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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-00219
Appellate Case No. 2020-01613

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated,

Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; Professional Account Services, Inc.,

Appellants,

INITIAL BRIEF OF RESPONDENTS

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Counter-Statement of the Issues on Appeal

I. Did the lower court properly deny Mary Black's motion to compel arbitration against Samuel Owens, a CIGNA insured, where Mr. Owens was not a party to Mary Black's agreement with CIGNA, his claims do not fall within the terms or scope of the purported arbitration provision, and he never relied on the agreement or received any benefit therefrom?

II. Where the policy of South Carolina is to deny immediate review of interlocutory orders in order to avoid piecemeal litigation, should this Court decline to exercise its discretion to hear an appeal from the denial of various Rule 12(b)(6) motions, especially where there is no appealable order before the Court as to Respondents Blackwell and Brooks and the order denying dismissal lacks a sufficient nexus or companionship to the arbitration issue before the Court?

Counter-Statement of the Case

This is a class action lawsuit arising out of appellant Mary Black Memorial Hospital's refusal to submit bills for treatment rendered to its patients' health insurers. Apparently dissatisfied with its agreed-upon reimbursement rates with insurers, Mary Black (along with its related billing and collection entities, CHSPSC, LLC and Professional Account Services, Inc., all of which are appellants herein and collectively referred to as "Mary Black") instead sought to recover its charges from patients directly by asserting a lien against any potential third-party tort recovery or by seeking payment directly from the patient or from an auto insurer. By obtaining payment from a source other than the patient's health insurer, Mary Black presumably recovers more money for services rendered than it would otherwise receive if it submitted claims to the insurer under its hospital services agreements.

Respondent Jo Ann Blackwell, a MedCost insured, originally filed this case as a class action on January 20, 2017, asserting claims against Mary Black on behalf of herself and hundreds (or possibly thousands) of potential class members. Blackwell subsequently moved to amend the complaint on October 18, 2019, to assert identical claims by additional individuals who were harmed by Mary Black's practices. The lower court granted the motion and on April 24, 2020,

Respondents filed an Amended Class Action Complaint, which included two additional individuals, respondent Samuel H. Owens, Jr., a CIGNA insured, and respondent Michelene Brooks, a Medicare beneficiary, as named plaintiffs and putative class representatives.

Collectively, Respondents (hereinafter referred to as "Plaintiffs" or "Respondents") are asserting causes of action against Mary Black for tortious interference with contractual relationship, unjust enrichment, and injunctive relief individually and on behalf of the class members. The class, which has not yet been certified, is currently defined as:

> All individuals who, since January 20, 2014, received any type of healthcare treatment from any entity located in South Carolina that is owned or affiliated with Defendants, while being covered by valid health insurance, and whose medical bills resulting from that treatment were not submitted to their health insurance carrier for potential payment. (Am. Compl. ¶ 53.)

After Plaintiffs filed the amended complaint, Mary Black moved to compel arbitration against Samuel Owens, asserting that his claims should be compelled to arbitration pursuant to an arbitration provision contained in Mary Black's agreement with CIGNA under a "direct benefits estoppel" theory. Mr. Owens, a nonsignatory to the agreement, was the only plaintiff against whom Mary Black sought to compel arbitration. Mary Black also moved to dismiss the amended complaint in its entirety as to all plaintiffs pursuant to Rule 12(b)(6), SCRCP. By way of Form 4 order filed September 4, 2020, the lower court denied the motion to compel arbitration as against Mr. Owens and further denied the Rule 12(b)(6) motions as against all of the plaintiffs.[1] Mary

[1]Because no appealable order exists as to either Blackwell or Brooks under section 14-3-330 of the South Carolina Code, Plaintiffs contend that the appeal of the interlocutory order denying Mary Black's Rule 12 motions as to those plaintiffs should be dismissed pursuant to *McLendon v. S.C. Dep't of Highway,* 313 S.C. 525, 443 S.E.3d 539 (1994) (dismissing appeal of party without prejudice where sole issue raised on appeal was the denial of a Rule 12(b)(6) motion); *See also Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) ("Since the order denying the Rule12(b)(6) motion does not finally decide any issue, it is not directly appealable.")

Black timely filed a motion to alter or amend, which was denied by way of Form 4 Order dated November 4, 2020, and formal order filed December 8, 2020. This appeal followed.

Factual Background

This case arises out of Mary Black's practice of seeking to recover its charges for treatment rendered from its patients directly, instead of from their respective health insurance plans, where a potential third party is identified by Mary Black as potentially liable for the patient's injuries. Plaintiffs' claims result from this policy and practice of Mary Black electing not to submit claims to health insurers for payment, and instead attempting to obtain payment for the patient's medical bills directly from the patient, from an auto insurer, and/or from the patient's third-party tort recovery. (Am. Compl. ¶¶ 4–8.) Plaintiffs allege that Mary Black, as a standard business practice, routinely refused to submit patients' medical bills to their insurance providers if its screening identified a patient as one for whom third-party recovery might be available to pay for such treatment. (*Id.* ¶¶ 4–5.) This was presumably done so that Mary Black could obtain a higher reimbursement than what might have been received from the patient's insurance. (*Id.* ¶ 6.) Plaintiffs further allege as follows: "[u]pon information and belief, Defendants are required by their contract with patients' health insurance carriers to submit insurance patients' medical bills directly to the carriers. Defendants were likewise required to submit the medical bills of Plaintiffs and the Class Members to their health insurance." (Am. Compl. ¶28.)[2] Regardless, the practical result is that upon receipt of such purported notice of lien, a patient's legal counsel cannot disburse settlement funds received up to the amount of the lien, thereby tying up funds due and owing to

[2] While the named Plaintiffs herein are insured by MedCost, Medicare, and CIGNA, respectively, it can be presumed that the putative class members could be insured by a variety of health insurance companies, as reflected in the class definition. (Am. Compl. ¶53.)

injured persons.[3] The patient is then forced to either meet the demand of Mary Black by way of some "compromise" payment (in order to access, at least in part, their rightful recovery) or refuse Mary Black's demand and allow their settlement funds to remain in trust indefinitely. Another name for this practice is extortion.[4]

A. The Blackwell-specific facts

While crossing the street in Spartanburg on December 19, 2013, Blackwell was injured when she was struck by a vehicle and transported to the trauma department of Spartanburg Regional Medical Center. She was subsequently transferred to Mary Black Hospital on December 27, 2013. Blackwell was discharged from Mary Black Hospital following treatment on January 3, 2014, but she continued to receive treatment through Mary Black thereafter. (*See* Am. Compl. ¶12). Blackwell had employer-based health insurance coverage through MedCost at the time she was admitted to Mary Black. She further alleges that Mary Black had a contract with MedCost, which required that bills for medical services provided to Ms. Blackwell be sent

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[3] *See, e.g.*, Rule 1.15(e), RPC, Rule 407, SCACR ("When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved"); *see also* Comment 4 ("Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury accident. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third- party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third-party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.").

[4] Mary Black appears to disregard the practical impact of this business practice, as reflected in its belief that "the *mere* assertion of a lien does not constitute the receipt or retention of a benefit" and that "it does not owe and has nothing to return to its patient." (App. Br. p. 27.) Its argument fails to recognize that a person's very health and well-being may depend on accessing the funds from their personal injury settlement—the same funds having been tied up in trust as a result of such "*mere assertion of lien.*" *See, e.g.*, Rule 1.15(e), SCRPC, Rule 407, SCACR.

directly to MedCost, not her, and that the contract provided for discounted rates for the services. (Am. Compl. ¶¶9, 28–31, 36.)[5] Instead, Mary Black asserted a lien against Blackwell's third-party automobile accident claim. She further alleges that her bills would have been paid if Mary Black had submitted them to MedCost for payment. (Am. Compl. ¶¶39–40). Mary Black contends that it is a party to a hospital services agreement with MedCost (the "MedCost Agreement"). (Mot. to Dismiss, June 8, 2020).[6]

B. The Owens-specific facts

On October 9, 2015, Owens was admitted to Mary Black Hospital following an automobile accident in which he was rear-ended. Owens alleges that at the time of his medical treatment he had valid health insurance coverage through CIGNA. Owens alleges that Mary Black had a contract with CIGNA which required that bills for medical services provided to him be sent directly to CIGNA, not him, and that the contract provided for discounted rates for the services. Owens further alleges that his bills would have been paid had they been submitted to CIGNA for payment. (Am. Compl. ¶¶ 14, 28–31, 47–51.) Owens alleges that Mary Black did not submit the bill for his services to CIGNA, but rather sought payment by asserting a lien against his claims

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[5] Blackwell does not allege she is a party to Mary Black's contract with MedCost.

