitration Agreement was signed and executed with the expectation that all disputes between the parties would be governed by its contents and such representations were relied upon by Defendants, only for the instant lawsuit to seemingly ignore the binding agreement. Accordingly, Plaintiff should be estopped from denying the validity of the Arbitration Agreement.

iv. Ms. Wragg's Mental Capacity and Competence

Ms. Wragg had the requisite mental capacity and competence to confer agency authority on her son and/or to consent to the Arbitration Agreement. The Plaintiff's arguments to the contrary are erroneous and unsupported by the evidence. Therefore, the court should find that the Arbitration Agreement executed by the parties is valid and enforceable, and compel this matter to arbitration.

In order for a principal to create an agency relationship, the principal must have the mental capacity to contract. *In re Thames*, 344 S.C. 564, 570, 544 S.E.2d 854, 856 (Ct. App. 2001). South Carolina Courts hold that the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. *Id.*, 344 S.C. at 572, 544 S.E.2d at 858. "Mere infirmity of mind or body, not amounting to an incapacity to understand the nature and consequence of the act done" is insufficient to show incapacity. *In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 896 (1937). Moreover, "[t]he mere fact that a person's mind has been weakened by old age, accident, or disease is not sufficient to show that he or she lacks mental capacity." *Ballenger v. City of Inman*, 336 S.C. 126, 131, 518 S.E.2d 824, 827 (Ct. App. 1999)(citing *Lewis v. Lewis*, 199 S.C. 490, 20 S.E.2d 107 (1942)). Instead, "mental incompetence is established by credible evidence that the subject, because of mental impairment,

has become incapable of managing his own affairs.” *Grapner v. Atl. Land Title Co.*, 307 S.C. 549, 551, 416 S.E.2d 617, 618 (1992).

The Plaintiff has cited a single report stating that the resident was “*moderately impaired*” to support his assertion that Ms. Wragg was completely incapacitated to the point where she was unable to confer agency authority on her son or consent to the Arbitration Agreement. However, this single observation from nursing staff upon the resident’s admission to the Facility is entirely insufficient to support the Plaintiff’s contention. It is certainly a far cry from a physician’s diagnosis of incapacity. This single nurse’s observation does not prove that Ms. Wragg lacked the ability to allow her son to execute necessary admissions documents, including the Arbitration Agreement, enabling her admission to the Facility. Therefore, Plaintiff has not established by a preponderance of the evidence that Ms. Wragg was incapacitated when her son signed the admissions documents, and the Arbitration Agreement should be enforced.

Moreover, with the exception of the Arbitration Agreement at issue, Plaintiff does not attack the validity of any other agreement entered into by Mr. Greene and the Facility. Accordingly, it is simply impossible for Plaintiff to somehow argue that Ms. Wragg lacked the mental capacity to confer authority upon Mr. Greene to sign the Arbitration Agreement while accepting that she was otherwise able to confer authority upon Mr. Greene to sign the Admission Agreement allowing her to gain admission to the Facility and receive skilled nursing care. As set forth more fully below, the Plaintiff cannot “have it both ways” by relying upon the Admission Agreement while at the same time repudiating the Arbitration Agreement. For these reasons, the Arbitration Agreement should be deemed enforceable and this matter should be compelled to arbitration.

v. The South Carolina Adult Health Care Consent Act does not apply

The Plaintiff's arguments in opposition to the Arbitration Agreement premised on the South Carolina Adult Health Care Consent Act (hereinafter the "Act") are misplaced as the Act does not apply in this case. In relevant part, the Act provides that "[w]here a patient is *unable to consent*, decisions concerning his health care may be made by the following persons in the following order of priority..." S.C. Code Ann. § 44-66-30 (A) (*emphasis added*). Based on its plain language and as Plaintiff correctly asserts, the Act does not apply here. As set forth more fully above, Ms. Wragg was *not* deemed "unable to consent" as defined by the Act. Defendants do not contend that the Act bestowed authority on Mr. Greene to bind his mother to the Arbitration Agreement. Rather, as discussed in this memorandum, ordinary agency and estoppel principles clearly apply. Nothing in the Act prevents a competent patient like Ms. Wragg from conferring agency authority on a family member as she has done in this case based upon the plain terms of the Arbitration Agreement and according to the apparent and inherent agency principles discussed above. Therefore, any contention that the Act somehow undermines the enforceability of the Arbitration Agreement in this case should be disregarded.

