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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2020-001441

Thelma Rudd, as Personal Representative of the Estate of Charles S. Rudd., Respondent,

v.

Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center, The Place at Pepper Hill, LLC, Pepper Hill Senior Properties, LLC, n/k/a The Place at Pepper Hill, LLC, and Shiloh Management Company, Inc., Defendants,

of which Shiloh Management Company, Inc., Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center are the Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	SUMMONS
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center	)	
n/k/a The Place at Pepper Hill, LLC; and	)	
Shiloh Management Company, Inc.	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Raymond P. Mullman, Jr.
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Attorneys for the Plaintiffs

Date: November 13 2019
 Spartanburg, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	COMPLAINT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center	)	
n/k/a The Place at Pepper Hill, LLC; and	)	
Shiloh Management Company, Inc.	)	
Defendants.	)	

The Plaintiffs, Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, deceased, and as Personal Representative of the Statutory Beneficiary do hereby respectfully allege as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, is a resident of the County of Aiken, State of South Carolina.
2. That the statutory beneficiaries of the Estate as defined by S.C. Code § 15-51-10 et seq. and § 15-32-220 is Thelma Rudd.
3. That upon information and belief, Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center n/k/a The Place at Pepper Hill, LLC (Pepper Hill) is a for-profit entity owned and operated by Wade Jones Sr. incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.
4. That upon information and belief, Shiloh Management Company, Inc. (Shiloh) is a for-profit entity owned and operated by Wade Jones to assist in the management and

operation of the facility and was incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.

5. That upon information and belief, Shiloh is the Home Office of Pepper Hill as defined in CMS Manual 15-2 Chapter 10 § 1000 because of common ownership and direct control of the operation of Pepper Hill.
6. That upon information and belief, Shiloh is the management company for Pepper Hill.
7. That upon information and belief, at all times relevant hereto, Pepper Hill has operated a nursing home facility and has done business in the state of South Carolina.
8. That upon information and belief, at all times relevant hereto, Charles Rudd, was a resident at Pepper Hill in the County of Aiken, State of South Carolina and there existed a resident/facility fiduciary relationship between Charles Rudd and the Defendants, and Charles Rudd was thereby entitled to all the protections afforded such residents in South Carolina.
9. That during his residency at Pepper Hill, Charles Rudd was a vulnerable adult as defined by the Omnibus Adult Protection Act, S.C. Code Ann. §43-35-10.
10. Defendants delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Charles Rudd during his residency at Pepper Hill.
11. Shiloh was involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Charles Rudd resided. Further, Shiloh, at all times relevant hereto, exerted managerial control and operational control over Pepper Hill, and that such control was so extensive and pervasive that Shiloh actually operated and managed

said facility, and did business as one joint venture. Further, the control by Shiloh was so extensive and pervasive over Pepper Hill that the business of Pepper Hill was the business of Shiloh.

12. Defendants were involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for Pepper Hill and have directly controlled the operations at said nursing home facility.
13. Defendants promulgated and established the policies, procedures, protocols, staffing decisions, and budgetary decisions at the Pepper Hill nursing facility, and all Defendants exert control over the facility at various times.
14. The deficiencies at the Pepper Hill nursing home facility in Aiken County, South Carolina were authorized, approved and ratified by all Defendants.
15. That this action is being brought pursuant to the South Carolina Common Law of Negligence, Gross Negligence, Negligence Per Se, Wrongful Death, Unjust Enrichment, Breach of Fiduciary Duty.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

16. Relevant and consistent allegations contained in paragraphs 1-15 are incorporated by reference as if written verbatim herein.
17. On or about July 27, 2016, Charles Rudd was admitted to the skilled nursing facility with the understanding that he would be provided with the care that his health conditions reasonably required.
18. Charles Rudd suffered a preventable and avoidable fall and subsequent hospitalization in late November 2016 that was caused by neglect and could have been avoided if proper supervision and assistance were care planned and provided.

19. Defendants failed to properly care plan for preventable falls.
20. Defendants failed to properly monitor and supervise his ambulation.
21. Defendants knew or should have known that Charles Rudd needed proper safety to devices to safely sit in his wheelchair.
22. Defendant's Occupational Therapy notes on August 19, 2016 proves that Defendants were no notice that Rudd needed supervision, assistance, and a safety device to maintain vertical stability in his wheelchair because the note clearly states: "The patient tolerates upright sitting in chair/wheelchair maintaining proper alignment and positioning for 0 hours."
23. Defendant's Occupational Therapy note additional stated on August 19, 2016 that Charles Rudd was unable to maintain balance with static or dynamic sitting.
24. Standard of Practice for care planning as defined by CMS.gov states that the care plan "must be consistent with the resident's specific conditions, risks, needs, behaviors, preferences and with current standards of practice and included measureable objectives and timetables with specific interventions."
25. The medical record states on November 27, 2016 entered at 11:59 AM states, "Resident was found on floor from wheelchair. Resident was found lying on floor with beside table at his feet. Resident stated he fell out of chair while trying to eat his breakfast. Resident stated he hit his head on the wheelchair when he slid out of the chair..."
26. On November 28, 2016 at 2:33 PM Charles Rudd was sent to Augusta Health University Hospital for a CT of his head, and diagnosed with "Parenchymal hemorrhage involving the right medial thalamus with intraventricular decompression layering within the right atria and occipital horn without midline shift or significant mass effect."
27. Charles Rudd incurred medical bills from the hospitalization.

28. On December 13, 2016 Charles Rudd was transferred to CM Tucker Nursing; a long-term care facility for rehabilitation and safety.
29. That the Defendants, their subsidiaries, related entities, officers, agents, servants, and employees negligently and carelessly failed to properly manage, operate, and provide care to and keep Charles Rudd safe.
30. That the Defendants were liable and responsible for the acts and delicts of their employees, agents, and servants under the principle of respondeat superior, agency, and joint venture.
31. That, upon information and belief, Charles Rudd's health conditions were aggravated and exacerbated by the Defendant's failure to properly supervise him and monitor his medical conditions. These deviations from the standard of care were the proximate causes of conscious pain and suffering, mental distress, medical bills, loss of dignity, and contributed to his premature and wrongful death.
32. Upon information and belief, Defendants failed to provide adequate and proper nursing services, and custodial care to Charles Rudd, contributing to his premature and wrongful death.
33. Further, that the Defendants, directly or indirectly, received federal and state funds as reimbursement for the care of residents including Charles Rudd.
34. That while residing at Defendants facility, Charles Rudd was damaged and injured, and eventually died as a result of neglect, negligence, recklessness, and violations of the standard of care for nursing and custodial care.
35. That Charles Rudd was a resident of Defendants facility from his admission until his transfer to the hospital on November 28, 2016.

36. That during Charles Rudd's residency at Pepper Hill, the acts and delicts of Defendants caused, and were the proximate causes of Charles Rudd's conscious pain and suffering, mental distress, medical bills, disability, loss of dignity, and loss of quality of life to Charles Rudd. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.
37. That the Defendants held Pepper Hill out to the State of South Carolina, the South Carolina Department of Health and Environmental Control, the public at large, and to Charles Rudd and his family, specifically, as being:
- a. skilled in the performance of nursing, rehabilitative, and other medical support services;
 - b. properly staffed, supervised and equipped to meet the total needs of its residents;
 - c. able to specifically meet the total nursing, personal care, medical, and physical therapy needs of its residents; and,
 - d. Licensed by the South Carolina Department of Health and Environmental Control and complying on a continual basis with all state and federal rules, regulations, and standards established for nursing homes in South Carolina.
38. That the Defendants held Pepper Hill out to the United States of America, the Centers for Medicare and Medicaid Services, the public at large, and Charles Rudd and his family, specifically, as being a skilled nursing facility and as a nursing facility meeting the requirements of 42 CFR Part 483.
39. To protect nursing home residents like Plaintiff, the federal government mandates that if a nursing home voluntarily accepted Medicare or Medicaid funds, the nursing home would be required to follow strict mandates for patient safety, documentation, and costs and expenditures. These mandates became known as the OBRA regulations at 42 CFR 483.1-

et seq. For example, one of the regulations simply states, "skilled nursing facilities participating in Medicare must meet certain specified requirements." 42 C.F.R. 483.1.

40. That the provisions of the Omnibus Reconciliation Act of 1987 (OBRA) were applicable with regard to the administration and operation of the facility, and the provision of care and services to Plaintiff throughout the residency.
41. Defendants were under an obligation to follow all rules and regulations of OBRA as well as all applicable state and federal laws, rules, regulations, and guidelines including S.C. Regulations 61-17, the Board of Nursing Advisory Opinions, the South Carolina Adult Protection Act, the South Carolina Nurse Practice Act, S.C. Code § 40-33-5 et. seq., and the South Carolina Long Term Health Care Administrators statute, S.C. Code § 40-35-5 et seq.
42. Defendants were under an obligation to follow the provisions and standards of the Federal Nursing Home Act applicable to the administration and operation of the facility and the provision of services, care and treatment as well as all applicable state laws, rules, regulations, and guidelines including but not limited to The Adult Protection Act of South Carolina Code § 43-35-5, et. seq.; South Carolina Department of Health and Environmental Control regulations for Nursing Homes at Regulation 61-17, et. seq.; the South Carolina Nursing Practice Act; Board of Nursing Advisory Opinions; South Carolina Code of Laws Title 40 Chapter 35; and South Carolina Code of Regulations Chapter 93.
43. The regulations are designed to reduce or eliminate accidents, assure proper staffing and supervision, and establish and maintain a reasonable quality of life for each resident.
44. OBRA regulations go to great lengths to ensure nursing home patients will be "in an environment that promotes maintenance or enhancement of each resident's quality of life."

42 C.F.R. 483.10.

45. They state that each patient "must" receive, and the facility "must" provide the necessary care and services to "attain or maintain the highest practicable physical, mental, and psychosocial well-being[.]" See e.g. 42 C.F.R. 483.24.
46. The OBRA regulations require that each nursing home has sufficient staff to provide the necessary care and services. 42 C.F.R. 483.30.
47. Defendants specifically violated the applicable standard for the administration of a nursing home found at §483.75 which expressly states: "A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident."
48. Defendants must submit "cost reports" to both state and federal agencies which include additional staffing information as well as the expenditures of the Defendants on staffing costs, facility costs, supplied, operating and management fees, etc submitted by Defendants to government agencies under penalty of perjury. 42 C.F.R. 413.24(f)(4)(iv).).
49. These regulations and reporting have a distinct purpose: "Collectively, these reports establish a basis for evaluation of the reasonableness of the rate paid to the nursing homes and determination of what constitutes an economically and efficiently operated facility." Nursing Home Cost Report Instruction Manual.
50. In particular, Defendants used their business structure as a means to evade the federal requirement that their nursing homes, including Pepper Hill, be administered in a manner that enables them to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. See 42 CFR § 483.75.