[6] The MedCost agreement was not attached to the Amended Complaint or incorporated by reference into the pleading. Because this case was determined at the Rule 12(b)(6) stage – i.e. the four corners of the complaint – the lower court correctly declined to consider the MedCost Agreement in its review, despite Defendants' urging to the contrary. *See* Form 4 Order dated Sept. 4, 2020. In Appellants' Designation of Matter to be included in the Record on Appeal and its Initial Brief of Appellants, Mary Black again urges this Court disregard the required standard of review at the Rule 12 stage, even going so far as to directly quote language from the MedCost agreement in its recitation of the factual background of the case. (App. Init. Br. p. 8.) Plaintiffs respectfully submit that this Court should decline to participate in this impermissible fact-finding mission and disregard any argument thereto. *See* Rule 210(c), SCACR; *See also* Rule 209(b), SCACR ("[T]he designation may only propose to include . . . other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.")

against the at-fault driver in the collision. Owens admits that, under duress, he paid Mary Black a reduced amount in order to gain access to his settlement monies. (*See* Am. Compl. ¶¶51–52.)

Mary Black contends that it is a party to a Hospital Services Agreement with CIGNA (the "CIGNA Agreement"). (Mot. to Dismiss p. 4.) Section 6.2 of the CIGNA Agreement contains the following dispute resolution provisions:

> 6.2 Dispute Resolution.
>
> 6.2.1 CIGNA's Internal Dispute Resolution Process. Any disputes between the parties arising with respect to the performance or interpretation of the Agreement shall first be resolved in accordance with the dispute resolution process outlined in the Administrative Guidelines. In the event the dispute is not resolved through that process, either party may request in writing that the parties attempt in good faith to resolve the dispute promptly by negotiation between designated representatives of the parties who have authority to settle the dispute. If the matter is not resolved within 60 days of a party's written request for negotiation, either party may initiate arbitration by providing written notice to the other party. With respect to a payment or termination dispute, Hospital must submit
>
> 6.2.2 Arbitration. If a party initiates arbitration as provided above, the proceeding shall be held in the jurisdiction of Hospital's domicile. The parties will jointly appoint a mutually acceptable arbitrator. If the parties are unable to agree upon such an arbitrator within 30 days after a party has given the other party written notice of its desire to submit a dispute for arbitration, then the parties shall prepare a Request for a Dispute Resolution List and submit it to the American Health Lawyers Association Alternative Dispute Resolution Service ("AHLA ADR Service") along with the appropriate administration fee. In accordance with the Codes of Ethics and Rules of Procedure developed by the AHLA ADR Service, the parties will be sent a list of 10 arbitrators along with a background and experience description, references and fee schedule for each. The 10 will be chosen by the AHLA ADR Service on the basis of their experience in the area of the dispute, geographic location and other criteria as indicated on the request form. The parties to the dispute will review the qualifications of the 10 suggested arbitrators and rank them in order of preference from 1 to 9. Each party has the right to strike 1 of the names from the list. The person with the

> lowest total will be appointed to resolve the case. Each party shall assume its own costs, but the compensation and expenses of the arbitrator and any administrative fees or costs shall be borne equally by the parties. Arbitration shall be the exclusive remedy for the resolution of disputes arising under this Agreement. The decision of the arbitrator shall be final, conclusive and binding, and no action at law or in equity may be instituted by either party other than to enforce the award of the arbitrator. The parties intend this alternative dispute resolution procedure to be a private undertaking and agree that an arbitration conducted under this provision shall not be consolidated with an arbitration involving other hospitals or third parties, and that the arbitrator shall be without power to conduct an arbitration on a class basis. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Agreement will remain in full force and effect during any such period of arbitration unless otherwise terminated under the terms of this Agreement.

(Mot. to Dismiss Ex. B)

The CIGNA agreement does not mandate arbitration but instead provides that either party "*may initiate arbitration by providing written notice to the other party.*" It likewise does not define "party," and it provides that "the arbitrator shall be without power to conduct an arbitration on a class basis" and provides that "*an arbitration conducted under this provision shall not be consolidated with an arbitration involving other Mary Black or third parties . . . .*" *Id.*

C. The Brooks-specific facts

On February 28, 2016, Brooks was admitted to Mary Black Hospital following an automobile accident in which she was a passenger in a vehicle hit by another driver. Brooks alleges that, at the time of her medical treatment, she was covered for health care services through Medicare. (Am. Compl. ¶¶41–42.) Brooks alleges that Mary Black did not submit the bills for her health care services to Medicare, but instead sought collection of the amounts due by asserting a lien against her recovery from the at-fault driver in the accident. Brooks admits that, under duress, she paid Mary Black a reduced amount in order to gain access to her settlement monies. (*See* Am. Compl. ¶¶44–46.)

Standard of Review

A. The Denial of Arbitration

"Arbitrability determinations are subject to *de novo* review." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 47, 790 S.E.2d 1, 3 (2016). "However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Id.* at 48, 790 S.E.2d at 3. "[A] presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Wilson v Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (quoting *Global Pac., LLC v. Kirkpatrick*, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017)). An appellate court "will not disturb the trial court's underlying factual findings reasonably supported by the record." *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020).

B. Review of Interlocutory Orders

It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005). "The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted." *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (quoting *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000)). "The denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable." *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (quoting *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994)). Issues in a Rule 12 order which "lack a sufficient nexus or companionship" to the issue on appeal fail "to justify [an appellate court's]

exercise of immediate appellate review." *See Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (declining to review the denial of motions to dismiss alongside the denial of a preliminary injunction); *See also S.C. Baptist Hosp. v. S.C. Dep't of Health & Env't Control,* 291 S.C. 267, 353 S.E.2d 277, 279 (1987) (declining to consider interlocutory appeal when the decision-maker has not yet had an opportunity to decide the merits of the case and consideration by appellate court would therefore be premature).

ARGUMENT

I. The Lower Court Correctly Held that Mr. Owens Could Not Be Compelled to Arbitration

"[A]rbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Aiken v. World Fin. Corp.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) (citing *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). Put another way, South Carolina law presumes contracts may only be enforced by their parties. *Touchberry v. City of Florence*, 295 S.C. 47, 367 S.E.2d 149 (1988). To compel Owens to arbitrate his claims, Mary Black "must demonstrate (1) there is a valid arbitration agreement, and (2) the claims fall within its scope." *Weaver v. Brookdale Senior Living, Inc.,* 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020) (citing *Wilson v. Willis,* 426 S.C. 326, 827 S.E.2d 167 (2019)). Its quest fails on both fronts. Because there is at least *some* evidence – if not *substantial* evidence - in the record that reasonably supports the lower court's refusal to compel arbitration, this Court should affirm and allow the matter to proceed to discovery and trial.

"State law controls when an arbitration agreement may be enforced against someone who has not signed it." *Id.* at 230, 847 S.E.2d at 272. "[T]he presumption in favor of arbitration applies to the scope of the arbitration agreement; it does not apply to the existence of the arbitration agreement *or to the identity of the parties who may be bound to such an agreement." Id.* (emphasis

in original). "Moreover, because arbitration, while favored, exists solely by agreement of the parties, a presumption *against* arbitration arises when the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Wilson,* 426 S.C. at 337-338, 827 S.E.2d at 173 (*citing Global Pac., LLC v. Kirkpatrick*, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017).

Mary Black contends that Owens must arbitrate his claims due to an arbitration clause contained in a purported 2006 contract between Mary Black and CIGNA. (Def. Mot. to Dismiss.) Mary Black asserts that Owens, a non-signatory, is bound to arbitration under the theory of equitable estoppel, also known as "direct benefits estoppel," in the arbitration arena. App. Init. Br. at pp. 12-18. "This [direct benefits estoppel] theory . . . estops a nonsigner from refusing to comply with an arbitration provision in a contract if (1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has "exploited" other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability. . . [D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen but for a contract's existence." *Weaver,* 431 S.C. at 230-231, 847 S.E.2d at 272 (quoting *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176).