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

i. Merger

As additional grounds to compel arbitration and in the alternative, the Admissions Agreement and Arbitration Agreement should be construed together and Plaintiff should be required to arbitrate her claims against the Defendants. The Arbitration Agreement and Admission Agreement were executed by Mr. Greene on behalf of Ms. Wragg. The validity of these agreements, including the Arbitration Agreement, must be determined in accordance with

the general principles of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010).

The Arbitration Agreement provides that “any controversy or dispute between the parties arising out of or relating to Facility’s Admission Agreement . . . or relating in any way to Resident’s stay at Facility” shall be resolved by arbitration pursuant to the terms of the Arbitration Agreement. (See **Ex. 2**) (emphasis added). As previously described, the Arbitration Agreement and the Admissions Agreement were both signed by Mr. Greene on behalf of his mother on the same day, at the same time, and in connection with the same subject matter and transaction - Ms. Wragg’s residency at Prince George and receipt of skilled nursing care there.

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

Development Services v. Joe Hardin Builder, Inc., 294 S.C. 430, 365 S.E.2d 231 (Ct. App. 1988); *accord Cafe Associates, Ltd v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

As indicated previously, the court in *McCutcheon* analyzed facts almost identical to the case at bar and determined that the arbitration agreement and admissions agreement had merged for purposes of equitable estoppel. *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011WL6318575 (See **Ex. 7**). Indeed, this Court has cited to *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admission agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC et al*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* attached hereto as **Exhibits 8 and 9, respectively**).

Accordingly, Ms. Wragg, by and through the acts of her representative, Mr. Greene, and the Facility, both contemplated that the terms of the agreement to admit Ms. Wragg were contained in the Admissions Agreement and Arbitration Agreement. Mr. Greene executed the Arbitration Agreement and the Admissions Agreement at the same time; the Arbitration Agreement and the Admissions Agreement both covered the same subject matter and transaction (Ms. Wragg's residency at the Facility and her receipt of residential and skilled nursing services); the Arbitration Agreement and Admissions Agreement were executed by the same parties; the Arbitration Agreement specifically makes citation to and incorporates the Admission Agreement; and thus the Arbitration Agreement and Admission Agreement should be construed as part and parcel of the same agreement between the parties.

ii. Equitable Estoppel of Merged Agreement

“Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). “A nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)); *see also Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290–297, 733 S.E.2d 597, 601–605 (Ct. App. 2012) (applying the direct benefits test as set forth in *International Paper Co.* to reverse the circuit court’s denial of a motion to compel arbitration); *Wilson v. Willis*, 426 S.C. 326, 339–345, 827 S.E.2d 167, 174–177 (2019) (discussing direct benefits test).

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

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

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

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

....

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

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

Of note, this Court applied this precise reasoning in *Spears*, referenced above. (See **Ex. 6**, pg. 9). In that case and as discussed above, a woman admitted her husband to a skilled nursing facility and in connection with his admission, executed admission and arbitration agreements *identical* to the ones here. The agreements were both executed by the woman and a representative of the skilled nursing facility at the same time. This Court considered the agreements as merged and held that the plaintiff was estopped from refusing to comply with the

² See also *THI of S.C. at Columbia, LLC v. Wiggins*, C/A No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011) (“Hall’s care was the essential purpose of the Contract. Thus, Hall was an intended third-party beneficiary of the Contract which was signed by Wiggins in her capacity as an immediate family member. It follows that Hall was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remains binding on his estate.”); accord *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. 7:13-CV-2929-BHH, 2014 WL 6863550, at *4 (D.S.C. Oct. 31, 2014), *report and recommendation adopted*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

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

Similarly, Ms. Wragg embraced all aspects of the Admission Agreement with the Facility. It would be manifestly inequitable to permit a party to claim the other is liable in tort based upon a contractual relationship, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. In other words, Plaintiff cannot “have it both ways” by relying upon certain terms of the Admission Agreement when it works to his advantage and repudiating the Arbitration Agreement when it works to his disadvantage.

As described, the Plaintiff’s allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against these Defendants based upon certain terms of the Admission Agreement while repudiating the Arbitration Agreement and should be prevented from doing so pursuant to the doctrine of equitable estoppel. Pursuant to numerous orders of this Court and numerous other courts on essentially identical facts and concerning identical arbitration agreements, where a non-signatory receives the benefits of the contract, which Ms. Wragg certainly did here, Plaintiff must be prevented from refusing to comply with the Arbitration Agreement merely because Ms. Wragg did not sign it.

iii. Coleman and Thompson are Distinguishable

Plaintiff argues the Admission Agreement and Arbitration Agreement are not merged pursuant to *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 452

(2014), and *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016), such reliance is misplaced.