51. By siphoning profits to related entities in non-arms' length transactions, Defendants deny the Facility sufficient resources to care for its residents.
52. Additionally, Defendants' use of "shell" limited liability companies and trusts serves to further the unjust practice of concealment and misrepresentation of the identity of the responsible ownership, management, and financial interest, or concealment of personal business activities.
53. This is an integral part of Plaintiffs' corporate negligence claim which include allegations that Defendants siphoned profits away from resident care to related parties. This is a concept noted in the federal regulations and seen in nursing home operations across the country.

. . .when services, facilities, or supplies are furnished to a provider by a "related organization," there is "a significant likelihood that charges incurred by providers . . . will be artificially inflated because of the absence of bona fide arms-length bargaining." *American Hosp. Management Corp. v. Harris*, 638 F.2d 1208, 1212 (9th Cir. 1981). . . "Reasonable costs" for such a provider are the actual costs incurred by the related supplier, rather than the amount the provider pays to it. 42 C.F.R. § 405.427(a) (1982).

Biloxi Reg'l Med. Ctr. v. Bowen, 266 U.S. App. D.C. 281, 835 F.2d 345, 349-50 (1987).

54. Part of determining an economically and efficiently operated facility includes disclosure of monies transferred to "related organizations."
55. "Federal Regulations, 42 CFR 447.284, requires the nursing home to identify related organizations and to summarize costs incurred in transactions between the NH and such related organizations." ("A related organization is one in which there is a common ownership or controlling interest existing between the vendor and the NH.) See Cost Report Manual.
56. Defendants are also required to report "related organizations" under 42 CFR §420.206.

57. The cost reports mentioned supra include information regarding transactions with what are referred to as “related parties”. CMS considers a party to be “related” to a nursing facility when the nursing facility “to a significant extent is associated or affiliated with or ... is controlled by the organization furnishing the services, facilities, or supplies.” 42 C.F.R. §413.17(b)(1).
58. The Centers for Medicare and Medicaid Services (“CMS”) is the federal agency that is tasked with regulating all nursing facilities in this country.
59. Federal law requires nursing facilities to disclose information on related parties that meet the following criteria:
- a. anyone with direct or indirect ownership in the nursing facility of 5% or more;
 - b. officers, director, and partners;
 - c. managing employees; and
 - d. anyone who is an “additional disclosable party” which is defined as any person or entity who
 - 1) exercises operational, financial, or managerial control over the nursing facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the nursing facility;
 - 2) leases or subleases real property to the nursing facility, or owns a whole or part interest of 5% of more of the total property value of the nursing facility; or
 - 3) provides management services, administrative services, clinical consulting services, accounting services, or financial services to the nursing facility.
 (See 42 U.S.C. §1320a-3).
60. Plaintiffs allege that while holding Pepper Hill out to Charles Rudd and other members of the public as providing excellent care, Defendants and their related parties extracted considerable profits through the management and operation of Pepper Hill by overpaying Wade Jones and his immediate family members and other related parties from funds which should have been utilized instead to hire, train, and retain a sufficient number of qualified

staff to meet the needs of all of their residents including Charles Rudd.

61. Included in the costs are extensive details as to how much money the nursing facility spent on RNs, LPNs, and CNAs during that year based on payroll records. The cost report also reports the resident census, hours paid, and the hourly rate that the nursing facility paid each category of direct caregivers during that year. By dividing the paid hours by the resident census it is possible to determine how many hours the nursing facility paid for each category of direct caregivers per resident, per day for the time period covered by that particular cost report. This number is referred to as the “reported HPPD”.
62. CMS is able to set a number of hours of direct care that they expect to be provided to residents by RNs, LPNs, and CNAs based on the nursing facility’s total acuity level. This expectation is expressed in terms of “hours per patient day” or “HPPD”.
63. The long-term care industry typically measures nursing department staffing in “hours per patient day”, often cryptically referred to as “HPPD” or “PPD”.
64. The cost reports provide information about the number of patients, acuity or illness levels of patients, and the staffing of the facility to meet the patients' needs.
65. Not only do the cost reports contain information on expenditure, they must contain information about the facility’s residents, in particular their acuity levels as determined by the RUG scores. CMS 2540 Cost Report Instruction Manual.
66. The term used by caregivers and health science literature to describe the intensity of nursing care required by a resident is “acuity level”.
67. Acuity levels are reflected in the resident’s ‘Resource Utilization Group’ classification or “RUGs”. RUGs are mutually exclusive categories that reflect the amount of resources that will be needed in order to meet the needs of a particular resident in nursing facilities. They are

assigned to residents based on data derived from an assessment tool referred to as a “Minimum Data Set” (MDS”).

68. An MDS is prepared for each resident of a nursing facility regardless of who is paying for their stay in the nursing facility. MDSs are required to be prepared when a resident initially arrives at the facility and periodically thereafter depending on the course of the resident’s medical profession. At a minimum, an MDS is to be prepared for every resident in a nursing facility on a quarterly basis.
69. The completion of an MDS by a nursing facility is a part of the federally mandated process for clinical assessments of all residents in nursing facilities. MDSs need to be as detailed and comprehensive as possible so that they reflect all of the needs of each of the residents in the nursing facility. When done properly, an MDS provides a comprehensive assessment of each resident’s functional capabilities and helps the staff of a nursing facility identify all of the health problems of each of their residents.
70. The information contained in an MDS is used to slot the resident into a RUG.
71. RUGs are organized in a hierarchy from residents who will need the greatest amount of resources to residents who will need the least amount of resources during their stay at the nursing facility.
72. Residents who will need the greatest amount of resources are assigned to higher groups in the RUG hierarchy.
73. RUGs also determine the level of compensation a nursing facility will receive in order to provide the level of care necessary for each of their residents.
74. Residents in higher RUGs place higher demands for care and services on the nursing facility and its staff.

75. Providing care to residents in higher RUGs requires more staff and is, therefore, reimbursed at a higher level.
76. The RUG assigned to a resident can be found in section Z of each resident's MDS.
77. The only way to determine the total acuity level and corresponding RUG of each of the residents at Millennium Post-Acute Rehabilitation on any given day is by examining section Z of **every** MDS in effect on that day.
78. Using the information contained in the MDSs of every resident in a nursing facility, CMS is able to determine an HPPD that is expected for each nursing facility in the country. This is referred to as the "expected HPPD" and can be found on the CMS.gov website. They are also able to adjust the HPPD per facility on a quarterly basis based on the updated MDSs that are provided to them.
79. Through the years, CMS has sponsored multiple studies to determine the amount of time that RNs, LPNs, and CNAs in nursing facility spend providing direct care to residents as well as other elements of resident care.
80. Expected hours are calculated by summing the nursing times in minutes (from the CMS Time Study found in Appendix Table A1) connected to each RUG category across all residents in the category and across all categories. The total minutes are then divided by the number of residents included in the calculations. The number of minutes per resident is converted to hours by dividing by 60. The result is the "expected" number of hours per resident day for each nursing category.
81. 70% of RUG reimbursement rate is attributable to the labor requirements associated with the RUG score.
82. Defendants knew or should have known that CMS publishes quarterly the facility's

expected hppd for direct care caregivers at CMS.gov.

83. The CMS "expected" staffing associated with the monthly or quarterly reports and the CMS "estimated" staffing associated with RUG scores are notice of potential under-staffing and knowledge of the dangers associated therewith.
84. The government has recognized the "considerable evidence of a relationship between nursing home staffing levels and resident outcomes." (CMS Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide). A government staffing study found "a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems."
85. In conjunction with these facts, Medicare has promulgated staffing 'expectations' based on the number and acuity of patients as reported by nursing homes. These expected staffing numbers drive higher quality of care and also serve as a basis for how much nursing homes are paid.
86. The staffing data is in the public domain via the CMS website and provides notice to nursing homes of CMS' expectations and estimated staffing requirements based on the facilities' average RUG scores.
87. That labor is the biggest component of the nursing home budget.
88. That nursing labor is the biggest component of the labor budget.
89. That RNs are the highest paid employees among the nursing staff.
90. That experienced, more senior, RNs cost more on an hourly basis than less experienced, less senior RNs.
91. According to the Federal Nursing Home Act at 42 CFR 483.35, the facility must have

sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).

92. The federal requirement for staffing is that the nursing home must provide sufficient staffing to meet all of the needs of all of the residents at all times. 42 CFR 483.30(a).

93. Providing adequate and appropriate staffing, resources and financial solvency to a facility is crucial to meeting the needs of the residents.

94. The regulations are exact in what information must be provided:

(i) **Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1128I(g) [42 USCS § 1320a-7j(g)],** including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include--

(I) concise explanations of how to interpret the data (such as a plain English explanation of data reflecting "nursing home staff hours per resident day");

(II) **differences in types of staff (such as training associated with different categories of staff);**

(III) **the relationship between nurse staffing levels and quality of care;** and

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

42 USCS § 1395i-3.

95. According to the CMS Technical User Guide for Design for Nursing Home Compare Five-Star Quality Rating System, there is considerable evidence of a relationship between nursing home staffing levels and resident outcomes.

96. The CMS Nursing Home Compare program serves to provide consumers of long-term care services “easily accessible, readily understandable” information about nursing facilities. 42 CFR § 1395i-3(i)(1)(A). The information that must be made available includes specific staffing information – which is reported by the facilities themselves.
97. The self-reported HPPD is actually an inflated number due to the fact that hours paid includes sick pay and vacation pay. By removing the sick pay and vacation pay from the hours paid the resulting HPPD would be closer to the actual HPPD provided by caregivers to residents in nursing facilities.
98. The actual HPPD for any given nursing facility can be determined by examining the data that nursing facilities use to track the number of hours their employees work. This information is easily accessed through reports that are commonly referred to as “Time Detail Reports”, “Punch Detail Data Reports”, or some other similarly named report depending on the time-keeping system used by the particular nursing facility. This information can reveal the actual HPPD for any period of time including a year, a quarter, a month, or even a day.
99. Defendants are required to report their staffing levels for RNs, LPNs and aides, the combination of which is commonly called “direct-care providers.”
100. By failing to provide adequate RN and other staffing, Defendants saved significant dollars to increase their profits, and put their residents, including Charles Rudd, at greater risk.
101. Indeed, Charles Rudd’s death is directly attributable to a lack of assessment and care planning because of the lack of RN staffing
102. The lack of RN staffing leads to lack of assessments or allowing unqualified LPNs to assess which is outside their scope of practice in violation of the Board of Nursing’s

Advisory Opinions.