Mary Black contends the lower court erred when it "placed improper significance on its belief that Owens is not a party to the CIGNA agreement" and "failed to conduct the required analysis under the principles of direct benefits estoppel and failed to apply those important principles to compel a non-signatory to arbitration," arguing that "it is undeniable that Owens' claims arise from the Cigna agreement, and Owens seeks to enforce the terms of that Agreement and to recover what damages he alleges to be caused by Defendants' failure to act in accordance with the Cigna Agreement." (App. Init. Br. pp. 12-13.) Because Mary Black's argument fails on

all fronts, this Court should affirm the lower court for all the reasons contained herein or for any reason found in the record.

In urging this Court to reverse the well-reasoned orders of the lower court, Mary Black relies upon *Pearson v. Hilton Head Hospital,* 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), a case which is unpersuasive and easily distinguished from this action. In *Pearson*, a plaintiff physician, working at a hospital under a *locum tenens*- type arrangement, was a nonparty to a contract between the hospital and the *locum* that contained an arbitration clause. The Court compelled him to arbitration because it found that he "received a benefit due to the contract, in that he was able to work at the Hospital and receive payment for his work." *Id.* at 296, 733 S.E.2d at 605; *see also id.* at 296–97, 733 S.E.2d at 605 ("If not for that contract, then Dr. Pearson would have had to make separate arrangements with the Hospital in order to work there. He *knowingly accepted* benefits of the contract between the hospital and Locum. Accordingly, Dr. Pearson benefitted from that contract and should not be able to disclaim the arbitration agreement contained in it." (emphasis added)).

Here, Mr. Owens has not received or accepted any corresponding benefit from the hospital service agreement Mary Black entered into with CIGNA. In fact, it is because the exact opposite has taken place— he was harmed by Mary Black's failure to act in accordance with the contract— that he has been forced to bring this action. *See Pearson,* 400 *S.C.* at 291, 733 S.E.2d at 602 ("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." (emphasis added) (quoting *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001))); *accord* 6 C.J.S. Arbitration § 18.

Our Supreme Court's recent decision in *Wilson v. Willis* - overturning the reversal of a trial court's order denying a motion to compel arbitration – is controlling of the case at bar. In *Wilson*, numerous insureds brought suit against their insurance agent, the broker who hired the agent, the agency, and the insurers whose policies the agency sold. *Wilson*, 426 S.C. 326, 827 S.E.2d 167 (2019). The plaintiff insureds alleged the agent, among other things, "forg[ed] insurance documents, [took] cash payments, and convert[ed] the payments to her own use, resulting in the Insureds having either no coverage or reduced coverage." *Id.* at 332, 827 S.E.2d at 170. Several insurers filed motions to compel arbitration based on arbitration clauses contained in contracts between the insurers and the agency. *Id.* at 332–33, 827 S.E.2d at 170-71. The insurers argued that "equitable estoppel should preclude [the plaintiffs'] assertion of their nonsignatory status because [their] claims were premised on duties that would not exist but for the Agency Agreement [the insurers] had with [the agency]." *Id.* at 333, 827 S.E.2d at 171.

In upholding the circuit court's denial of arbitration, the Supreme Court distinguished *Pearson*:

> We agree with [Plaintiffs] that the circumstances in *Pearson* are distinguishable. Unlike Dr. Pearson, [Plaintiffs] did not embrace the Agency Agreement during the life of the contract and then, during litigation, attempt to repudiate the arbitration clause in the contract. It is undisputed that [Plaintiffs] were never aware of the existence of the contract until they brought their tort actions against [the insurers].

Id. at 342, 827 S.E.2d at 176.

There is no evidence in the record that Mr. Owens "embraced" – or in fact was even aware of – CIGNA's agreement with Mary Black (or any arbitration provision contained therein) during the life of the contract; further, Owens' claims for unjust enrichment and tortious interference with contract are grounded in South Carolina common law and do not rely upon the Mary Black services agreement for recovery. Accordingly, any benefit conferred due to the existence of the agreements

would be indirect at best and provide no basis to compel arbitration. *See id.* at 343, 827 S.E.2d at 176 ("[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence."); *id.* ("When a claim depends on the contract's existence and cannot stand independently—that is, the alleged liability 'arises solely from the contract or must be determined by reference to it'—equity prevents a person from avoiding the arbitration clause that was part of that agreement. But 'when the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law,' direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen 'but for' the contract's existence.*" (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018))); *see, e.g.*, *id.* at 342, 827 S.E.2d at 176 ("General principles of South Carolina law form the basis for most of [Plaintiffs'] claims. For example, [Plaintiffs'] allegation that [the insurers] possibly conspired with [the agent] and others to commit fraud is misconduct that does not arise from the contract.").

Owens' remaining claim for injunctive relief similarly does not warrant compelling arbitration. Although Owens' success on that claim admittedly relies on the hospital services agreements, the relief sought—enjoining Mary Black from engaging in unlawful billing practices in contravention of the agreements—will confer no direct benefit on him or the putative class members. Any benefit resulting from the successful litigation of this claim will inure only to future patients, as Mary Black would be forced to cease its practice going forward. Such an indirect and insubstantial benefit is insufficient to support Mary Black's attempt to compel arbitration. *See Equitable estoppel—Generally*, 1 Domke on Com. Arb. § 13:9 ("A nonsignatory who has received a direct benefit from a contract containing an arbitration clause may be estopped from refusing to comply with that arbitration clause. This approach does not apply if the claimed benefits are

insubstantial or indirect, nor does it apply if the claim merely relates to the contract." (footnote omitted)). Moreover, the fact that only one of Owens' claims relies on the health service agreements further weighs against enforcement of the arbitration clause. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176 (denying arbitration and noting "[g]eneral principles of South Carolina law form the basis for *most* of Petitioners' claims" (emphasis added)).

Further, the lower court correctly found that Mary Black's argument fails because the CIGNA agreement's arbitration clause does not encompass Owens' claims.[7] The clause is limited to "disputes between the parties," and only CIGNA and Mary Black were parties to the agreement. The provisions of the arbitration clause also repeatedly refer to actions a "party," "the parties," or "Mary Black" may take, which indicates that it was not intended to encompass Owens' claims. The agreement does not define "party," so in interpreting the agreement, the ordinary definition of the term (which does not include Mr. Owens, a mere "participant") should be used. *See Plain meaning*, 11 Williston on Contracts § 32:3 (4th ed.) ("The plain, common, or normal meaning of

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[7] Despite Mary Black's assertion that the lower court erred in considering the elective nature of the arbitration clause, (App. Init. Br. pp. 19-20), the lower court did not rely on this fact in determining the arbitration clause was inapplicable to Mr. Owens. *See* Form 4 Order dated Sept. 4, 2020 at 3 ("[T]he arbitration provision in the Cigna Agreement . . . does not apply to the Plaintiff as the Plaintiff is not a 'party' to the agreement. In accordance [with] the terms of the agreement, the Plaintiff is, at best, a 'participant' under the agreement's terms but not a 'party'. . . . As previously stated, the Plaintiff is not a 'party' to the agreement and its provisions are not enforceable as binding on the Plaintiff."). Accordingly, Mary Black's argument on this point is immaterial, as is its reliance upon *Mailsource v. M.A. Bailey*, 356 S.C. 370, 588 S.E.2d 639 (Ct. App. 2003). Appel. Init. Br. p. 19. In *Mailsource*, the parties to the litigation were the same parties to the asset purchase agreement which contained an "elective" arbitration agreement. When a dispute arose over an alleged breach of the non-compete clause contained in the purchase agreement, litigation ensued and the seller sought to compel arbitration. Since both the seller and the purchaser were parties to the contract containing the arbitration agreement, the Court of Appeals found the trial court had erred in failing to compel arbitration, as there was no evidence to support a finding of waiver. Here, the facts are entirely different: Mr. Owens was not a party to the hospital services agreement and whether the arbitration clause was elective or mandatory was immaterial to the trial court's analysis. Merely because the trial court considered the language contained in the arbitration provision as part of its overall analysis is not reversible error.

language will be given to the words of a contract unless the circumstances show that in a particular case a special meaning should be attached to them." (footnote omitted)); *Party*, Black's Law Dictionary (11th ed. 2019) ("Someone who takes part in a transaction <a party to the contract>."). Moreover, any ambiguity as to whether "party" encompasses Mr. Owens should be resolved against Mary Black. *See Contra proferentem: Ambiguities are interpreted against the drafter*, 11 Williston on Contracts § 32:12 (4th ed.) ("[I]t is a generally accepted principle that any ambiguity in that language will be interpreted against the drafter.").