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

Unlike the arbitration agreements in *Coleman* and *Thompson*, the Arbitration Agreement and Admission Agreement in the case at bar should not be considered "separate" for purposes of denying merger. Unlike *Coleman* and *Thompson* the Arbitration Agreement in this case does not state that it can be revoked after it has been signed. Furthermore, it does not state that arbitration is a precondition to admission to the Facility.

Instead, in the present case, the agreements "were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction" and, therefore, the documents merged. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts, supra*, 268 S.C. at 88, 232 S.E.2d at 24).³ Specifically, the Admission and Arbitration Agreements were signed

³ To be clear, even though the *Coleman* Court found evidence of an intent contrary to merger on the particular facts before it, it nonetheless recognized as *correct* the general proposition of law on which the *Coleman* Appellants' based their merger argument,

by Mr. Greene, on his mother's behalf, and the Facility on November 27, 2017. The documents were signed by the exact same people: Mr. Greene as representative for his mother and by the Admissions Director for the Facility. The documents were signed for the same purpose and transaction of establishing Ms. Wragg's residency at the skilled nursing facility.

While the Admission Agreement in this case does contain an "Entire Agreement" clause, unlike the admission agreements in those other cases, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn't refer to it at all). Moreover, the Arbitration Agreement at issue contains no disclaimer provision, unlike *Coleman* and *Thompson*.

Further still, it must be remembered that the merger question examines whether, "where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction,"⁴ as indeed the admission and arbitration agreements were here, there is evidence to upset the *default presumption* that the contracting parties intended the instruments to be construed together as effectively one contract. As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties' possessed a contrary intention. Such superficial things as the fact that the admission arbitration agreements have their own titles, are separately paginated, and/or are separately signed cannot suffice to show evidence of intent contrary to merger. To point to such things is really to do no more than

i.e., the *Coleman* Court expressly observed that the admission agreements and arbitration agreements before it (which, in this respect, are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), "the documents were [indeed] executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction." 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

⁴ *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

to point out that the admission agreement and arbitration agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of merger is to *merge* separate documents.

Even though, as noted above, the Arbitration Agreement was not a precondition to admission, this does not mean that the two instruments did not work hand-in-hand once the arbitration agreement came into existence (i.e., once it was in fact entered into). While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true; the Admission Agreement is indeed necessary to the Arbitration Agreement. In other words, yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with; *but that is not what happened*. The Arbitration Agreement was in fact executed, of course, and it was executed under circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction. Unlike the Admission Agreement, however, which is capable of making sense either standing alone or, alternatively, together with the Arbitration Agreement, the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being.

It matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission; and, here, there can be no question that the Arbitration Agreement—once agreed upon—was intended to be considered and construed

together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Ms. Wragg's relationship with the Defendants. Indeed, this conclusion finds direct support in the Admission Agreement's "Entire Agreement" provision, which states, "[t]he undersigned further acknowledges that he/she has received and read the Admission Handbook and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein." (Ex. 2, p. 12 (emphasis added)). Had the Arbitration Agreement not been executed, it would not constitute admissions material, but, of course, it was executed, and it does constitute admissions material; most respectfully, to conclude otherwise simply does not make sense. Respectfully, the material facts of *Coleman* and *Thompson*, are different from the material facts of the instant case, and those other cases do not control the outcome here. Under the particular facts of this case, an intent contrary to merger cannot reasonably be found.

D. Defendant Porter is a Direct Third Party Beneficiary and May Compel Arbitration.

As a general matter, a party not in privity of contract with another cannot enforce a contract against such other party. *Bob Hammond Const. Co., Inc. v. Banks Const. Co.*, 312 S.C. 422, 424 S.E.2d 890 (Ct. App. 1994) (internal citations omitted). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such person." *Id.* (citing *Cothran v. Rock Hill*, 211 S.C. 17, 43 S.E.2d 615 (1947)). Further, the FAA "... requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001).