103. According to the South Carolina Board of Nursing Advisory Opinion #21 which constitutes competent and safe nursing practice, the State Board of Nursing for South Carolina has determined that it is NOT within the role and scope of practice for the licensed practical nurse (LPN) to perform physical assessments. It is within the role of the LPN to assist with the collection of patient health data to be used for the complete physical assessment. However, the analysis and synthesis of clinical information and the formulation of problem statements and/or nursing diagnoses requires the knowledge base and skills that are within the scope of practice of the registered nurse (RN) and may NOT be delegated to the LPN.
104. According to the South Carolina Board of Nursing Advisory Opinion #46 which constitutes competent and safe nursing practice, the Board of Nursing for South Carolina recognizes that it is NOT within the role and scope of the licensed practical nurse (LPN) to evaluate and/or stage vascular, diabetic/neuropathic or pressure ulcers. However, the LPN may collect and document health data related to vascular, diabetic /neuropathic and/or pressure ulcer(s) in order to assist the RN with decisions regarding wound classification/stage and continued management.
105. S.C. Code § 40-33-20 (48) states the scope of practice for registered nursing which means the performance of health care acts in the nursing process that involve assessment, analysis, intervention, and evaluation. This practice requires specialized independent judgment and skill and is based on knowledge and application of the principles of biophysical and social sciences.

106.S.C. Code § 40-33-20 (48) states the scope of practice of registered nursing includes, but is not limited to:

- a. assessing the health status of persons and groups;
- b. analyzing the health status of persons and groups;
- c. establishing outcomes to meet identified health care needs of persons and groups;
- d. prescribing nursing interventions to achieve outcomes;
- e. implementing nursing interventions to achieve outcomes;
- f. administering and delivering medications and treatments prescribed by an authorized licensed provider;
- g. delegating nursing interventions to qualified others;
- h. providing for the maintenance of safe and effective nursing care rendered directly or indirectly;
- i. providing counseling and teaching for the promotion and maintenance of health;
- j. evaluating and revising responses to interventions, as appropriate;
- k. teaching and evaluating the practice of nursing;
- l. managing and supervising the practice of nursing;
- m. collaborating with other health care professionals in the management of health care;
- n. participating in or conducting research, or both, to enhance the body of nursing knowledge;
- o. consulting to improve the practice of nursing; and
- p. performing additional acts that require special education and training and that are approved by the board.

107.This information on “Nursing Home Compare” is compiled into what is commonly called a “Star Rating.” A portion of the CMS Star rating formulation includes a calculation of the differential between reported and expected staffing levels for a facility.

108.Medicare/CMS clearly states on their website and in their manuals to providers, including Defendants, that part of the reason for their star rating system is that there “is evidence of a relationship between nursing home staffing levels, staffing stability, and resident outcomes.

109.The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which

residents are at a substantially higher risk of quality problems.” Nursing Home Compare Five Year Report. The staffing rating is a combination of RN and total nurse staffing.

110.Staffing is the biggest issue in the star rating system as CMS has noted that “staffing has the lowest proportion of any domain receiving five stars.”

111.The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems. See Kramer AM, Fish R. “The Relationship Between Nurse Staffing Levels and the Quality of Nursing Home Care.” Chapter 2 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II Final Report. Abt Associates, Inc., Winter 2001.

112.Defendants knew or should have known that the US GAO (2009a) found that the most poorly performing nursing homes in the United States tended to be owned by for-profit chains.

113.Defendants knew or should have known that studies have found that poor nursing home quality is directly related to inadequate staffing levels (Harrington et al. 2000; US Centers for Medicare and Medicaid Services [CMS] 2001; Schnelle et al. 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

114.Defendants knew or should have known that nurse staffing levels have been documented to have a positive impact on both the process and the outcomes of nursing home care, such as fewer pressure ulcers, improved functional status, better mortality rates, and fewer deficiencies for poor quality (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Castle and Engberg 2007, 2008; Castle 2008).

115. Defendants knew or should have known that a systemic review of 87 research articles and reports from 1975 to 2003 found that high total staffing levels, especially licensed staff, were associated with higher quality of care (Bostick et al. 2006).
116. Defendants knew or should have known that the Relationship of Nursing Home Staffing to Quality of Care at HSR: Health Services Research 39:2 (April 2004) study is supported by other correlational data documenting a relationship between staffing (particularly RNs) and a variety of outcomes, including: lower death rates, higher rates of discharges to home, improved functional outcomes fewer pressure ulcers, fewer urinary tract infections, lower urinary catheter use, and less antibiotic use (Linn, Gurel, and Linn 1977; Nyman 1988; Munroe 1990; Cherry 1991; Spector and Takada 1991; Aaronson, Zinn, and Rosko 1994; Bliesmer et al. 1998; Harrington et al. 2000; U.S. Department of Health and Human Services 2000b).
117. Defendants knew or should have known that inadequate staffing has been associated with inadequate feeding assistance during meals, poor skin care, lower activity participation, and less toileting assistance (Spector and Takada 1991; Kayser-Jones 1996, 1997; Kayser-Jones and Schell 1997).
118. Defendants knew or should have known that lower staffing levels, especially RN staffing, translate into lower labor costs, which appears to be a management strategy by the top 10 chains as well as other for-profit facilities to reduce costs. Nurse Staffing and Deficiencies in the Largest For-Profit Nursing Home Chains and Chains Owned by Private Equity Companies. DOI: 10.1111/j.1475-6773.2011.01311.x
119. Defendants knew or should have known that low staffing levels are a major concern because low staffing, especially RN staffing, have been associated with more federal

deficiencies and poorer resident outcomes as noted in previous studies (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Bostick et al. 2006; Castle and Engberg 2007, 2008; Castle 2008; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

120. Defendants knew or should have known that a clear link has been demonstrated between lower nurse staffing levels in nursing homes and adverse patient outcomes.
121. Defendants knew or should have known that more RN direct care time per resident per day (examined in 10-minute increments up to 30 to 40 minutes per resident per day) was associated with fewer pressure ulcers, hospitalizations, and UTIs; less weight loss, catheterization, and deterioration in the ability to perform ADLs; and greater use of oral standard medical nutritional supplements.
122. Defendants knew or should have known that more certified nursing assistants and licensed practical nurse time was associated with fewer falls.
123. Defendants knew or should have known that numerous studies have shown positive relationships between staffing levels for different types of staff (RN, LPN, nursing assistant) and a range of quality measures (e.g. number of deficiencies, functional improvement, pressure ulcer rates, and discharged home). See Feuerberg M, Reilly K, Kramer AM, Kane RA. "Review of selected research on nursing home staffing and resident outcomes. Chapter 6 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." Health Care Financing Administration, 2000; Bliesmer MM, Smayling M, Kane RL, Shannon I. The relationship between nursing staffing levels and nursing home outcomes. J Aging Health 1998; 10(3):351-371; Cohen JW, Spector WD. The effect of Medicaid reimbursement on quality of care in nursing homes. J Health Econ 1996;

15:23-48; Harrington C, Zimmerman D, Karon S, Robinson J, Bjorkling F. Nursing home staffing and its relationship to deficiencies. (This research was funded by the Health Care Financing Administration and the Agency for Health Policy & Research). 1999; and Spector WD, Takada HA. Characteristics of nursing homes that affect resident outcomes. J Aging Health 1991; 3(4):427-454.

124. Defendants knew or should have known that a number of studies have found that for-profit ownership is related to poorer quality of care than nonprofit ownership (Hillmer et al. 2005; Comondore et al. 2009).

125. Defendants knew or should have known that there is evidence that nursing home chains, defined as companies that own or operate two or more facilities, also have lower staffing, poor resident outcomes, and more deficiencies (violations of regulations) (Cohen and Spector 1996; Grabowski 2001a, b; Harrington et al. 2001; Banaszak-Holl et al. 2002; O'Neill et al. 2003; Harrington, Mullan, and Carrillo 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

126. Because of their joint venture, Defendants had a joint obligation to sufficiently fund Pepper Hill to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with their residents' comprehensive assessments and plans of care.

127. This joint obligation required Defendants to sufficiently fund Pepper Hill so that there would be enough staff and resources in order to meet the needs of their residents.

128. Pepper Hill was totally dependent on Defendants' generosity in their decision-making process as to whether they would allow them to keep the money they were earning.

129. Plaintiffs allege that the overpayments to related parties left Pepper Hill with insufficient

cash to provide sufficient and qualified staff to meet the individual needs of the residents in their facility during Charles Rudd's period of residency therein.

130. Plaintiffs allege that throughout 2016, Defendants, through their operational, budgetary, consultation, and managerial decisions and actions, provided grossly inadequate capitalization as measured by the nature and magnitude of the corporate undertaking of ensuring that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with each residents' comprehensive assessments and plans of care including those of Charles Rudd.

131. In other words, Defendants' actions in 2016 resulted in an underfunded nursing home during Charles Rudd's residency.

132. Plaintiffs allege that this underfunding and corresponding understaffing, although profitable for Defendants and their related parties, directly resulted in their failure to provide the necessary and basic services to Charles Rudd that he needed in order to keep him safe and avoid injury from preventable falls.

133. Because of their joint venture, Defendants have a joint obligation to sufficiently staff the facility to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

134. This joint obligation required Defendants to base the number of Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nurse Aides (CNAs) to be provided at Pepper Hill not only upon the number of residents residing in their facility (commonly referred to as "resident census") but also on the intensity of nursing care or acuity required

by their residents' needs.

135. Plaintiffs allege that Defendants jointly exercised control over the operation and management of the facility prior to and during Charles Rudd's period of residency therein, including but not limited to, the creation, setting, funding and/or implementation of budgets; the monitoring of resident acuity levels; the monitoring of staffing levels; control over resident admissions and discharges; and control over the number of hours of direct care provided to the residents by RNs, LPNs, and CNAs.
136. Plaintiffs allege that each of these managerial and operational functions had a direct impact on the amount and quality of care delivered to Charles Rudd while he resided at Pepper Hill and were taken in furtherance of operational and managerial objectives of Shiloh.
137. Plaintiffs allege that Defendants engaged in a systematic process of under-staffing which made it impossible for the staff to meet the individual needs of their residents including fall prevention during Charles Rudd's residency.
138. Plaintiffs allege that this understaffing, although quite profitable for Defendants, directly resulted in their failure to provide the necessary and basic services Charles Rudd needed in order to keep him safe and avoid injury from a preventable fall.
139. According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

140. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.
141. According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(11), a "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.
142. Plaintiff Charles Rudd was a resident of Defendant facility and was therefore a vulnerable adult under the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(11).
143. S.C. Regulation 61-17 Section 603(A) states that the facility must meet the following standard: "There shall be direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs.[care plans]"
144. S.C. Regulation 61-17 Section 803(B) states that the facility must meet the following standard regarding the resident's Individual Care Plan (ICP): The ICP shall describe:
1. The needs of the resident, including the services that are to be furnished, *i.e.*, what assistance, how much, who will provide the assistance, how often, and when;
 2. Advance directives and healthcare power-of-attorney, as applicable;
 3. Recreational and social activities that are suitable, desirable, and important to the resident;
 4. Dietary needs and preferences of resident as approved by a physician;

5. Discharge planning, to include assessing continuing care needs and developing a plan designed to assure the resident's needs will be met after discharge or transfer.