The agreement does define "Participant" as "any individual . . . who is eligible and enrolled to receive Covered Services." (Mot. to Dismiss Ex. B.) As this definition encompasses Mr. Owens, if CIGNA and Mary Black had intended to include a participant's claims within the scope of the arbitration clause, they could certainly have used that defined term. Instead, the clause explicitly excludes "arbitration on a class basis" and states "an arbitration conducted under this provision shall not be consolidated with an arbitration involving . . . third parties." *Id.* Read as a whole, the arbitration clause demonstrates the contracting parties' intent not to include claims by "Participants," and any limited, specific language to the contrary should not override this interpretation. *See The contract is to be read as a whole; the "four corners" rule*, 11 Williston on Contracts § 32:5 (4th ed.) ("A contract will be read as a whole, and every part will be read with reference to the whole.").

Further support for affirming the decision of the lower court is found in this Court's recent opinion in *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), where it held that a nursing home's insistence that "direct benefits estoppel" required arbitration of a granddaughter's claims was wholly unsupported by the law. In *Weaver*, a granddaughter brought suit after her grandmother died on the grounds of a nursing home after wandering away.

The granddaughter discovered her maimed and dismembered body in a retention pond and, as a result, asserted claims for negligent and intentional infliction of emotional distress. The nursing home argued "direct benefits estoppel funnels the [granddaughter's] claims to arbitration because her ability to sue [the nursing home] stems from [her grandmother's] residency agreement, which includes the arbitration agreement." *Id.* at 272.

The Court disagreed, holding "this argument is easily scotched, for direct benefits estoppel is not implicated simply because a claim related to or would not have arisen but for a contract's existence." *Id.* The Court noted that the daughter "ha[d] not exploited or otherwise sought to enforce or benefit from the residency agreement, any more than a pedestrian run over by a truck has benefited from the contract for the purchase of the truck." *Id.* at 273. Declining to apply the doctrine of direct benefits equitable estoppel, the Court noted that "the heart of the theory 'is that the party entitled to invoke the principle was misled to his injury.'" *Id.* at 274 (quoting *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017)). Finding no evidence of such conduct, the Court held there was no agreement to arbitrate between the parties and affirmed the denial of the motion to compel arbitration. Here, as in *Weaver*, Owens did not mislead Mary Black or cause it any injury. In fact, as reflected above, the opposite has taken place.

The lower court correctly found that Mr. Owens did not agree to arbitrate any claims with Mary Black because, *inter alia*, he never executed any arbitration agreement, is not a "party" to the CIGNA contract, and received no benefit therefrom. South Carolina law provides that the doctrine of equitable estoppel is inapplicable to the case at bar and, accordingly, the Court should affirm the lower court's order denying Mary Black's motion to compel arbitration for all the

reasons outlined herein, or, pursuant to Rule 220(c), SCACR, upon any additional ground appearing in the record.[8]

II. The Court Should Decline to Consider Interlocutory Orders

An order denying a Rule 12(b)(6) motion is interlocutory and not generally immediately appealable under South Carolina law. *See Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) ("The denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings."); *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (declining to review the denial of defendants' individual motions to dismiss alongside the denial of a motion for preliminary injunction filed by the plaintiff where the Rule 12 orders "lack a sufficient nexus or companionship to justify [the] exercise of immediate appellate review", and observing "[c]ourts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable.")

Mary Black contends that that the Court of Appeals, in its discretion, should consider the trial court's interlocutory order denying a multitude of Rule 12 motions as against each of the plaintiffs as part of its appeal from the denial of their request to compel arbitration against Mr. Owens. In Mary Black's view, the lower court must be deprived of its discretion at the Rule 12

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[8] Mary Black urges this Court to adopt the reasoning of the Tennessee Supreme Court in *Benton v. Vanderbilt University*, 137 S.W.3d 614 (Tenn. 2004). *Benton* is inapposite, as the *Benton* plaintiff sued for breach of a hospital services contract which contained an arbitration provision. This is entirely different from the posture of the instant lawsuit, which asserts no claim for breach of the CIGNA contract. Further, South Carolina law mandates a presumption against arbitration where the party resisting arbitration is a nonsignatory – the *Benton* court announced no similar directive, and instead focused on the third-party beneficiary status of the plaintiff (acknowledging that it previously declined to enforce arbitration against nonsignatories asserting tort claims). *See Id.* at 620 (*citing Cocke Cnty. Bd. of Hwy. Comm'rs. v. Newport Utilities Bd.*, 690 S.W.2d 231 (Tenn. 1985) ("arbitration clauses are not binding on third parties who are not parties to the contract").

stage (and beyond) as to any litigant if an issue of arbitration as to a single litigant is before the trial court as well (and subsequently appealed).

Given that the sole appealable matter before this Court is the order denying a motion to compel arbitration against just one of the three plaintiffs, this Court should reject such an unwarranted intrusion into the traditional role of the trial court; decline to exercise its discretion to review the denial of any Rule 12(b)(6) motions; and affirm the lower court and remand the matter to the lower court for all the reasons contained herein or for any reason found in the record. *See* Rule 220(c), SCACR. Otherwise, the discretion afforded the trial court at the Rule 12 stage will be rendered meaningless if an appellant can divest the lower court of jurisdiction and leapfrog over the discovery process through an appeal of an arbitration order, allowing the Court of Appeals to essentially displace the trial court's essential role at the Rule 12 stage. Such a result is clearly disfavored under South Carolina law, which provides that "[i]n cases on appeal, the South Carolina Rules of Court provide for the trial court to retain jurisdiction over matters not affected by the appeal." *Cousar v. New London Eng'g Co.*, 306 S.C. 37, 40, 410 S.E.2d 243, 245 (1991) (observing retention of jurisdiction by trial court over discovery matters not an abuse of discretion).[9]

Mary Black cites to numerous cases in an attempt to circumvent the clear policy disfavoring review of interlocutory orders and urge this court to take up Rule 12 motions as matter of judicial economy; however, all of these cases are inapposite as they concern cases where the parties to the arbitration agreement were identical to the parties to the litigation. In *Cox v. Woodmen of the World*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001), the Court of Appeals

[9] *See* Rule 241(a), SCACR and Rule 205, SCACR; *See also Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012) (noting trial court retains jurisdiction over matters not affected by appeal).

considered the denial of a Rule 12(b)(8) motion along with the denial of a motion to compel arbitration where the class plaintiffs were all members of the same fraternal benefits society and subject to the same constitution (which contained the arbitration provision). The Court held that it could consider the order denying the motion to dismiss because there was an appealable issue before the court. *See id.* at 462–64, 556 S.E.2d at 398–99. Here, there exist no such commonalities, as Mary Black never sought to compel Plaintiffs Brooks and Blackwell to arbitration.[10] The other cases cited by Mary Black are similarly unpersuasive, as they deal with scenarios involving appeals by all plaintiffs. *See, e.g.*, *Hite v. Thomas & Howard Co. of Florence*, 305 S.C. 358, 409 S.E.2d 340 (1991) (action by single minority shareholder against majority shareholder) (*overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *Edge v. State Farm*, 366 S.C. 511, 623 S.E.2d 387 (2005) (agreeing to consider cross-appeal by defendant State Farm of interlocutory order denying motion to dismiss in case involving underlying appeal by Plaintiffs of dismissal of action against a co-defendant); *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 450 S.E.2d 616 (Ct. App. 1994) (allowing appeal by plaintiff of interlocutory order denying motion for summary judgment as against one defendant driver alongside appeal from the granting of summary judgment in favor of another defendant).