The Arbitration Agreement was agreed to by Mr. Greene and the Facility. Although Defendant Porter is not a signatory to the Arbitration Agreement, the parties manifested their intent to make all employees of the Facility beneficiaries of the rights and obligations created under the Arbitration Agreement through the inclusion of the Facility's "employees" as parties to the agreement. (Ex. 2). Richard Porter, as the administrator of the Facility, was an employee. Therefore, as an employee of the Facility, Richard Porter is an intended beneficiary of the right and obligation to arbitrate any disputes with Plaintiff, of which Plaintiff's claims in this matter undoubtedly qualify as such. Richard Porter has exercised his rights as a third party beneficiary in filing his Motion and requests that this Court enforce the valid Arbitration Agreement and compel Plaintiff to arbitration with him.

E. Should the Court decide to Deny Defendants' Motions, the Parties Should be Permitted to Conduct Additional Discovery.

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

In a case involving similar issues, the Honorable Perry Gravely allowed the parties to conduct additional discovery on the issue of a mother's authority to execute an Arbitration Agreement on her son's behalf in connection with his admission to a skilled nursing facility. See *James Boyd v. THI of South Carolina, LLC d/b/a at Magnolia Place-Greenville, et. Al*, 2018-CP-23-01934 (S.C. Com. Pls. July 9, 2018)(attached hereto as **Exhibit 10**). Critical to the court's decision in that case was whether the son's conduct and admissions director's understanding of that conduct created apparent agency so as to bind the son to an arbitration agreement. The court permitted the parties to take the depositions of the mother, the son, the admissions coordinator

for the skilled nursing facility, and the case manager for the hospital the son was transferred from. After considering the testimony of those individuals, the court found there was evidence to support a finding of apparent agency.

Likewise, the Honorable Alison Lee allowed the parties to conduct additional discovery on a wife's authority to execute an arbitration agreement on behalf of her husband. *See Priscilla Brown, as Personal Representative of the Estate of James Brown v. THI of South Carolina at Columbia at Magnolia Manor d/b/a Midlands Health and Rehabilitation Center*, 2017-CP-40-00516 (S.C. Com. Pls. Nov. 7, 2019) (attached hereto as **Exhibit 11**). The case at the bar involves Mr. Greene's authority to execute the Arbitration Agreement and the circumstances surrounding its execution. As in *Boyd and Brown*, if the Court determines the record is insufficient to properly rule on the issues before it, additional discovery should be permitted as necessary.

Most respectfully, if the Court should make such a determination, it is only fair to allow the Defendants to engage in some appropriately limited discovery to attempt to protect their arbitration rights. It must be remembered that the Defendants moved to compel arbitration under a facially valid arbitration agreement. The Defendants firmly believe Mr. Greene had the authority to execute the Arbitration Agreement on behalf of his mother. Nevertheless, neither Plaintiff, Mr. Greene, nor Ms. Wragg (or anyone else authorized to act on Ms. Wragg's behalf) ever called Mr. Greene's authority to enter into the Arbitration Agreement into question until now. Defendants had no reason to conduct discovery until this dispute arose, and even then, they still maintain their primary position that the Arbitration Agreement was enforceable based on the record as is. If further development of the record is needed on any point material to arbitrability, the Court should expressly allow Defendants to protect their legitimate interests through

discovery into the relevant subject matter without exposing themselves to a claim of waiver by Plaintiff, i.e., without having to expose themselves to a potential Catch-22 where they could be said to have waived their arbitration rights simply by endeavoring to prove them.

CONCLUSION

For the reasons set forth herein, the Defendants respectfully request that this Court enter an Order staying the pending action and compelling arbitration. Alternatively, and if the Court is not inclined to grant the instant motion on any of the grounds asserted above, Defendants request that the parties be permitted to conduct additional discovery. Defendants also request permission to be heard after such discovery is conducted and requests that they be permitted to submit supplemental memoranda along with any additional evidence procured.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Matthew O. Riddle

Gaillard T. Dotterer, III

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*Attorneys for the Defendants Prince George
Operating LLC, d/b/a Prince George Healthcare
Center and Richard Porter*

Charleston, South Carolina

Dated: June 16, 2020

Pneumococcal Immunization**Benefits:**

Pneumococcal disease is a serious disease that causes much sickness and death. The pneumococcal vaccine protect against 23 types of pneumococcal disease. About 1 in 21 people who get pneumococcal pneumonia die. The vaccine begins to provide protection within 2 to 3 weeks. The pneumococcal vaccine is a very safe vaccine.