145.S.C. Regulation 61-17 Section 605(A) states that the facility must meet the following standard: "An adequate number of licensed nurses shall be on duty to meet the total nursing needs of residents. Licensed nursing staff shall be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation.

146.S.C. Regulation 61-17 Section 605(B) states that the facility must meet the following standard for unlicensed Nursing Staff: "The required number of nurse aides and other unlicensed nursing staff shall be determined by the number of residents assigned to beds at the facility. Additional staff members shall be provided if the minimum staff requirements are inadequate to provide appropriate care and services to the residents of a facility."

147.S.C. Regulation 61-17 Section 601(E) states that the facility must meet the following standard regarding staffing information: "Time schedules shall be maintained indicating the numbers and classification of all staff, including relief staff, who work on each shift of duty. The time schedules shall reflect all changes so as to indicate who actually worked."

148.S.C. Regulation 61-17 Section 601(H) states that the facility must meet the following standard regarding third party providers: "When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, recreation, meal service, social services, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and

when the services are to be provided, the exact services to be provided, and the requirement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, treatment, services, and rights.

149.S.C. Regulation 61-17 Section 607(A) states that the facility must meet the following standard regarding training: "Staff members shall be provided the necessary training to perform the duties for which they are responsible."

150.S.C. Regulation 61-17 Section 607(B) states that the facility must meet the following standard regarding training: "Before performing any duties, all newly-hired staff members shall be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members shall be instructed in the provisions of S.C. Code § 43-35-5 et seq., "Omnibus Adult Protection Act" and S.C. Code § 44-81-10 et seq., "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in this regulation.

151.S.C. Regulation 61-17 Section 607(C) states that the facility must meet the following standard regarding training: "All staff shall be provided in-service training programs that identify training needs related to problems, needs, care of residents and infection control and are sufficient to assure staff's continuing competency. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, and/or services delineated in Section 1000."

152.S.C. Regulation 61-17 Section 601(D) states that the facility must meet the following standard regarding employee information: "There shall be accurate current information maintained regarding all staff members of the facility that shall include:

1. Name, address and telephone number;
2. Date of hire;

3. Past employment, experience, and education;
4. Professional licensure or registration number or certificate or letter of completion;
5. Position in the facility and job description;
6. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, job duties, in-service training and on-going education;
7. Health status, health assessment, and tuberculin testing results;
8. Evidence that a criminal record check has been completed;
9. For former staff members, the date of separation;
10. Date of initial resident contact may be maintained by the facility.

153.S.C. Regulation 61-17 Section 805(B) states that the facility must meet the following standard regarding the resident's Electronic Resident Records: "A facility that maintains electronic records shall:

1. Retain the hard copy originals of any materials that cannot be electronically stored;
2. Employ an off-site backup storage system as protection in the event that the on-site system is damaged or destroyed;
3. Use an imaging mechanism that is able to copy documents with signatures;
4. Assure that records, once put in electronic form, are unalterable.

154.S.C. Regulation 61-17 Section 805(C) states that the facility must meet the following standard regarding the resident's **Electronic Resident Records**: "Electronic signatures may be used any place in the resident or outpatient record that requires a signature, provided signature identification can be verified and an electronic signature may be legally used. Electronic authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry to preclude the improper or unauthorized use of any electronic signature.

155.The facility as a health care provider maintains electronic records which requires the facility to maintain an audit trail. See the requirements of 45 CFR §164.312.

156.The audit trail is a document that shows the sequence of events related to the use of and access to an individual patient's electronic health records (EHR). For instance, the audit

trail will reveal who accessed a particular patient's records, when, and where the health care provider accessed the record.

157. The audit trail shows what the provider did with the records—e.g., simply reviewed them, prepared a note, or edited a note. Each time a patient's EHR is opened, regardless of the reason, the audit trail documents this detail.

158. The audit trail cannot be erased and all events related to the access of a patient's EHR are permanently documented in the audit trail.

159. 45 C.F.R. § 164.306(a)(1) commands the facility to "[e]nsure the confidentiality, integrity, and availability of all electronic protected health information [that it] creates, receives, maintains, or transmits."

160. 45 C.F.R. § 164.304 provides that "availability" in this context means "that data or information is accessible and useable upon demand by an authorized person."

161. 45 C.F.R. § 164.308(a)(7)(ii) provides that a facility must "[e]stablish and implement procedures to create and maintain retrievable exact copies of electronic protected health information."

162. 45 C.F.R. § 164.312(b) provides that a facility must "[i]mplement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information."

163. 45 C.F.R. § 170.210(b) requires that "[t]he date, time, patient identification, user identification must be recorded when electronic health information is created, modified, accessed, or deleted; and an indication of which action(s) occurred and by whom must be recorded."

164.21 C.F.R. § 11.10(e) provides that a facility shall employ procedures and controls including the "[u]se of secure, computer generated, time-stamped audit trails to independently record the date and time of operator entries and actions that create, modify, or delete electronic records" and that "[s]uch audit trail documentation shall be retained for a period at least as long as that required for the subject electronic records"

165.21 C.F.R. § 11.10(k)(2) states that a facility shall employ appropriate controls over systems documentation including "[r]evision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation."

166.42 U.S.C. §1320d-2(d)(2) provides that a facility "shall maintain reasonable and appropriate administrative, technical, and physical safeguards —(A) to ensure the integrity and confidentiality of the [health] information; (B) to protect against any reasonably anticipated—(I) threats or hazards to the integrity of the information; and (ii) unauthorized uses or disclosures of the information"

167.42 U.S.C. § 1320d(6) [provides that] "individually identifiable health information" is defined to include "any information created or received by a health care provider [that] relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual; or can be used to identify the individual."

168. According to §483.20 applicable to nursing homes, a Resident Assessment requires the facility to provide with ongoing assessment information necessary to develop a care plan, to provide the appropriate care and services for each resident, and to modify the care plan

and care/services based on the resident's status. The facility is expected to use resident observation and communication as the primary source of information when completing the RAI. In addition to direct observation and communication with the resident, the facility should use a variety of other sources, including communication with licensed and non-licensed staff members on all shifts and may include discussions with the resident's physician, family members, or outside consultants and review of the resident's record.

169. According to CMS' Long-Term Care Facility Resident Assessment Instrument 3.0 User's Manual Section 2.4, the Federal regulatory requirement at 42 CFR 483.20(d) requires nursing homes to maintain all resident assessments completed within the previous 15 months in the resident's active clinical record.

170. According to §483.20(k) applicable to nursing homes related to Comprehensive Care Plans:

(1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following:

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §483.25; and

(ii) Any services that would otherwise be required under §483.25 but are not provided due to the resident's exercise of rights under §483.10, including the right to refuse treatment under §483.10(b)(4).

171. Defendants' facility had a duty to properly assess, care plan, and attempt interventions to prevent falls, and other preventable injuries.

172. According to §483.25 related to Quality of Care requires the facility to provide the necessary care and services to attain or maintain the highest practicable physical, mental,

and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

173. According to §483.25(h) related to Accidents, the facility must ensure that:

- (1) The resident environment remains as free from accident hazards as is possible; and
- (2) Each resident receives adequate supervision and assistance devices to prevent accidents.

174. S.C. Regulation 61-17 Section 701(A) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall maintain a record of each accident and incident, including each serious accident and incident as defined in Section 701.B, involving residents or staff members or volunteers, occurring in the facility or on the facility grounds. A facility's record of each accident and incident shall be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures, and retained by the facility for six (6) years after the resident stops receiving services.

175. S.C. Regulation 61-17 Section 701(E) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall retain a copy of every serious accident and incident with all of the information provided to the Department and the names, injuries, and treatments associated with each resident, staff, and/or visitor involved. A facility shall retain all serious accident and incident records for six (6) years after the resident stops receiving services."

176. S.C. Regulation 61-17 Section 801(B) states that the facility must meet the following standard regarding documentation in the resident record: "Contents of the resident record may be stored in separate files, in separate areas within the facility, and the record shall include the following information:

1. Medical history and physical examination;

2. Consent form for treatment signed by the resident or his legal representative;
3. Care and services agreement;
4. Healthcare directives and special information, *e.g.*, advance directive information, do-not-resuscitate (DNR) orders, and allergies;
5. **Incidents involving the resident;**
6. Medical treatment;
7. Orders, including telephone and standing orders, for all medication, care, services, therapy, procedures, and diet from physicians or other legally authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted;
8. Individual Care Plan;
9. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician;
10. **Assessments and progress notes**, *e.g.*, dietary, activity, therapy;
11. Record of administration of each dose of medication;
12. Record of the use of restraints, if applicable, including time, type, reason and authority for applying;
13. Treatment, procedure, wound care report (dictated or written into the record after treatment, procedure, or wound care) to include at least:
 - a. Description of findings;
 - b. Techniques utilized to perform treatments and procedures;
 - c. Specimens removed, if applicable;
 - d. Name of provider;
 - e. Progress notes generated by physicians and healthcare professionals;
 - f. Notes of observation, including temperature, pulse, respiration, blood pressure and weight when indicated by physician's orders or by a change in the resident's condition;
 - g. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms, diagnosis, and/or treatment of infectious conditions including but not limited to tuberculosis, influenza, pneumonia, therapies;
 - h. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated;
 - i. Consultations by physicians or other healthcare professionals;
 - j. Photograph of resident, if the resident or **him** responsible party approves;
 - k. Date and hour of discharge or transfer, as applicable;
 - l. Discharge and/or transfer summary, including care and condition at discharge or transfer, date and time of discharge or transfer, instructions for self-care, instructions for obtaining post-treatment or procedure emergency care, and signature of physician authorizing discharge or transfer;
 - m. Date and circumstances of death, as applicable.

177.The federal regulation at §483.75(l) related to documentation in the clinical records requires:

(1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are--

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

178. Defendants' facility had a duty to document the respective interventions and incidents adequately in the nurses' notes.