This lawsuit alleges serious malfeasance on the part of Mary Black – allegations which, if proven true, likely resulted in severe consequences for hundreds, if not thousands, of injured persons over the years. As such, the Court should reject Mary Black's proposed "short-circuit" approach which wholly divests the trial court of its discretionary role at the Rule 12 stage, renders meaningless the requirement that both the trial court and the appellate court presume all well-pled

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[10] *See, e.g., Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 620 S.E.2d 86 (Ct. App. 2005) (finding error by trial court in forcing the resolution of all claims in one forum out of the interest of judicial economy).

facts in the complaint to be true, and allows Mary Black to circumvent discovery into the allegations contained in the pleading. [11]

A. As No Appealable Issues Exist as to Plaintiffs Michelene Brooks and Jo Ann Blackwell, the Court should Decline to Consider the Appeal

Mary Black has never sought to compel Ms. Brooks and Ms. Blackwell to arbitration and there exists no appealable issue as to these two plaintiffs or the putative class members they seek to represent. South Carolina law does not allow for the appeal of an interlocutory order where no appealable issue is before the court, *See, e.g., McLendon v. S.C. Dep't. of Highway*, 313 S.C. 525, 443 S.E.2d 539 (1994) (dismissing appeal of order denying motion to dismiss as not immediately appealable). Accordingly, this Court should decline to consider the majority of the "Issues on Appeal" listed in Appellant's Initial Brief, as excerpted below:

1. the denial of the motion to dismiss **Blackwell's** claim for unjust enrichment;
2. the denial of the motion to dismiss **Blackwell's** claims for lack of standing;
3. the denial of the motion to dismiss **Brooks'** claims under the Medicare Act;
4. the denial of the motion to dismiss **Brooks'** claims pursuant to the voluntary payment doctrine;
5. the denial of the motions to dismiss the claims of **Brooks** and **Blackwell** for tortious interference with their respective health insurance policies**;**
6. the denial of the motions to dismiss all claims asserted **by Brooks** and **Blackwell** against PASI and CHSPSC, LLC

(*See* App. Init. Br. p. 2, §§ III – VIII; pp. 25-39.)

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[11] *See Justice v. The Pantry*, 335 S.C. 572, 576, 518 S.E.2d 40, 42 (1999) (reiterating requirement that "[t]he trial court and this [C]ourt on appeal must presume all well pled facts to be true" and acknowledging "[t]he grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action cannot be upheld if facts alleged in the complaint and inferences reasonably deducible therefrom, if proven, would entitle the plaintiff to relief on any theory of the case." (quoting *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 293 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988))).

B. If the Court Elects to Review Interlocutory Orders, It Should Affirm the Trial Court's Denial of the Motions to Dismiss.

"Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) (citing *Charleston Cnty. Sch. Dist. v. Harrell,* 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) ("In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint."); *See also Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 556 (2007) ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). "At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim . . . . [A]ny plaintiff is . . . . entitled to litigate the validity of its original complaint without having to convince the trial court of the merits of its underlying complaint." *Skydive*, 426 S.C at 180, 826 S.E.2d at 588. [12]

In deciding a motion to dismiss under Rule 12(b)(6), "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112–13, 659 S.E.2d 158, 161 (2008) (citing *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). Where "the 'facts alleged and inferences

[12] Notably, under Rule 23(d), SCRCP, the trial court is also charged with protecting the interest of the unknown putative class members, including, but not limited to, the following: " In the conduct of actions to which this rule applies, the court may make appropriate orders: . . . (2) The court may at any time impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended."

reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,' then dismissal under Rule 12(b)(6) is improper." *Id.* at 113, 659 S.E.2d at 161 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995)). A "complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007) (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)); *See also Kennedy v. Henderson*, 289 S.C. 393, 395, 346 S.E.2d 526, 527 (1986) ("[T]he complaint must be construed liberally in favor of the pleader and sustained if facts alleged, and inferences reasonably deducible therefrom, entitle the plaintiff to relief on any theory of the case." (citing *Blandon v. Coleman*, 285 S.C. 472, 475, 330 S.E.2d 298, 300 (1985))). A decision denying a motion to dismiss under Rule 12(b)(6) is reviewed for an abuse of discretion: "[a]n abuse of discretion may be found when the appellant shows that the conclusion reached by the [circuit] court was without reasonable factual support and resulted in prejudice to the rights of the appellant, thereby amounting to an error of law." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997).

1. The Lower Court Correctly Found Owens' Claims Not Time-Barred

The Court should affirm the denial of Mary Black's motion to dismiss Owens' claims on statute of limitations grounds. The trial court, taking the allegations in the amended complaint as true and drawing all inferences therefrom in plaintiff's favor, correctly determined that claims asserted by Mr. Owens "relate back" to the filing of the original complaint and such decision does not reflect an abuse of discretion.

Mary Black contends that "Owens' claims do not relate back to the filing of the original complaint . . ." and therefore "the new claims . . . are not timely and are barred by the applicable statute of limitations." (App. Init. Br. p. 24.) It further contends that "when he made a direct

payment to Mary Black on October 14, 2016, he knew or should have known that Mary Black was attempting to collect payment from him directly and not from his alleged health insurance provider." *Id.*

This Court should reject Mary Black's argument and affirm the lower court's finding that "any statute of limitations issue fails at this time" because Owens' claims relate back to the filing date of the original complaint in this matter, which was January 20, 2017. *See* Form 4 Order dated Sept. 4, 2020 at 4. The trial court correctly found that Owens' claims arose out of the same conduct set forth in the original class action complaint—Mary Black's wrongful billing practices. *See* Rule 15(c), SCRCP ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."). Thus, *even if* the applicable statute of limitations started running on October 14, 2016, when "Defendants agreed to accept a 50% reduction on Plaintiff Owens's account and settle for $4,543.38," (Am. Compl. ¶ 52), his claims as set forth in the Amended Complaint relate back to the original date of filing and are nonetheless timely.[13]

Rule 15(c), SCRCP, governs the amendment of pleadings and the relation back of such amendments:

> **(c) Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

Accordingly, Rule 15(c) does not prohibit the addition of plaintiffs in an amended complaint. Here, the claims of Mr. Owens are materially unchanged from those in the original Complaint and

[13] Owens does not concede that the "trigger" date for statute of limitations purposes in this action is October 14, 2016.

certainly "arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." *Id.* In fact, Rule 15(c) explicitly allows the relation back of claims when the party against whom the claim is asserted is changed. *See id.* ("An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and" the party has notice or knowledge of the action.). Accordingly, Defendants' reliance on Rule 15(c) is misplaced.

Recent case law also stands in stark opposition to Mary Black's position. In *Patton v. Miller*, the plaintiff initially filed an action in her capacity as "next friend" to her daughter, and later moved to amend her complaint to change her capacity from "next friend" to her individual capacity. 420 S.C. 471, 477, 479, 804 S.E.2d 252, 255–56 (2017). On appeal from the denial of the motion, the Supreme Court found her claim was not time-barred:

> [Plaintiff's] individual claim . . . satisfies Rule 15(c) because it is the exact claim she made in the representative capacity. In fact, there is no difference between the old claim and the new claim except the capacity of the person bringing it. Therefore, [the] amended claims . . . relate back to the [initial date of] filing and comply with the statute of limitations.

Id. at 494, 804 S.E.2d at 264.

The *Patton* court further explained the purpose behind the rule:

> Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims **that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.**

Patton, 420 S.C. at 496–97, 804 S.E.2d at 265 (emphasis added) (*citing Thomas v. Grayson*, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995) ("The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations.")

The *Patton* court also took the opportunity to address and distinguish *Valentine v. Davis,* 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995), a case repeatedly cited by Mary Black in the lower court in support of its statute of limitations defense. [14] In *Patton*, the Supreme Court clarified that the *Valentine* opinion "stands only for the proposition that Rule 15 does not contemplate adding a new plaintiff *to assert a new claim.*" *Id.* at 495, 804 S.E.2d at 264 (emphasis added). Given that no new claims were asserted by Mr. Owens and, in fact, his claims are identical to those of the other plaintiffs, *Valentine* remains wholly unpersuasive to the case at bar.

The amended complaint asserts the same causes of action as those contained in the original complaint. (*See* Amend. Compl.; Compl.) By merely adding additional putative class representatives as plaintiffs, Mary Black suffers no prejudice: it defends the same claims asserted on behalf of the putative class, but now represented by two additional named class representatives. There are no new claims; instead, Plaintiffs merely "amend[ed their] complaint to assert the same claim in a new capacity." *Id.* at 496, 804 S.E.2d at 265; *see also Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (Ct. App. 1999) ("[Defendants] rely on *Valentine* ... for the proposition that a plaintiff may not add a new plaintiff to a case to assert a claim against the defendant. In this case, however, no new claims are being added. The court is only changing the name of the plaintiff. The subject of the claim . . . is still the same.").