Side Effects/Risk Factors:

Soreness or redness of the arm

Muscle aches Low grade fever Rash/Hives

Pneumococcal vaccinations are contraindicated for people who have experienced a severe allergic reaction with previous vaccination. A single dose of pneumococcal vaccine is recommended for most persons age 65 or older. Some people might need to get a booster after 5 to 10 years as deemed appropriate by the physician. Some people who were younger than 65 when they received the vaccine may need a second dose at age 65. The pneumococcal vaccine can be given at the same time as the influenza vaccine. If the date of the last vaccine is unknown, then it may be administered at the physician's discretion. The Resident/Responsible Party has the right to refuse the vaccination.

Medical Practice or Primary Care Physician _____

Date of last known pneumococcal vaccination: _____

Date

Signature of Resident/Responsible Party

Date

PLEASE GIVE AS MD ORDERS

PLEASE DO NOT GIVE THE PNEUMOCOCCAL IMMUNIZATION

Influenza Immunization**Benefits:**

The best single way to protect against the flu is to get vaccinated in the fall. Vaccination is recommended anytime during the Flu season (October-April) to prevent development. The vaccine begins to provide protection within 2 weeks.

Side Effects/Risk Factors:

Soreness or redness of the arm

Muscle aches Low grade fever

Influenza vaccinations are contraindicated for people with a severe allergy to eggs, people that developed Guillian-Barré syndrome within 6 weeks of getting a flu vaccination, to people that have had an allergic reaction to the flu vaccine in the past. People who have a moderate or severe illness with fever should wait until symptoms lessen. Coincidental respiratory disease unrelated to the flu vaccine can occur after vaccination.

The influenza vaccine is offered yearly, as deemed appropriate by the physician. If the date of the last vaccine is unknown, then it may be administered at the physician's discretion. The Resident/Responsible Party has the right to refuse the vaccination. I am not aware of an allergy to eggs for this resident.

Date of last known influenza vaccination: _____

Date

Signature of Resident/Responsible Party

Date

PLEASE GIVE AS MD ORDERS

PLEASE DO NOT GIVE THE INFLUENZA IMMUNIZATION

Resident _____

RM# _____

MR# _____

Physician _____

Copy to Resident's chart

**DEFENDANT'S
EXHIBIT**

3

Wrapp-

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
PALMETTO PRINCE GEORGE	)	<u>DECLARATION OF ANGELA BURNS</u>
OPERATING, LLC D/B/A PRINCE	)	
GEORGE HEALTHCARE CENTER;	)	
PALMETTO HEALTH CARE, LLC,	)	
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

I, Angela Burns, respectfully submit this Declaration in support of Palmetto Prince George Operating, LLC d/b/a Prince George Health Care, LLC's ("Prince George" or the "facility") Motion to Stay Action and Compel Arbitration in the above-captioned case:

1. I am over the age of eighteen, am otherwise competent, and a resident of the State of South Carolina.
2. I served as the Admissions Director for Prince George during the time period at issue in the Plaintiff's Complaint.
3. I personally conducted the admissions process for Eleanor Greene Wragg, during her admission to Prince George on November 27, 2017. Ms. Wragg's son, Wendall Greene, was present for the admissions process and completed all admissions paperwork, identified and set forth below, on behalf of his mother.
4. As part of the admissions process, each admitting resident, or her representative on the resident's behalf, reviews an Admissions Agreement and various other documents that must be completed by the resident or her representative for admission to the facility.

Page 1 of 3

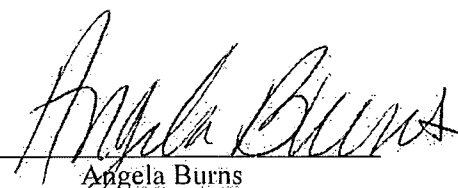
**DEFENDANT'S
EXHIBIT**

5. The admitting resident and her representative also receives a written copy of the Facility's Handbook, a written copy of the resident's rights under applicable state laws, a written copy of the facility's policy on Advance Directives, a written explanation of the charges for services provided by facility, a separate listing of local and government resources furnished by the state Ombudsman and other state/local advocacy groups, a separate listing of all medical professionals available to provide on-site services, and a written copy of the facility's policy on the use of physical/chemical restraints, in addition to other administrative documents. The admitting resident, or the resident's representative on behalf of the resident, initials an Acknowledgement Form as part of this admissions process, acknowledging that he or she has received and reviewed these respective items.
6. The admitting resident, or the resident's representative on behalf of the resident, also has the option to enter into an Arbitration Agreement with the facility during the admissions process, whereby any future claims by and between the resident and the facility based on the admitting resident's residency at the facility must be submitted to mandatory arbitration. Completion of the Arbitration Agreement is not a condition for admission to the facility.
7. The admissions process normally takes approximately one hour, depending on the admitting resident, but can take longer depending on certain variables, including whether the resident's family members are present for the admission process, whether the resident or family members have any questions about the admissions documents, and what the resident's medical condition is during the admissions process.
8. During the admissions process on November 27, 2017, I personally reviewed and explained each of the admissions documents, described above, to Mr. Greene to ensure that he reviewed, was comfortable with, and understood each and every document, including the Admission Agreement and Arbitration Agreement.
9. I specifically told Mr. Greene that completion of the Arbitration Agreement was not a condition of his mother's admission to the facility.
10. During the admissions process, Mr. Greene was talkative, alert, and oriented. I did not have any reasons to suspect Mr. Greene was suffering from any mental or cognitive disabilities at the time.