179. S.C. Regulation 61-17 Section 701(D) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall submit a written report of its investigation of every serious accident and incident to the Department within five (5) days of the serious accident or incident. A facility's written report to the Department shall provide at a minimum:

- 1. Facility name;
- 2. License number;
- 3. Type of accident or incident;
- 4. Date accident or incident occurred;
- 5. Number of residents directly injured or affected;
- 6. Resident record number or last four (4) digits of Social Security Number;
- 7. Resident age and sex;
- 8. Number of staff directly injured or affected;
- 9. Number of visitors directly injured or affected;
- 10. Name(s) of witness(es);
- 11. Identified cause of accident or incident;
- 12. Internal investigation results if cause unknown; and
- 13. Brief description of the accident or incident including the location of occurrence and treatment of injuries."

180. S.C. Regulation 61-17 Section 701(B) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall report every serious accident and incident that results in resident's death or significant loss of function or damage to a body structure, not related to the natural course of a resident's illness or underlying condition or normal course of treatment, and resulting from an accident or incident

occurring to resident within the facility or on the facility grounds. Serious accidents and incidents requiring reporting include, but are not limited to:

1. Crime(s) against resident;
2. Confirmed or suspected cases of abuse, neglect, or exploitation;
3. Medication error with adverse reaction;
4. Hospitalization as a result of the accident or incident;
5. Severe hematoma, laceration, or burn requiring medical attention or hospitalization;
6. Bone fracture or joint fracture;
7. Severe injury involving use of restraints;
8. Attempted suicide; or
9. Fire.

181.S.C. Regulation 61-17 Section 500(A) states that the facility must meet the following standard: "There shall be written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The written policies and procedures shall accurately reflect actual facility practice regarding care, treatment, procedures, services, record keeping and reporting, admission and transfer, physician services, nursing services, social services, resident rights and assurances, medication management, pharmaceutical services, meal service operations, emergency procedures, fire prevention, maintenance, housekeeping and infection control, the operation of the facility, and other special care and procedures as identified in this section. The policies and procedures shall address the provision of any special care offered by the facility that would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically or developmentally disabled, in accordance with any laws that pertain to that service offered, for example, Alzheimer's Special Care Disclosure Act."

182.S.C. Regulation 61-17 Section 500(C) states that the facility must meet the following standard: "All policies and procedures shall:

1. Establish a time period for review of policies and procedures in writing and such reviews shall be documented;
2. Be revised as appropriate in order to reflect actual facility practice; and
3. Be accessible to staff, printed or electronically, at all times."

183.The facility Administrator shall be licensed as a nursing home Administrator in accordance with S.C. Code § 40-35-30. In addition, all other applicable provisions of S.C. Code Title 40, Chapter 35, shall be followed.

184.S.C. Regulations applicable to nursing homes found in 61-17 Section 602 requires that "each facility shall have a full-time licensed Administrator".

185.S.C. Code § 40-35-110 states that "Misconduct" includes the following:

- (1) acting in a manner inconsistent with the health or safety of the patients of the nursing home or community residential care facility;
- (2) failing to ensure that the nursing home or community residential care facility in which he is an administrator complies with the provisions of law and regulations of the licensing or supervising authority or agency, whether federal, state, or local, having jurisdiction over the operation and licensing of the nursing home or community residential care facility;
- (3) intentional or knowing, direct or indirect, violation of or the aiding and abetting in the violation of this chapter or a regulation promulgated under this chapter;
- (4) failing to operate a nursing home or community residential care facility in a manner that ensures the safety, health, and welfare of the patients;
- (5) use of a false, fraudulent, or forged statement in the practice of nursing home administration or community residential care facility administration.

186.The federal regulation at §483.75(k) requires that: "The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services."

187.What while at Pepper Hill, Charles Rudd suffered a hospitalization and preventable fall that caused mental anguish, pain and suffering, including one that resulted in a brain bleed.

188.The complications from Charles Rudd's brain bleed contributed to his untimely and

wrongful death.

189. That the facility failed to keep Charles Rudd safe from preventable falls.

190. That the facility failed to utilize safety devices with Charles Rudd.

191. That the facility failed to monitor Charles Rudd for changes in condition.

192. Defendants' facility had a duty to ensure that proper preventative measures were in place to keep the resident safe and free from avoidable and preventable injuries.

193. Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.

194. That at all times relevant hereto, Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.

195. That the facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical nursing, nutritional, mental, and psychological needs as identified in the comprehensive assessment.

196. That the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

197. That the nursing home had a duty to ensure that Charles Rudd received necessary treatment and services to prevent falls, hospitalization, and to keep him safe.

198. That treatment and prevention of falls and injuries in the nursing home should be part of an interdisciplinary approach.

199. That several types of personnel have essential roles in the assessment, care planning, prevention, and treatment of fall prevention.

200. That evaluation, multi-disciplinary documentation of treatment, and detailed individual care plans must be developed and implemented.
201. That the acts and delicts of Defendants caused, and were the proximate causes of, Charles Rudd's falls, multiple hospitalizations, loss of dignity, conscious pain and suffering, mental distress, medical bills and disability to the Charles Rudd.
202. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.
203. That the Plaintiffs institute this action in order to recover for Charles Rudd's injuries and wrongful death, and for damages to the statutory heirs of Charles Rudd, deceased, pursuant to and under the authority of S.C. Code § 15-51-10.
204. Pursuant to S.C. Code § 15-51-20, the wrongful death beneficiaries and claimant as defined by S.C. Code § 15-31-26(2) is Charles Rudd's widow: Thelma Rudd.
205. As a result of the death of Charles Rudd, the wrongful death beneficiaries have suffered grief and sorrow, mental shock and suffering, wounded feelings, loss of companionship, and deprivation of the use and comfort of the Charles Rudd's society. These damages were the proximate result of the acts and delicts of Defendants.
206. That the Defendants were jointly, directly, and vicariously liable and responsible for the acts and delicts of their employees, agents, and servants.
207. That the Defendants hold themselves out as specialists in the field of adult geriatric care with the expertise necessary to maintain the health, safety, and highest practicable quality of life of persons unable to adequately care for themselves.

208. That the Defendants were under a duty to provide reasonable, appropriate and adequate care to Charles Rudd pursuant to state and federal laws, rules, regulations, guidelines, and existing industry standards.

- a. Defendants failed to provide the highest practicable level of care, training, and competency. (42 CFR § 483.75)
- b. Defendants repeatedly failed to maintain nursing and other staffing at levels necessary to meet the needs of Charles Rudd. 42 CFR §§ 483.30 and 483.25)
- c. Defendants failed to provide proper and timely assessments, and provide a 1:1 sitter, throughout Charles Rudd's stay and on the days of the subject falls. 42 CFR §§ 483.35, and 483.25)
- d. Defendants repeatedly failed to follow proper skilled nursing care standards to maximize the health, safety, and well-being of Charles Rudd.
- e. Defendants repeatedly failed to ensure that Charles Rudd was safe, free from abuse, neglect, and accorded the dignity and respect owed.

209. Defendants failed to follow, implement, and adhere to all physician's orders.

210. Defendants failed to establish and implement a resident care plan for Charles Rudd based upon his needs.

211. That at all times pertinent hereto, Charles Rudd resided at the above-named facility and as such was under the exclusive control and care of Defendants and their employees, agents, officers, and servants while a resident.

212. That the Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.

213. That, upon information and belief, at all times during Charles Rudd's residency, the facility was understaffed, suffered a high turnover rate, and failed to properly screen, train, supervise, and discipline their staff, and failed to put them in suitable positions for their skills, experience, and competence.

214. That, upon information and belief, Defendants were involved in the budget and staffing decisions of the facility, and were more concerned about profits and siphoning funds to

the billion dollar national chain than creating a budget that provided quality care to the residents.

215. That, upon information and belief, at all times during Charles Rudd's residency, the facility was underfunded, under-supplied, and under-equipped to care for residents, and was forced to operate on a budget that did not allow for the best care of the residents, including Charles Rudd.

216. That, upon information and belief, Defendant Shiloh is jointly, directly, and vicariously liable and also liable as alter ego defendants in creating the budget for the facility and siphoning money away from the facility to related entities with common ownership to the Defendants.

ALLEGATIONS REGARDING DEFENDANTS' JOINT VENTURE

217. Relevant and consistent allegations contained in paragraphs 1-216 are incorporated by reference as if written verbatim herein.

218. Plaintiffs allege that Defendants were engaged in a joint venture in the operation of Pepper Hill nursing home.

219. Defendants' joint venture in the operation of Pepper Hill included:

- a. an agreement, express or implied, among the members of the group;
- b. a common purpose to be carried out by the group;
- c. a community of pecuniary interest in that purpose, among the members; and
- d. an equal right to a voice in the direction of the enterprise, which give an equal right of control.

220. Because of the joint venture, Defendants owed a joint duty to Charles Rudd to provide the same level of care and treatment as any other reasonable, prudent, similar business that owns, operate, manages, and/or controls a nursing facility would have provided under the same or similar circumstances taking into consideration Charles Rudd's known medical condition.

FIRST CAUSE OF ACTION
(Negligence/Recklessness)

221.Relevant and consistent allegations contained in paragraphs 1-220 are incorporated by reference as if written verbatim herein.

222.That Defendants Shiloh and Pepper Hill, had a duty of due care to their patients and residents, to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

223.The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More particularly the Defendants were negligent in the following particulars:

- e. failing to properly supervise as required, and as promised to the family upon admission;
- f. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for his health and safety;
- g. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Charles Rudd;
- h. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- i. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- j. failing to hire a sufficient number of trained and competent staff;
- k. failing to follow the licensing and regulatory rules of the State of South Carolina;
- l. failing to develop and follow an appropriate Plan of Care;
- m. failing to properly train employees to deal with residents who were unable to care for themselves;
- n. failing to properly monitor Charles Rudd;
- o. failing to appropriately diagnose Charles Rudd's condition;
- p. failing to provide timely emergency services to Charles Rudd;
- q. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- r. failing to prevent Charles Rudd from suffering from a fall;
- s. failing to prevent Charles Rudd's hospitalization;

- t. failing to monitor and assess Charles Rudd adequately for pain and discomfort;
- u. failing to treat Charles Rudd with dignity and respect;
- v. failing to exercise due care; and
- w. by other negligent acts and/or omissions yet to be determined or defined.

224. That the Defendants independently and through their agents, servants, and employees demonstrated conscious and intentional disregard of and indifference to the rights and safety of Charles Rudd and other patients at Pepper Hill as demonstrated by:

- x. Their business practice of attempting to care for residents with an inadequate number of trained staff, which their officers and managers knew or should have known was reasonably likely to result in injury to Charles Rudd and their other patients; and
- y. Their business practice of failing to supervise and train their staff in order to ensure that their policies and procedures were known to and adhered to by licensed staff, and that licensed staff practiced within their scopes of practice.

225. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

226. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's damages, injuries and death, and were the sole and proximate cause of the damage and injuries sustained by the wrongful death beneficiaries.

SECOND CAUSE OF ACTION
(Corporate Negligence)

227. Relevant and consistent allegations contained in paragraphs 1-226 are incorporated by reference as if written verbatim herein.

228. That Defendants had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

229. That the Shiloh facility was negligently administered and managed by Defendants who were working together to manage and operate the facility.

230. That the facility was negligently administrated in violation of 42 C.F.R. 483.75 by Defendants Pepper Hill and Shiloh who were working together to govern, administer, control, manage and operate the facility.

231. That the Defendants, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless, and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More specifically, the Defendants were negligent in the following particulars:

- z. failing to properly supervise as required, and as promised to the Plaintiffs upon admission;
- aa. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for his health and safety;
- bb. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Charles Rudd;
- cc. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- dd. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- ee. failing to hire a sufficient number of trained and competent staff;
- ff. failing to follow the licensing and regulatory rules of the State of South Carolina;
- gg. failing to develop and follow an appropriate Plan of Care;
- hh. failing to properly train employees to deal with residents who were unable to care for themselves;
- ii. failing to follow physicians' orders;
- jj. failing to properly monitor Charles Rudd;
- kk. failing to appropriately diagnose Charles Rudd's condition;
- ll. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- mm. failing to keep Charles Rudd's chart free of fraudulent documentation;
- nn. failing to prevent Charles Rudd from suffering preventable falls;
- oo. failing to prevent Charles Rudd from being hospitalized;
- pp. failing to prevent Charles Rudd from sustaining a fracture;
- qq. failing to treat Charles Rudd with dignity and respect;

- rr. failing to exercise due care; and
- ss. by other negligent acts and/or omissions yet to be determined or defined.

232. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

233. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's injuries and wrongful death.

THIRD CAUSE OF ACTION **(Joint Venture)**

234. Relevant and consistent allegations contained in paragraphs 1-233 are incorporated by reference as if written verbatim herein.

235. That a joint venture is an association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation.

236. That the elements of joint venture in the State of South Carolina are:

- tt. an agreement;
- uu. a joint interest in a common business;
- vv. an understanding that profits and losses will be shared, and;
- ww. a right to joint control.

237. That a joint venture exists when there is:

- xx. contribution of resources by both parties;
- yy. joint proprietorship and control over the subject matter of the property engaged in the venture;
- zz. sharing of profits by express or implied agreement, and;
- aaa. an express or implied contract showing joint venture.

238. That Defendants Pepper Hill and Shiloh, were involved in a joint venture.

FOURTH CAUSE OF ACTION
(Alter Ego/Piercing the Corporate Veil)

239.Relevant and consistent allegations contained in paragraphs 1-238 are incorporated by reference as if written verbatim herein.

240.That, upon information and belief, Pepper Hill was dominated and controlled by Defendant Shiloh before, during, and after Charles Rudd's residency. This Defendant and its related entities, agents, and managers siphoned profits from the nursing home chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries, death and suffering, including that of Charles Rudd at Pepper Hill.

FIFTH CAUSE OF ACTION
(Neglect of a Vulnerable Adult)

241.Relevant and consistent allegations contained in paragraphs 1-240 are incorporated by reference as if written verbatim herein.

242.That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Charles Rudd was considered a vulnerable adult.

243.That, according to the South Carolina Adult Protection Act, ANeglect@ means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health and safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has

caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.

244. That Defendants failed to supervise Charles Rudd and allowed him to suffer preventable falls.

245. That Defendants failed to provide care, goods, and services to Charles Rudd in the form of fall prevention and fall prevention devices.

246. That Defendants failed to provide care and medical services to Charles Rudd by not transferring him to the hospital in a timely manner after a change of condition.

247. That Charles Rudd trusted in, confided in and relied upon Defendants to use their expertise and discretion for Plaintiff's care.

248. That Defendants Pepper Hill and Shiloh, accepted Charles Rudd's trust and reliance and so became responsible for Charles Rudd's health while residing at the nursing home facility.

249. That as a result of aforementioned reliance and trust upon Defendants Pepper Hill and Shiloh, Charles Rudd's physical, mental and emotional health was placed in the hands of Defendants Pepper Hill and Shiloh.

250. That Defendants Pepper Hill and Shiloh received compensation for the care and treatment they were responsible for providing to Charles Rudd during his residency but did not provide that care and treatment.

SIXTH CAUSE OF ACTION
(Wrongful Death)

251. Relevant and consistent allegations contained in paragraphs 1-250 are incorporated by reference as if written verbatim herein.

252. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, Charles Rudd was severely injured in Pepper Hill.

253. That the injuries so inflicted on Charles Rudd were the cause of Charles Rudd's wrongful death on May 10, 2018.

254. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Charles Rudd and by the wrongful death beneficiaries was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of the action, and for such other and further relief as this Court may deem just and proper.

s/Raymond P. Mullman, Jr.

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Attorneys for the Plaintiffs

Date: November 13 2019
Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) AFFIDAVIT OF PAIGE SWATMAN, RN, LNC

RE: Charles Rudd
DOB: **/**/****

1. My name is Paige Swatman. I am a Registered Nurse with 25 years' experience in the long-term care field. My experience includes Director of Nursing Service, Regional Clinical consultant, Vice President of Clinical services, and Long-term care surveyor for the South Carolina Department of Health and Environmental Control.
2. I have reviewed the medical records of Charles Rudd for the time period of July 27, 2016 through December 13, 2016. These records include Pepper Hill Nursing & Rehab Center, Aiken Regional Hospital, Augusta University Medical Center, and The Veteran's Administration Hospital.
3. Based on the medical records review, it is my expert nursing opinion that during the time period of approximately 9:30 AM on November 27, 2016 and 8:13 AM on November 28, 2016 Pepper Hill Nursing & Rehab Center deviated from reasonable best practices and standards of practice customary in the industry for prevention of falls with injury, and appropriate notification of change in condition resulting in an unsafe delay in treatment.

My findings are based on review of the medical records as follows:

1. Charles Rudd was admitted to Pepper Hill Nursing & Rehab Center on July 27, 2016. He was high risk for falls based on his functional limitations. The facility knew he was a high risk, and accepted him into the facility as a high fall risk. The standard practice is to assess, develop a care plan with reasonable and appropriate interventions to maintain the resident's safety, health, and well-being.
2. Mr. Rudd was evaluated by Occupational Therapy on August 19, 2016. The Occupational Therapist wrote, "The patient tolerates upright sitting in chair/wheelchair maintaining proper alignment and positioning for 0 hours."
Balance: static sitting – Unable.
Balance: dynamic sitting-Unable.
Balance: fall risk- High risk due to muscle weakness and decreased balance.

The facility knew or should have known that it was unsafe to place Mr. Rudd in an upright position without a safety intervention.

3. A nurse's note written on November 27, 2016 at 11:59 AM states, "Resident was found on floor from wheelchair. Resident was found lying on floor with bedside table at his feet. Resident stated he fell out of chair while trying to eat his breakfast. Resident stated he hit his head on the wheelchair when he slid out of chair. Resident stated his head hurt.

No signs of bruising or hematomas on his head or body. Tramadol was given. Vital signs were taken before he was removed from the floor as follows: t 98.1 P 121 R 18 **B/P 169/91 pain at a scale of 7**. Resident two person assisted to upright position then placed back in wheelchair. Bed and chair alarm placed as well as call light within reach. Neuro checks started. Wife Thelma Rudd was called as well as a note placed on the DR communication book. Will continue to monitor.” Jewell Jones, LPN

4. A Nurse’s note written on November 28, 2016 at 10:52 AM states, “Charles Rudd fell at approximately 9:30AM November 27, 2016. Neuro checks were started and vitals remained stable. As of N at 7:45 AM patient was still complaining of pain. Wife Thelma Rudd stated she did not want him sent out last night and she wanted to wait until the morning to see how he was doing. Wife was called this morning to let her know that he was still in pain and that he wanted to be sent to the hospital. Wife wanted him sent to the VA hospital, but no ambulance was able to take him. Mrs. Rudd was told that he would be going to Aiken Regional due to this fact by Riverside ambulance. Ambulance picked up Mr. Rudd at 8:13AM. Report given to Dana in the Aiken Regional ER. Dana called back to state that patient has a slight hemorrhage and would be transferred. Dana stated she would call back to let us know where.” Jewell Jones, LPN
5. A nurse’s note written on November 28, 2016 at 11:47 AM states, “Reported to DON at 10:17 AM that resident was sent to the hospital and has a hemorrhage. Was told to chart on patient and note in the 24-hour report as well as doctor communication book. Was also told for future reference to notify the nurse practioner before sending a resident out during the week so that she can evaluate them.”
6. The medical record reflects that Mr. Rudd was finally sent to Augusta Health University Hospital for a CT of his head on November 28, 2016 at **2:33 PM**.
 - The reason for the exam was written as, “CT 68 Y/O MALE TRANSFER FROM AIKEN FOR BRAIN BLEED FELL OUT OF WHEELCHAIR”
 - The results were, 1. “Parenchymal hemorrhage involving the right medial thalamus with intraventricular decompression layering within the right atria and occipital horn without midline shift or significant mass effect.” 2. Subtle asymmetric hypodensity along the right frontal horn that may represent ischemic insult of acute/subacute nature.”
 - Mr. Rudd was admitted to the neuro intensive floor and later transferred to the Veteran’s Hospital per his wife’s request.
7. Mr. Rudd was transferred to CM Tucker Nursing long term care facility on December 13, 2016.

Concerns:

1. The care plan to prevent falls was inadequate, and not followed by caregivers. The caregivers should have provided safety devices, supervision, and assistance to keep Mr. Rudd safe from falls.
2. The nurse assigned to Mr. Rudd's care did not notify the attending Physician or Nurse Practitioner of the fall on November in a timely manner. The wife was notified but the caregivers did not know what should be done.
3. Mr. Rudd had severe head pain after the fall, and due to the lack of Physician notification, was not sent to the hospital for assessment for 23 hours and 17 minutes after his fall resulting in a traumatic head injury.
4. The nurse assigned to Mr. Rudd's care administered Tramadol for the headache that resulted from the fall without regard to possible side effects after a head trauma.

Resources:

www.drugs.com/disease-interactions/tramadol states, "Tramadol may induce pupillary changes (miosis) that may obscure the existence, extent, or course of intracranial pathology. Therapy with Tramadol should be administered cautiously with patients with increased intracranial pressure or head injury."