Mary Black's reliance on *Gause v. Smithers* and *Jackson v. Doe* is misplaced, as both cases involved the addition of an entirely new defendant.[15] Here, the defendants have remained the same and the claims asserted by Mr. Owens, individually and on behalf of the putative class members,

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[14] *See, e.g.*, Def. Mem. In Supp. Of Mot. to Dism. pp. 7-8 (filed Jul. 24, 2020); Def. Mot. to Alter or Amend p. 5 (filed Sept. 14, 2020). However, Mary Black has not relied upon the *Valentine* case in its initial brief to this Court.

[15] *Gause*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009); *Jackson*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000).

are identical to those asserted by the original plaintiff (albeit with CIGNA insurance at issue). As such, there is no abuse of discretion and the Court should affirm the ruling of the trial court for all the reasons contained herein, or for any reason found in the record.

2. The Denial of the Motion to Dismiss Blackwell's Unjust Enrichment Claim was Not an Abuse of Discretion

"Restitution is a remedy designed to prevent unjust enrichment. Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 14 (Ct. App. 1988) (citation omitted) (quoting *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 434, 322 S.E.2d 474, 478 (Ct. App. 1984)). "A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *See also Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 327, 734 S.E.2d 177 (Ct. App. 2012) ("Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment"); *Id.* (citing with approval *Costanzo v. Stewart*, 9 Ariz. App. 430, 432 (Ariz. Ct. App. 1969) for the proposition that the failure to file mechanic's lien did not bar recovery for unjust enrichment when owner paid no one, as Arizona court found that "recipient is liable for the reasonable value of the services irrespective of their value to him").

Mary Black argues that Plaintiff Blackwell's unjust enrichment claim fails because there are no allegations "that Plaintiff Blackwell, or anyone on her behalf or for her benefit, made any payment or provided any value to [Defendants] for the medical care she received." (Mary Black Mot. to Dismiss p. 3; PASI Mot. to Dismiss p. 5; CHSPSC Mot. to Dismiss p. 5.) In Mary Black's view, "Blackwell cannot state a claim for unjust enrichment unless she can and does allege that

she actually conferred a benefit to Defendants that that can and must be returned." (App. Init. Br. p. 26)

Instead of acknowledging the seriousness of its practice of asserting liens against settlement funds – i.e., potentially tying up a patient's rightful monies for bodily injuries, lost wages, and the like as their attorney holds funds in trust as required under South Carolina law – Mary Black asserts that "the *only* allegation" asserted by Ms. Blackwell is that "Mary Black asserted a lien against her potential third-party automobile accident claim" and that "the *mere* assertion of a lien does not constitute the receipt or retention of a benefit." (App. Init. Br. pp. 26-27) (emphasis added). Such a casual dismissal of the claims asserted in this lawsuit reflects a fundamental misunderstanding of the very real consequences of its "business practices."

Viewing the amended complaint in the light most favorable to Blackwell, the trial court correctly found that Plaintiff Blackwell adequately stated a claim for unjust enrichment because "a reasonable factual conclusion . . . can be that the Defendants were unjustly enriched and it would be inequitable to allow them to retain the benefits of their wrongful billing practices while attempting to collect a higher amount from Plaintiffs." Form 4 Order dated Sept. 4, 2020 Order p. 4. Thus, the allegation that Mary Black "assert[ed] liens against Plaintiff Blackwell's potential third party automobile accident claim," (Am. Compl. ¶ 40), was sufficient for purposes of the pleading stage, where all well pled facts are presumed true, and all reasonable doubts are resolved in favor of the plaintiff. *Cf. Beverly v. Grand Strand Reg'l Med. Ctr., LLC*, 429 S.C. 502, 516, 839 S.E.2d 468, 475 (Ct. App. 2020) (noting that Plaintiff's complaint "alleges affirmative inequitable conduct seeking to deprive her of the benefit of her funds"), *cert granted* Nov. 25, 2020. In sum, the trial court correctly found that the facts alleged by Blackwell – and the inferences reasonably deducible therefrom – were sufficient to entitle Blackwell to relief when viewed in the light most

favorable to the plaintiff. This Court should affirm the sound rulings of the lower court and affirm for all the reasons stated herein or for any reason contained in the record.

3. The Trial Court Correctly Denied Dismissal of the Blackwell Claims on Standing Grounds

Mary Black contends that Ms. Blackwell may not "enforce the negotiated rates for medical services in the Participating Mary Black Agreement between her insurance provider (MedCost) and Mary Black" because language in "that Agreement expressly denies non-signatory third-parties (like Plaintiff Blackwell) the right to sue to enforce its terms." (App. Init. Br. pp. 27-30); (Mary Black Mot. to Dismiss. p. 4; PASI Mot. to Dismiss p. 5; CHSPSC Mot. to Dismiss p. 5.)

Pursuant to Rule 12(b)(6), the trial court must consider only materials within the four corners of the pleadings. *See Charleston Cnty Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011) ("[I]t is a well-settled principle that in resolving a Rule 12(b)(6) motion to dismiss, the court is limited to a consideration of the allegations contained within the four corners of the complaint.") As Mary Black's standing argument relies solely on a provision in a purported contract which is wholly outside the operative pleading, it should be rejected on that basis alone. *See generally O'Laughlin v. Windham*, 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998) ("A ruling on a 12(b)(6) motion to dismiss must be based *solely* upon allegations set forth on the face of the complaint."). Rule 12(b)(6) expressly provides that when the court considers matters outside of the pleadings, the motion must be converted to one for summary judgment. The Court should reject Mary Black's continued attempts to ignore the scope of review for dismissal and improperly inject unpled facts into its analysis of the court below.

Besides relying on facts and allegations that do not appear in the Amended Complaint and are taken from a contract that has not been proven to be in force at times relevant to this action, Mary Black's argument that "the circuit court did not expressly rule on this issue despite

Defendants raising the issue in the Motion [to dismiss] and again requesting a ruling in the Motion to Alter or Amend" is wholly unsupported by the record. (App. Init. Br. p. 27, n. 2.) In fact, the lower court expressly ruled on this issue when it stated that its review of the Mary Black service agreements "was limited to the arbitration issue. Any other consideration of the agreements goes beyond a SCRCP Rule 12(b)(6) analysis." Form 4 Order dated Sept. 4, 2020 at 3.

This is an unequivocal ruling by the lower court that correctly found Mary Black's argument premature and inappropriate at the Rule 12 stage.[16] As such, the trial court properly adhered to the longstanding principal that, at the Rule 12 stage, the court may look only within the four corners of the complaint to determine the sufficiency of the allegations therein. It is undisputed that no documents were incorporated into the amended complaint by reference or attached to the complaint itself, nor were there "matters of which the court may take judicial notice" (i.e. publicly available records such as deeds). Mary Black's sole basis for its argument that the lower court can consider documents outside the pleadings appears to be its belief that the trial court can rely upon documents submitted by a party moving to dismiss the complaint "*so long as the documents are integral to the complaint.*" (App. Init. Br. at p. 11) (citing *Carolina First Corp. v. Whittle,* 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000); *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010); and *Patterson v. Witter*, 425 S.C. 213, 821 S.E.2d 677 (2018). However, none of these cases are persuasive or replace the standard of review at the Rule 12 stage.

[16]This lends further support to Plaintiffs' contention that Mary Black wishes to place this Court in the shoes of the trial court, despite the fact that only limited written discovery has been exchanged, no depositions have been taken, and the trial court has never had an opportunity to address the merits of the claim.

For instance, in *Patterson v. Witter*, the parties consented to consideration of documents outside the four corners of the complaint when they submitted affidavits and other documents for the Court's consideration. Here, the Plaintiffs have continuously objected to Mary Black's attempt to introduce contracts and other evidence outside the four corners of the complaint. *See, e.g.*, Pl. Resp. In Opp. To Mot. to Dismiss; Pl. Resp. in Opp. To Mot. to Alter or Amend. *Carolina First v. Whittle* is likewise inapposite, as there the Court of Appeals found no error and affirmed the trial court's refusal to consider documents outside the complaint, because any reference contained within the pleading was insufficient to comply with Rule 23 requirements for a shareholder derivative suit. Finally, *Brazell v. Windsor* presents a set of facts wholly distinct from those in the instant litigation. In *Brazell*, the trial court allowed consideration of an exhibit in a motion to dismiss based on the fact that the complaint expressly referred to the exhibit and purported to "attach and incorporate by reference" the specific exhibit. 384 S.C. at 516, 682 S.E.2d at 826. No such "incorporation by reference" or "express reference" is present in the Plaintiffs' amended complaint and the trial court correctly denied Mary Black's motion to dismiss Blackwell's claims for lack of standing.[17]

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[17] Regardless, the law is well-established in South Carolina that a nonparty may enforce contractual terms that intend to provide direct benefits to such person. *See, e.g., Kingman v. Nationwide Mut. Ins. Co.,* 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964) ("We have held in numerous cases that a contract between two persons, for the benefit of a third, even though such third party be not named therein, can be enforced by such third party."); *Jennings v. First of Ga. Underwriters Co.,* 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining contracts between two persons for the benefit of a third can be enforced by the third person even though she is not named therein). "The presumption that [a] contract is not enforceable by [a nonparty] may be overcome by showing he was intended to be the direct beneficiary of the contract." *Touchberry v. City of Florence,* 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988); *See also Beverly v. Grand Strand*, 429 S.C. at 511-512, 839 S.E.2d at 472-473 (holding that where a contract between Blue Cross Blue Shield and the hospital contained language expressly stating, "*This Agreement is not intended to, and shall not be construed to make any person or entity a third party beneficiary,*" it was error for the trial court to dismiss the patient's breach of contract claim because the agreement as a whole must be examined to determine whether the contract intended to benefit members in the insurance plan.)