11. It appeared Mr. Greene was listening to me and understood me as I explained each of the admissions documents during the admissions process, and Mr. Greene did not voice any objections as to any of the admissions documents, including the Arbitration Agreement.
12. Mr. Greene spoke English well, and did not indicate that he was unable to read or understand any of the admissions documents as I explained them, including the Admissions Agreement and Arbitration Agreement, during the admissions process.
13. I believed based on Mr. Greene's statements and actions at the time of Ms. Wragg's admission that Mr. Greene was his mother's authorized representative and had the authority to execute the Admission Agreement, Arbitration Agreement, and other admissions documents on her behalf.
14. Mr. Greene signed each of the admissions documents, including the Admissions Agreement and Arbitration Agreement, on behalf of his mother.
15. Ms. Wragg never repudiated or invalidated her son's actions, and did not otherwise indicate that Mr. Greene was not her authorized representative for the purpose of executing the Admission Agreement, Arbitration Agreement, and other admissions documents on her behalf.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 16, 2020

_____, South Carolina


Angela Burns

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GEORGETOWN
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
PALMETTO PRINCE GEORGE	)	MEMORANDUM IN SUPPORT OF
OPERATING, LLC D/B/A PRINCE	)	DEFENDANT PALMETTO HEALTH
GEORGE HEALTHCARE CENTER;	)	CARE, LLC'S MOTION TO STAY
PALMETTO HEALTH CARE, LLC,	)	
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

DIRK J. DERRICK AND S. TAYLOR HOOVEN, ATTORNEYS FOR PLAINTIFF:

COMES NOW, Defendant Palmetto Health Care, LLC (hereinafter "this Defendant"), by and through its undersigned attorneys and submits this Memorandum in Support of its Motion to Stay.

BACKGROUND FACTS

Defendant Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center (hereinafter, "Facility Defendant" or "Prince George"), entered into a valid Arbitration Agreement with resident Eleanor Wragg (the "Arbitration Agreement"), at the time of Ms. Wragg's admission to Prince George. Per the Arbitration Agreement, Ms. Wragg and Prince George agreed that the South Carolina Uniform Arbitration Act would not apply; rather, the arbitration would be governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq. (the "FAA"),

because the services and reimbursement thereof to be provided to Ms. Wragg upon her admission to the facility affected and involved interstate commerce.

As set forth herein, Facility Defendant has filed a Motion with this Court to enforce the Arbitration Agreement against the Plaintiff. *See Exhibit 1 - Motion to Stay Action and Compel Arbitration.* Per this Court's inherent power to manage its own docket and the statutory mandates of the FAA, this Defendant respectfully requests that this matter must be stayed as to this Defendant until such time as the Court has made a final decision regarding Prince George's pending Motion to Compel Arbitration, the arbitration process is complete, and the appellate process, if any, has been exhausted. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, a stay would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

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

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

(Emphasis added.)¹

¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See* S.C. Code Ann. § 15-48-20(d) ("Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section..." (emphasis added))

Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002).

Both federal and state policy favor arbitration of disputes. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). Even when, as is the case here, a party to the lawsuit is not a party to the arbitration agreement, it “may be advisable to stay litigation among the nonarbitrating parties pending the outcome of the arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 21, 103 S. Ct. 927, 939 (1983). This Court also possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court’s discretion. *Id.* See also *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936)(“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

The Court’s decision on whether to stay the pending action against this Defendant “should be motivated by the court’s ‘concern that litigation against a party not bound by an arbitration provision may impair an arbitrator’s consideration of claims against a party that is compelled to arbitrate.’” *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor’s Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993).