CMS State Operations Manual/ Appendix PP (2016) Guidance to Surveyors states:

483.10

F 157: A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is - An accident involving the resident which results in injury and has the potential for requiring Physician intervention.

483.25: (d)

F 323: A Facility must ensure that a resident receives adequate services and assistance devices to prevent accidents.

Conclusion:

It is my professional opinion that the staff at Pepper Hill Nursing & Rehab Center contributed in a direct and proximate way to the fall with traumatic brain injury, delay in treatment, and decline in condition of Charles Rudd.

Sworn to and subscribed before me,
This 30 day of May, 2019.

Olivia G. Weeks
Notary Public

Paige Swatman, RN LNC
Paige Swatman, RN LNC

OLIVIA G. WEEKS
Notary Public, State of South Carolina
My Commission Expires Aug. 3, 2028

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	AMENDED SUMMONS
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center;	)	
and Shiloh Management Company, Inc.	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Raymond P. Mullman, Jr.
 GARY W. POLIAKOFF S.C. Bar # 4488
atty@gpoliakoff.com
 RAYMOND P. MULLMAN, JR. S.C. Bar #8662
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 Poliakoff & Associates, P.A.
 215 Magnolia Street
 P. O. Box 1571
 Spartanburg, SC 29304
 (864) 582-5472

Attorneys for the Plaintiffs

Date: November 20, 2019
 Spartanburg, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	AMENDED COMPLAINT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center;	)	
and Shiloh Management Company, Inc.	)	
Defendants.	)	

The Plaintiffs, Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, deceased, and as Personal Representative of the Statutory Beneficiary do hereby respectfully allege as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, is a resident of the County of Aiken, State of South Carolina.
2. That the statutory beneficiaries of the Estate as defined by S.C. Code § 15-51-10 et seq. and § 15-32-220 is Thelma Rudd.
3. That upon information and belief, Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center (Pepper Hill) is a for-profit entity owned and operated by Wade Jones Sr. incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.
4. That upon information and belief, Shiloh Management Company, Inc. (Shiloh) is a for-profit entity owned and operated by Wade Jones to assist in the management and

operation of the facility and was incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.

5. That upon information and belief, Shiloh is the Home Office of Pepper Hill as defined in CMS Manual 15-2 Chapter 10 § 1000 because of common ownership and direct control of the operation of Pepper Hill.
6. That upon information and belief, Shiloh is the management company for Pepper Hill.
7. That upon information and belief, at all times relevant hereto, Pepper Hill has operated a nursing home facility and has done business in the state of South Carolina.
8. That upon information and belief, at all times relevant hereto, Charles Rudd, was a resident at Pepper Hill in the County of Aiken, State of South Carolina and there existed a resident/facility fiduciary relationship between Charles Rudd and the Defendants, and Charles Rudd was thereby entitled to all the protections afforded such residents in South Carolina.
9. That during his residency at Pepper Hill, Charles Rudd was a vulnerable adult as defined by the Omnibus Adult Protection Act, S.C. Code Ann. §43-35-10.
10. Defendants delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Charles Rudd during his residency at Pepper Hill.
11. Shiloh was involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Charles Rudd resided. Further, Shiloh, at all times relevant hereto, exerted managerial control and operational control over Pepper Hill, and that such control was so extensive and pervasive that Shiloh actually operated and managed

said facility, and did business as one joint venture. Further, the control by Shiloh was so extensive and pervasive over Pepper Hill that the business of Pepper Hill was the business of Shiloh.

12. Defendants were involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for Pepper Hill and have directly controlled the operations at said nursing home facility.
13. Defendants promulgated and established the policies, procedures, protocols, staffing decisions, and budgetary decisions at the Pepper Hill nursing facility, and all Defendants exert control over the facility at various times.
14. The deficiencies at the Pepper Hill nursing home facility in Aiken County, South Carolina were authorized, approved and ratified by all Defendants.
15. That this action is being brought pursuant to the South Carolina Common Law of Negligence, Gross Negligence, Negligence Per Se, Wrongful Death, Unjust Enrichment, Breach of Fiduciary Duty.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

16. Relevant and consistent allegations contained in paragraphs 1-15 are incorporated by reference as if written verbatim herein.
17. On or about July 27, 2016, Charles Rudd was admitted to the skilled nursing facility with the understanding that he would be provided with the care that his health conditions reasonably required.
18. Charles Rudd suffered a preventable and avoidable fall and subsequent hospitalization in late November 2016 that was caused by neglect and could have been avoided if proper supervision and assistance were care planned and provided.

19. Defendants failed to properly care plan for preventable falls.
20. Defendants failed to properly monitor and supervise his ambulation.
21. Defendants knew or should have known that Charles Rudd needed proper safety to devices to safely sit in his wheelchair.
22. Defendant's Occupational Therapy notes on August 19, 2016 proves that Defendants were no notice that Rudd needed supervision, assistance, and a safety device to maintain vertical stability in his wheelchair because the note clearly states: "The patient tolerates upright sitting in chair/wheelchair maintaining proper alignment and positioning for 0 hours."
23. Defendant's Occupational Therapy note additional stated on August 19, 2016 that Charles Rudd was unable to maintain balance with static or dynamic sitting.
24. Standard of Practice for care planning as defined by CMS.gov states that the care plan "must be consistent with the resident's specific conditions, risks, needs, behaviors, preferences and with current standards of practice and included measureable objectives and timetables with specific interventions."
25. The medical record states on November 27, 2016 entered at 11:59 AM states, "Resident was found on floor from wheelchair. Resident was found lying on floor with beside table at his feet. Resident stated he fell out of chair while trying to eat his breakfast. Resident stated he hit his head on the wheelchair when he slid out of the chair..."
26. On November 28, 2016 at 2:33 PM Charles Rudd was sent to Augusta Health University Hospital for a CT of his head, and diagnosed with "Parenchymal hemorrhage involving the right medial thalamus with intraventricular decompression layering within the right atria and occipital horn without midline shift or significant mass effect."
27. Charles Rudd incurred medical bills from the hospitalization.

28. On December 13, 2016 Charles Rudd was transferred to CM Tucker Nursing; a long-term care facility for rehabilitation and safety.
29. That the Defendants, their subsidiaries, related entities, officers, agents, servants, and employees negligently and carelessly failed to properly manage, operate, and provide care to and keep Charles Rudd safe.
30. That the Defendants were liable and responsible for the acts and delicts of their employees, agents, and servants under the principle of respondeat superior, agency, and joint venture.
31. That, upon information and belief, Charles Rudd's health conditions were aggravated and exacerbated by the Defendant's failure to properly supervise him and monitor his medical conditions. These deviations from the standard of care were the proximate causes of conscious pain and suffering, mental distress, medical bills, loss of dignity, and contributed to his premature and wrongful death.
32. Upon information and belief, Defendants failed to provide adequate and proper nursing services, and custodial care to Charles Rudd, contributing to his premature and wrongful death.
33. Further, that the Defendants, directly or indirectly, received federal and state funds as reimbursement for the care of residents including Charles Rudd.
34. That while residing at Defendants facility, Charles Rudd was damaged and injured, and eventually died as a result of neglect, negligence, recklessness, and violations of the standard of care for nursing and custodial care.
35. That Charles Rudd was a resident of Defendants facility from his admission until his transfer to the hospital on November 28, 2016.

36. That during Charles Rudd's residency at Pepper Hill, the acts and delicts of Defendants caused, and were the proximate causes of Charles Rudd's conscious pain and suffering, mental distress, medical bills, disability, loss of dignity, and loss of quality of life to Charles Rudd. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.
37. That the Defendants held Pepper Hill out to the State of South Carolina, the South Carolina Department of Health and Environmental Control, the public at large, and to Charles Rudd and his family, specifically, as being:
- a. skilled in the performance of nursing, rehabilitative, and other medical support services;
 - b. properly staffed, supervised and equipped to meet the total needs of its residents;
 - c. able to specifically meet the total nursing, personal care, medical, and physical therapy needs of its residents; and,
 - d. Licensed by the South Carolina Department of Health and Environmental Control and complying on a continual basis with all state and federal rules, regulations, and standards established for nursing homes in South Carolina.
38. That the Defendants held Pepper Hill out to the United States of America, the Centers for Medicare and Medicaid Services, the public at large, and Charles Rudd and his family, specifically, as being a skilled nursing facility and as a nursing facility meeting the requirements of 42 CFR Part 483.
39. To protect nursing home residents like Plaintiff, the federal government mandates that if a nursing home voluntarily accepted Medicare or Medicaid funds, the nursing home would be required to follow strict mandates for patient safety, documentation, and costs and expenditures. These mandates became known as the OBRA regulations at 42 CFR 483.1-

et seq. For example, one of the regulations simply states, "skilled nursing facilities participating in Medicare must meet certain specified requirements." 42 C.F.R. 483.1.

40. That the provisions of the Omnibus Reconciliation Act of 1987 (OBRA) were applicable with regard to the administration and operation of the facility, and the provision of care and services to Plaintiff throughout the residency.
41. Defendants were under an obligation to follow all rules and regulations of OBRA as well as all applicable state and federal laws, rules, regulations, and guidelines including S.C. Regulations 61-17, the Board of Nursing Advisory Opinions, the South Carolina Adult Protection Act, the South Carolina Nurse Practice Act, S.C. Code § 40-33-5 et. seq., and the South Carolina Long Term Health Care Administrators statute, S.C. Code § 40-35-5 et seq.
42. Defendants were under an obligation to follow the provisions and standards of the Federal Nursing Home Act applicable to the administration and operation of the facility and the provision of services, care and treatment as well as all applicable state laws, rules, regulations, and guidelines including but not limited to The Adult Protection Act of South Carolina Code § 43-35-5, et. seq.; South Carolina Department of Health and Environmental Control regulations for Nursing Homes at Regulation 61-17, et. seq.; the South Carolina Nursing Practice Act; Board of Nursing Advisory Opinions; South Carolina Code of Laws Title 40 Chapter 35; and South Carolina Code of Regulations Chapter 93.
43. The regulations are designed to reduce or eliminate accidents, assure proper staffing and supervision, and establish and maintain a reasonable quality of life for each resident.
44. OBRA regulations go to great lengths to ensure nursing home patients will be "in an environment that promotes maintenance or enhancement of each resident's quality of life."