Here, the amended pleading set forth sufficient allegations that Ms. Blackwell was the intended third-party beneficiary of an agreement between MedCost (her insurance provider) and Mary Black, and that Mary Black agreed to accept a reduced amount from MedCost as payment for services rendered to its insureds. Blackwell further alleges that Mary Black failed to submit its bills to MedCost, thereby harming Ms. Blackwell. Taken together, Blackwell has alleged facts sufficient at the Rule 12 stage to support a claim of standing as a third-party beneficiary and this Court should affirm the order of the lower court for these reasons, or for any reason contained in the record.

4. Plaintiff Brooks' claims do not fail under the Medicare Act.

Mary Black argues that Brooks' claims fail as a matter of law because, pursuant to 42 U.S.C.A. § 1395y(b)(2)(A)(ii), they "were required to seek payment from any applicable auto or liability policy coverage prior to seeking or obtaining any payment from Medicare." (Mary Black Mot. 2; PASI Mot. 3–4; CHSPSC Mot. 3–4.) Again, this argument is improper at this stage of the action because it presumes facts not alleged in the Amended Complaint. *See Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011) ("It is a well-settled principle that in resolving a Rule 12(b)(6) motion to dismiss, the court is limited to a consideration of the allegations contained within the four corners of the complaint.")

Mary Black's argument fails as a matter of law because it presumes that the at-fault driver in Brooks's automobile accident had a valid insurance policy from which to collect, even though this fact is not alleged anywhere in the Amended Complaint. Instead, the Amended Complaint merely alleges that Brooks was involved in an automobile accident and had valid health insurance coverage through Medicare, which would have paid her medical bills had they been submitted for

payment. (Am. Compl. ¶¶ 41–44.) Thus, Mary Black's argument not only relies on a fact outside of the amended pleading, but it would also require the Court to disregard the allegation in the Amended Complaint that "Plaintiff Brooks's medical bills would have been paid had they been submitted to her health insurance for payment." (Am. Compl. ¶ 44.) Because this is wholly contrary to the Court's scope of review in deciding a Rule 12(b)(6), SCRCP, motion for dismissal, the Court should reject this argument and affirm the decision of the lower court. *See Harrell*, 393 S.C. at 559, 713 S.E.2d at 608; *Sloan Constr. Co.*, 377 S.C. at 112–13, 659 S.E.2d at 161.

5. **The voluntary payment doctrine fails to bar the claims of either Owens or Brooks**

As alleged in their complaint, Brooks and Owens only settled with Mary Black after it asserted unlawful liens against the plaintiffs' recoveries for their personal injuries. (*See* Am. Compl. ¶¶ 26, 46, 52.) In addition, Plaintiffs alleged Mary Black "[sought] payment for medical bills by demanding cash payment directly from the patients, placing unlawful liens on patients' third-party tort claims, seeking medical payment benefits from patients' automobile insurers, turning patients over to collection agencies, and/or reporting patients to credit bureaus (thereby impairing patients' credit scores)." (*Id.* ¶ 26.)

Mary Black asserts that that the voluntary payment doctrine bars the claims of both Plaintiff Brooks and Plaintiff Owens. (*See* Mary Black Mot. to Dismiss pp. 3, 5–6; PASI Mot. to Dismiss pp. 4–5, 7; CHSPSC Mot. to Dismiss pp. 4–5, 7.) Their arguments rely on two South Carolina cases, *Hardaway v. S. Railway Co.*, 90 S.C. 475, 73 S.E. 1020 (1912), and *Moody v. Stem*, 214 S.C. 45, 51 S.E.2d 163 (1948), and a North Carolina federal district court case, *Cross v. Ciox Health, LLC*, 38 F. Supp. 3d 572 (E.D.N.C. 2020). None of these authorities require dismissal of these Plaintiffs' claims, and the trial court correctly found that the Plaintiffs' allegations, along

with the inferences reasonably drawn from those allegations, were sufficient to defeat dismissal with respect to the voluntary payment doctrine. In relevant part, the lower court ruled:

> Under a 12(b)(6) analysis, [the] decision [not to dismiss due to the voluntary payment doctrine] is reasonable given the assertion that payments made by the Plaintiffs were not voluntary, as the Plaintiffs only settled with Mary Black after the Mary Black asserted unlawful liens against them. Plaintiffs strongly assert that payments made as a result of extortion are not considered voluntary.
>
> Form 4 Order dated Sept. 4, 2020, at 4.

Viewed in the light most favorable to the plaintiffs, the trial court correctly found that any payments Brooks and Owens made to Mary Black were not voluntary. *See Hardaway*, 73 S.E. at 1025 ("[A] party cannot by direct action, or by way of set-off or counterclaim, recover money *voluntarily* paid with a full knowledge of all the facts, *and without any fraud, duress, or extortion*, although no obligation to make such payment existed." (emphasis added)). The allegations in the pleading reflect a pattern and practice on the part of Mary Black of coercing and extorting its patients into making payments for services that the hospital should have billed to the patients' insurers. No payments made under these circumstances can be considered voluntary. *See Cross*, 438 F. Supp. 3d at 590 (stating a payment is involuntary when there is "some actual or threatened exercise of power possessed, or believed to be possessed, by the party exacting or receiving the payment over the person or property of another, for which the latter has no other means of immediate relief than by making the payment" (quoting *Big Bear of N. Carolina, Inc. v. City of High Point*, 240 S.E.2d 422, 424 (N.C. 1978))); 70 C.J.S. *Payment* § 103 ("Recovery may be allowed where the payment of an unlawful demand has been obtained by taking undue advantage of the payor's situation, where it has been made to prevent an injury to property rights, or where it was made to release a person or property from detention or to prevent an immediate seizure of person or property." (footnotes omitted)); *id.* ("Where a person is compelled, through the necessity

of protecting his or her business interests, or under a business necessity to free or protect property from some duress or lien, to pay an unlawful demand, the payment is compulsory and may be recovered." (footnotes omitted)).

Additionally, Owens and Brooks did not make the payments to Mary Black with the requisite "full knowledge of all the facts." *Hardaway*, 73 S.E. at 1025. Specifically, these plaintiffs acted without knowledge of the contractual obligations Mary Black had in relation to the plaintiffs' insurers, except the commonly held belief that Defendants were required to submit patients' bills to their respective health insurers. (*See* Am. Compl. ¶28.) In extracting payments from Owens and Brooks, Mary Black failed to inform its patients of its duties and obligations. Consequently, the voluntary payment doctrine is further inapplicable. *See Moody*, 214 S.C. at 53, 51 S.E.2d at 165 ("That cannot be said with propriety to be voluntarily done, where a formal assent thereto is induced by *mistake*, or procured by fraud or deception, as to facts material to control the operation of the will therein, any more than where such formal assent is extorted by the application of a *force* which fetters and obstructs its free working."); 70 C.J.S. *Payment* § 103 ("A payment is not voluntary if the payor reasonably and in good faith believes in his or her obligation or personal interest in making the payment."); *see, e.g.*, *Freeman v. J.L.H. Investments, LP*, 414 S.C. 362, 383, 778 S.E.2d 902, 913 (2015) ("Freeman paid the closing fee without full knowledge of what comprised the fee. . . . Accordingly, we find that Hendrick's reliance on the voluntary payment doctrine is misplaced.").[18]

[18] While Mary Black argues that the claims of Brooks and Owens are barred because they made payments to Mary Black, they argue elsewhere that Blackwell's claims are barred for precisely the opposite reason—because she *did not* make any payments to Mary Black. In doing so, Mary Black advances a seemingly Kafkaesque scenario where claims arising out of these billing practices are barred both when payments are made and when they are not made. The practical result is to foreclose all relief arising from its conduct no matter the circumstances.