In the instant matter, the Plaintiff’s claims against this Defendant arise out of the exact same factual underpinnings as his claims against Prince George, a party to the Arbitration

Agreement. To be sure, the claims against both this Defendant and Prince George are solely concerned with Ms. Wragg's stay at Prince George and the provision of care and treatment provided to her. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration between Plaintiff and Prince George. Without the issuance of a stay, disposition of the Plaintiff's claims against this Defendant may affect the disposition of the matter against Prince George, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Generally, Plaintiff's allegations of liability in the Complaint make very little distinction between this Defendant and Prince George. Rather, Plaintiff repeatedly alleges that the "Defendants" are liable to Plaintiff under the various causes of action set forth in the Complaint. *See* Pltf.'s Complaint at ¶¶ 34 - 39. In no uncertain terms, Plaintiff alleges and seeks to prove that this Defendant had had the power to direct and control employees at the Facility and therefore should be liable for their purported acts and omissions. *See* Pltf.'s Complaint at ¶¶ 7. If this Defendant is forced to continue with this litigation, the arbitration proceedings against Prince George could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Prince George. Should discovery and the trial of this matter continue against this Defendant in this Court, the right to arbitration of Prince George would be adversely affected, which would thwart the federal and state policies favoring arbitration. *See Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000)(Stay granted to defendant non-signatory to arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.). Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

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*Attorneys for the Defendant Palmetto Health Care,
LLC*

Charleston, South Carolina

Dated: June 16, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
KEVIN GREENE, AS ATTORNEY IN	)	CASE NO. 2019-CP-22-00961
FACT FOR AND ON BEHALF OF	)	
ELEANOR GREENE WRAGG,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	MOTION TO ALTER, AMEND, AND/OR
	)	RECONSIDER ORDER REGARDING
	)	DEFENDANTS' MOTION
	)	TO COMPEL ARBITRATION
PALMETTO PRINCE GEORGE	)	
OPERATING, LLC D/B/A PRINCE	)	
GEORGE HEALTHCARE CENTER;	)	
PALMETTO HEALTH CARE, LLC,	)	
MURRAY FORMAN, INDIVIDUALLY;	)	
AND RICHARD PORTER,	)	
INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

TO: THE HONORABLE BENJAMIN H. CULBERTSON, PRESIDING JUDGE, AND
DIRK J. DERRICK, ESQUIRE, AND S. TAYLOR HOOVEN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF

NOW COME Defendants, Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center (the "Facility"); Palmetto Health Care, LLC ("Palmetto Health Care"), and Richard Porter ("Porter") (collectively, "Defendants"), by and through their undersigned counsel, pursuant to Rule 59(e), SCRCP, and, on the grounds set forth below, hereby move this Honorable Court to alter, amend, and/or reconsider and/or correct its Order filed June 17, 2020, Denying the Facility and Porter's Motions to Stay and Compel Arbitration and Denying Palmetto Health Care's Motion to Stay (the "Subject Order").

FOR ALL MOTIONS DISPOSED OF VIA THE SUBJECT ORDER, DEFENDANTS REQUEST THAT THE COURT (RE)CONSIDER AND SPECIFICALLY RULE ON EACH AND EVERY ARGUMENT/ISSUE RAISED IN SUPPORT THEREOF, TO INCLUDE ARGUMENTS/ISSUES RAISED VIA DEFENDANTS' MEMORANDA.

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

The Facility and Porter filed motions to stay this action and compel arbitration on March 27, 2020 (collectively, the "Motion to Compel Arbitration"), pursuant to a valid and enforceable arbitration agreement that was executed in connection with Eleanor Wragg's admission to the Facility. Palmetto Health Care filed a related motion to stay on March 25, 2020 (the "Motion to Stay").

By email on June 2, 2020, the Court notified the parties that the Motion to Compel Arbitration adequately argued in favor of the relief requested and would be decided on briefs and without oral arguments. The Court permitted Plaintiff until June 16, 2020, to submit a brief in opposition. Plaintiff filed a memo in opposition to the Motion to Compel Arbitration on June 15, 2020. The Facility and Porter jointly filed a memo in support of the Motion to Compel Arbitration the next day, June 16, 2020. Palmetto Health Care also filed a memo in support the Motion to Stay on June 16, 2020. These memoranda and supporting exhibits, including an affidavit of the Facility's admissions director, further elucidated the grounds for relief raised in

the Defendants' motions. The memoranda also included Defendants' specific reply to certain of Plaintiff's arguments raised in his memo in opposition:

The Subject Order states that, pursuant to South Carolina Supreme Court Order 2020-04-22-01(c)(4), the motions before the Court were dispensed with without oral arguments "and after review of the *defendants' motions* and plaintiff's memorandum filed 6/15/2020" (emphasis added). However, the Subject Order does not indicate that the Court considered Defendants' memoranda, which again, more fully illustrated the grounds for the Defendants' motions, raised a number of arguments in favor of a stay and enforcement of the arbitration agreement at issue, and included a specific reply to certain arguments raised by Plaintiff in opposition.

Most respectfully, Defendants contend their memoranda were duly submitted for the Court's consideration and request that the Court (re)consider and specifically rule on each and every argument raised therein, so that these arguments may be appropriately preserved for appellate review in accordance with *Elam*. Defendants maintain based on the grounds raised in their motions and memoranda that this matter must be stayed and compelled to arbitration. Defendants' memoranda are being attached to this Motion as **Exhibit 1** and all arguments raised therein are hereby incorporated by reference.

Wherefore, Defendants ask that the Court alter, amend, and/or reconsider the Subject Order, (re)considering and specifically ruling on each and every argument/issue raised in support thereof, which arguments/issues, Defendants' maintain, entitle them to their requested relief (i.e., the grant of the Motion to Compel Arbitration by the Facility and Porter and the grant of the Motion to Stay by Palmetto Health Care).

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

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*Attorneys for the Defendants Palmetto Prince
George Operating, LLC d/b/a Prince George
Healthcare Center; Palmetto Health Care, LLC; and
Richard Porter*

Charleston, South Carolina

Dated: June 29, 2020

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

Appeal from Georgetown County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2019-CP-22-00961

Kevin Greene,
as Attorney in Fact for and on Behalf of
Eleanor Greene Wragg,

Respondent,

v.

Palmetto Prince George Operating, LLC
d/b/a Prince George Healthcare Center;
Palmetto Health Care, LLC;
Murray Forman, Individually; and
Richard Porter, Individually,

Defendants.

Of whom Palmetto Prince George Operating, LLC
d/b/a Prince George Healthcare Center;
Palmetto Health Care, LLC; and
Richard Porter, Individually, are

Appellants.

NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Russell G. Hines (SC Bar No. 72100)
Matthew O Riddle (SC Bar No. 76650)
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Attorneys for Appellants

Defendants Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center (the "Facility"); Palmetto Health Care, LLC ("PHC"); and Richard Porter, Individually ("Porter") (collectively, "Appellants"), hereby appeal the following orders of the Honorable Benjamin H. Culbertson, Circuit Court Judge:

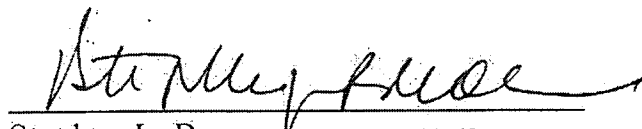
- Form 4 Order filed June 17, 2020, denying PHC's motion to stay and the Facility and Porter's motions to compel arbitration; and
- Form 4 Order filed July 16, 2020, denying Appellants' motion to alter, amend, and/or reconsider.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on July 16, 2020.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:



Stephen L. Brown (SC Bar No. 66468)

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Attorneys for Appellants

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Dated: 8/17/20

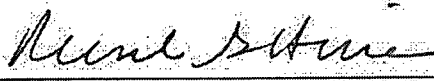
I, Russell G. Hines, of Young Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on August 17, 2020, properly posted for delivery to the following addressees:

Dirk J. Derrick, Esquire
S. Taylor Hooven, Esquire
The Derrick Law Firm
P.O. Box 28
Conway, SC 29528

Attorneys for Respondent

I also certify that a copy of this **NOTICE OF APPEAL** is this day, August 17, 2020, being E-Filed with the lower court (which will also, i.e., in addition to service by mail, effect service of the notice electronically on all counsel of record).

YOUNG CLEMENT RIVERS, LLP

By: 
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

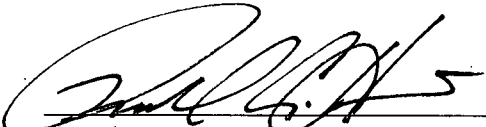
Dated: 8/17/20

Certificate of Counsel

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

Respectfully submitted,

CLEMENT RIVERS, LLP

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Charleston, South Carolina

March 22, 2021

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SC Court of Appeals