For all the reasons stated herein, or for any reason found in the record, the Court should affirm. The facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, entitle the Plaintiffs to relief; accordingly, dismissal is unwarranted.

6. The Amended Complaint States a Claim for Tortious Interference with Contract

"[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." *Dutch Fork Dev. Group II, LLC v. SEL Props., LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012) (quoting *Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984)). The elements of a claim for tortious interference with contractual relations are: "(1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Id.* (quoting *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993)).

Here, Plaintiffs allege a claim for tortious interference with a contractual relationship based on Mary Black's knowledge of their contractual relationship with their health insurance providers and its willful refusal to submit Plaintiffs' and Class Members' Mary Black bills for payment by their insurance. (*See* Am. Compl. ¶¶ 63–68.) As a result of Mary Black's wrongful conduct, Plaintiffs and Class Members did not "receiv[e] the benefit of their relationships with their respective health insurance carriers" and Plaintiffs and the Class Members "paid premiums but receiv[ed] no or little benefit." (*Id.* ¶¶ 66, 67.) Construed in the light most favorable to the Plaintiffs, the trial court correctly found that the allegations are sufficient to state a claim for tortious interference with contractual relations.

Defendants argue this cause of action should be dismissed because "[w]ithout a breach by the health insurers of their insurance contracts with Plaintiffs, there can be no recovery from Defendants under a cause of action for tortious interference with a contractual relationship." App.

Init. Br. p. 35. (Mary Black Mot. to Dismiss p. 3.) However, Mary Black again fails to construe the allegations in the light most favorable to Plaintiffs and reads Plaintiffs' allegations too narrowly, all the while seeking to have this Court impermissibly consider the merits of the claim, rather than the claim "as it is alleged." The trial court correctly determined that the allegations in the Amended Complaint can be reasonably construed to mean that Mary Black's conduct resulted in a breach of patients' contracts with their insurers since Plaintiffs alleged they paid premiums but did not have their Mary Black bills paid by their insurers. Accordingly, Mary Black's argument that Plaintiffs failed to allege facts sufficient to constitute a cause of action for tortious interference should be rejected and the decision of the lower court affirmed.

7. The Trial Court Correctly Found the Amended Complaint States Facts Sufficient to Support a Cause of Action Against Appellants PASI and CHSPSC

Mary Black, CHSPSC, and PASI are related entities that engaged in the wrongful billing and collection practices alleged in the Amended Complaint. CHSPSC and PASI are billing and collection entities related to Mary Black (Am Compl. ¶¶ 16–17). In their amended pleading, Plaintiffs assert facts and allegations against all defendants, and often refer to the defendants collectively. (*See, e.g.,* Am. Compl. ¶¶22–34 (alleging all defendants engaged in wrongful conduct).) In addition, Plaintiffs allege that "CHSPSC and PASI exercise control over policies and procedures enacted and implemented by Mary Black Health System, including policies relating to billing and liens, and all of these entities committed the acts and omissions complained of herein, jointly and in concert." (Am. Compl ¶ 18.) Because these allegations as to both PASI and CHSPSC meet the pleading requirements, there exists no error in the denial of the motion to dismiss and this Court should affirm the decision of the lower court.

In seeking dismissal, both PASI and CHSPSC urge the Court to revert to past days of code pleading by arguing that the Amended Complaint lacks "specific or individual allegations" against

them. (*See* App. Init. Br. pp. 36-39) (PASI Mot. to Dismiss pp. 1–3; CHSPSC Mot. to Dismiss pp. 1–3.) However, this argument contravenes the well-established rules governing pleading in our state, as the Rules of Civil Procedure merely require a plaintiff to set forth "a short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a)(2), SCRCP. Additionally, the purpose of the South Carolina Rules of Civil Procedure is "to secure justice, and . . . reduce formalities and technicalities." *Patton* 420 S.C. at 492, 804 S.E.2d at 263 (2017) (quoting James F. Flanagan, *South Carolina Civil Procedure* 3 (2d ed. 1996)). They are "designed to discourage battles over mere form and to sweep away needless procedural controversies that either delay a trial on the merits or deny a party his day in court because of technical deficiencies." *Id.* at 493, 804 S.E.2d at 263 (quoting 4 Charles Alan Wright et al., *Federal Practice and Procedure* § 1029 (4th ed. 2015)). Put simply, the governing South Carolina pleading requirements are no longer "technical confines of code pleading" but instead are "far more flexible notice pleading provisions of the Rules of Civil Procedure." *Patton*, 420 S.C. at 492.

Under South Carolina law, there exists no prohibition against pleading facts in the manner contained in the amended complaint at issue here. *See* Rule 8(e)(1), SCRCP ("Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."); *Patton*, 420 S.C. at 493, 804 S.E.2d at 263 (observing that it is "entirely contrary to the spirit of the . . . Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities" (quoting *Foman v. Davis*, 371 U.S. 178, 181 (1962))). Because the Amended Complaint provides sufficient notice to <u>all</u> Defendants of the allegations being made against them, the Court should reject the arguments of PASI and CHSPSC that the allegations against them are factually insufficient.

Mary Black further suggests Plaintiffs' pleadings improperly attempt to attach liability to each defendant; however, Plaintiffs have not alleged any defendant is vicariously liable for the actions of another, nor have Plaintiffs attempted to pierce the corporate veil of any defendant. Instead, Plaintiffs alleged in their pleading that all of the defendants acted in concert with one another, and each defendant's liability is the result of its own conduct (although such conduct may mirror that of the other defendants). Accordingly, Mary Black's cited authority from various federal courts of appeal is unpersuasive.

Mary Black's alternative suggestion that collective pleading is somehow prohibited or improper in South Carolina is equally incorrect. Abandoning their previous reliance on cases relied upon in the lower court, Mary Black cannot point to any case law, statute, or rule of civil procedure prohibiting collective pleading or requiring a plaintiff to repeat allegations against individual defendants when the defendants acted in concert. In fact, the opposite holds true. *See, e.g.*, *Connor v. Honeywell Int'l Inc.*, No. CIV.A. 2:12-1421-CWH, 2012 WL 6135193 (D.S.C. Nov. 13, 2012) (finding collective pleading to be proper where plaintiff believed defendants acted in concert). Defendants' cited authority offers no support to their position. *See Scurmont LLC v. Firehouse Rest. Grp., Inc.*, No. 4:09-CV-00618-RBH, 2010 WL 11433199, at *15 (D.S.C. May 19, 2010) (finding a lack of specific personal jurisdiction over an individual defendant because the plaintiff failed to plead facts demonstrating the defendant committed wrongful acts within South Carolina).[19]

[19] Mary Black's reliance on *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986) is similarly misplaced. In *Jones*, the Court of Appeals sustained a *demurrer* to a complaint alleging breach of contract by a county employee where the plaintiff failed to set out the pertinent provisions of the handbook or personnel policies upon which she based her complaint, and there were no such contracts incorporated by referenced into the pleading. Here, Plaintiffs have not alleged a breach of contract and there were no "missing" documents necessary to support their claims.

Accordingly, for all the reasons contained herein, or for any reason found in the record, the Court should affirm the lower's court refusal to dismiss the claims against PASI and CHSPC.

CONCLUSION

The lower court correctly denied the motion to compel Mr. Owens to arbitration and the multiple motions to dismiss as against all Plaintiffs. The orders of the lower court should be affirmed for all of the reasons stated herein, or for any other reason found in the record pursuant to Rule 220(c), SCACR, and the matter remanded to the lower court for trial.

Respectfully submitted,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-00219
Appellate Case No. 2020-001613

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated,

Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; Professional Account Services, Inc.,

Appellants,

PROOF OF SERVICE

The undersigned hereby certifies that on July 26th, 2021, the **Initial Brief of Respondents and Respondents' Designation of Matter to be included in the Record on Appeal** was served on all counsel of record via email pursuant to SC Supreme Court COVID Order 2020-05-29-02 as follows:

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