42 C.F.R. 483.10.

45. They state that each patient "must" receive, and the facility "must" provide the necessary care and services to "attain or maintain the highest practicable physical, mental, and psychosocial well-being[.]" See e.g. 42 C.F.R. 483.24.
46. The OBRA regulations require that each nursing home has sufficient staff to provide the necessary care and services. 42 C.F.R. 483.30.
47. Defendants specifically violated the applicable standard for the administration of a nursing home found at §483.75 which expressly states: "A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident."
48. Defendants must submit "cost reports" to both state and federal agencies which include additional staffing information as well as the expenditures of the Defendants on staffing costs, facility costs, supplied, operating and management fees, etc submitted by Defendants to government agencies under penalty of perjury. 42 C.F.R. 413.24(f)(4)(iv).).
49. These regulations and reporting have a distinct purpose: "Collectively, these reports establish a basis for evaluation of the reasonableness of the rate paid to the nursing homes and determination of what constitutes an economically and efficiently operated facility." Nursing Home Cost Report Instruction Manual.
50. In particular, Defendants used their business structure as a means to evade the federal requirement that their nursing homes, including Pepper Hill, be administered in a manner that enables them to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. See 42 CFR § 483.75.

51. By siphoning profits to related entities in non-arms' length transactions, Defendants deny the Facility sufficient resources to care for its residents.
52. Additionally, Defendants' use of "shell" limited liability companies and trusts serves to further the unjust practice of concealment and misrepresentation of the identity of the responsible ownership, management, and financial interest, or concealment of personal business activities.
53. This is an integral part of Plaintiffs' corporate negligence claim which include allegations that Defendants siphoned profits away from resident care to related parties. This is a concept noted in the federal regulations and seen in nursing home operations across the country.

. . .when services, facilities, or supplies are furnished to a provider by a "related organization," there is "a significant likelihood that charges incurred by providers . . . will be artificially inflated because of the absence of bona fide arms-length bargaining." *American Hosp. Management Corp. v. Harris*, 638 F.2d 1208, 1212 (9th Cir. 1981). . . "Reasonable costs" for such a provider are the actual costs incurred by the related supplier, rather than the amount the provider pays to it. 42 C.F.R. § 405.427(a) (1982).

Biloxi Reg'l Med. Ctr. v. Bowen, 266 U.S. App. D.C. 281, 835 F.2d 345, 349-50 (1987).

54. Part of determining an economically and efficiently operated facility includes disclosure of monies transferred to "related organizations."
55. "Federal Regulations, 42 CFR 447.284, requires the nursing home to identify related organizations and to summarize costs incurred in transactions between the NH and such related organizations." ("A related organization is one in which there is a common ownership or controlling interest existing between the vendor and the NH.) See Cost Report Manual.
56. Defendants are also required to report "related organizations" under 42 CFR §420.206.

57. The cost reports mentioned supra include information regarding transactions with what are referred to as “related parties”. CMS considers a party to be “related” to a nursing facility when the nursing facility “to a significant extent is associated or affiliated with or ... is controlled by the organization furnishing the services, facilities, or supplies.” 42 C.F.R. §413.17(b)(1).
58. The Centers for Medicare and Medicaid Services (“CMS”) is the federal agency that is tasked with regulating all nursing facilities in this country.
59. Federal law requires nursing facilities to disclose information on related parties that meet the following criteria:
- a. anyone with direct or indirect ownership in the nursing facility of 5% or more;
 - b. officers, director, and partners;
 - c. managing employees; and
 - d. anyone who is an “additional disclosable party” which is defined as any person or entity who
 - 1) exercises operational, financial, or managerial control over the nursing facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the nursing facility;
 - 2) leases or subleases real property to the nursing facility, or owns a whole or part interest of 5% of more of the total property value of the nursing facility; or
 - 3) provides management services, administrative services, clinical consulting services, accounting services, or financial services to the nursing facility.
 (See 42 U.S.C. §1320a-3).
60. Plaintiffs allege that while holding Pepper Hill out to Charles Rudd and other members of the public as providing excellent care, Defendants and their related parties extracted considerable profits through the management and operation of Pepper Hill by overpaying Wade Jones and his immediate family members and other related parties from funds which should have been utilized instead to hire, train, and retain a sufficient number of qualified

staff to meet the needs of all of their residents including Charles Rudd.

61. Included in the costs are extensive details as to how much money the nursing facility spent on RNs, LPNs, and CNAs during that year based on payroll records. The cost report also reports the resident census, hours paid, and the hourly rate that the nursing facility paid each category of direct caregivers during that year. By dividing the paid hours by the resident census it is possible to determine how many hours the nursing facility paid for each category of direct caregivers per resident, per day for the time period covered by that particular cost report. This number is referred to as the “reported HPPD”.
62. CMS is able to set a number of hours of direct care that they expect to be provided to residents by RNs, LPNs, and CNAs based on the nursing facility’s total acuity level. This expectation is expressed in terms of “hours per patient day” or “HPPD”.
63. The long-term care industry typically measures nursing department staffing in “hours per patient day”, often cryptically referred to as “HPPD” or “PPD”.
64. The cost reports provide information about the number of patients, acuity or illness levels of patients, and the staffing of the facility to meet the patients' needs.
65. Not only do the cost reports contain information on expenditure, they must contain information about the facility’s residents, in particular their acuity levels as determined by the RUG scores. CMS 2540 Cost Report Instruction Manual.
66. The term used by caregivers and health science literature to describe the intensity of nursing care required by a resident is “acuity level”.
67. Acuity levels are reflected in the resident’s ‘Resource Utilization Group’ classification or “RUGs”. RUGs are mutually exclusive categories that reflect the amount of resources that will be needed in order to meet the needs of a particular resident in nursing facilities. They are

assigned to residents based on data derived from an assessment tool referred to as a “Minimum Data Set” (MDS”).

68. An MDS is prepared for each resident of a nursing facility regardless of who is paying for their stay in the nursing facility. MDSs are required to be prepared when a resident initially arrives at the facility and periodically thereafter depending on the course of the resident’s medical profession. At a minimum, an MDS is to be prepared for every resident in a nursing facility on a quarterly basis.
69. The completion of an MDS by a nursing facility is a part of the federally mandated process for clinical assessments of all residents in nursing facilities. MDSs need to be as detailed and comprehensive as possible so that they reflect all of the needs of each of the residents in the nursing facility. When done properly, an MDS provides a comprehensive assessment of each resident’s functional capabilities and helps the staff of a nursing facility identify all of the health problems of each of their residents.
70. The information contained in an MDS is used to slot the resident into a RUG.
71. RUGs are organized in a hierarchy from residents who will need the greatest amount of resources to residents who will need the least amount of resources during their stay at the nursing facility.
72. Residents who will need the greatest amount of resources are assigned to higher groups in the RUG hierarchy.
73. RUGs also determine the level of compensation a nursing facility will receive in order to provide the level of care necessary for each of their residents.
74. Residents in higher RUGs place higher demands for care and services on the nursing facility and its staff.

75. Providing care to residents in higher RUGs requires more staff and is, therefore, reimbursed at a higher level.
76. The RUG assigned to a resident can be found in section Z of each resident's MDS.
77. The only way to determine the total acuity level and corresponding RUG of each of the residents at Millennium Post-Acute Rehabilitation on any given day is by examining section Z of **every** MDS in effect on that day.
78. Using the information contained in the MDSs of every resident in a nursing facility, CMS is able to determine an HPPD that is expected for each nursing facility in the country. This is referred to as the "expected HPPD" and can be found on the CMS.gov website. They are also able to adjust the HPPD per facility on a quarterly basis based on the updated MDSs that are provided to them.
79. Through the years, CMS has sponsored multiple studies to determine the amount of time that RNs, LPNs, and CNAs in nursing facility spend providing direct care to residents as well as other elements of resident care.
80. Expected hours are calculated by summing the nursing times in minutes (from the CMS Time Study found in Appendix Table A1) connected to each RUG category across all residents in the category and across all categories. The total minutes are then divided by the number of residents included in the calculations. The number of minutes per resident is converted to hours by dividing by 60. The result is the "expected" number of hours per resident day for each nursing category.
81. 70% of RUG reimbursement rate is attributable to the labor requirements associated with the RUG score.
82. Defendants knew or should have known that CMS publishes quarterly the facility's

expected hppd for direct care caregivers at CMS.gov.

83. The CMS "expected" staffing associated with the monthly or quarterly reports and the CMS "estimated" staffing associated with RUG scores are notice of potential under-staffing and knowledge of the dangers associated therewith.
84. The government has recognized the "considerable evidence of a relationship between nursing home staffing levels and resident outcomes." (CMS Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide). A government staffing study found "a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems."
85. In conjunction with these facts, Medicare has promulgated staffing 'expectations' based on the number and acuity of patients as reported by nursing homes. These expected staffing numbers drive higher quality of care and also serve as a basis for how much nursing homes are paid.
86. The staffing data is in the public domain via the CMS website and provides notice to nursing homes of CMS' expectations and estimated staffing requirements based on the facilities' average RUG scores.
87. That labor is the biggest component of the nursing home budget.
88. That nursing labor is the biggest component of the labor budget.
89. That RNs are the highest paid employees among the nursing staff.
90. That experienced, more senior, RNs cost more on an hourly basis than less experienced, less senior RNs.
91. According to the Federal Nursing Home Act at 42 CFR 483.35, the facility must have

sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).

92. The federal requirement for staffing is that the nursing home must provide sufficient staffing to meet all of the needs of all of the residents at all times. 42 CFR 483.30(a).

93. Providing adequate and appropriate staffing, resources and financial solvency to a facility is crucial to meeting the needs of the residents.

94. The regulations are exact in what information must be provided:

(i) **Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1128I(g) [42 USCS § 1320a-7j(g)],** including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include--

(I) concise explanations of how to interpret the data (such as a plain English explanation of data reflecting "nursing home staff hours per resident day");

(II) **differences in types of staff (such as training associated with different categories of staff);**

(III) **the relationship between nurse staffing levels and quality of care;** and

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

42 USCS § 1395i-3.

95. According to the CMS Technical User Guide for Design for Nursing Home Compare Five-Star Quality Rating System, there is considerable evidence of a relationship between nursing home staffing levels and resident outcomes.

96. The CMS Nursing Home Compare program serves to provide consumers of long-term care services “easily accessible, readily understandable” information about nursing facilities. 42 CFR § 1395i-3(i)(1)(A). The information that must be made available includes specific staffing information – which is reported by the facilities themselves.
97. The self-reported HPPD is actually an inflated number due to the fact that hours paid includes sick pay and vacation pay. By removing the sick pay and vacation pay from the hours paid the resulting HPPD would be closer to the actual HPPD provided by caregivers to residents in nursing facilities.
98. The actual HPPD for any given nursing facility can be determined by examining the data that nursing facilities use to track the number of hours their employees work. This information is easily accessed through reports that are commonly referred to as “Time Detail Reports”, “Punch Detail Data Reports”, or some other similarly named report depending on the time-keeping system used by the particular nursing facility. This information can reveal the actual HPPD for any period of time including a year, a quarter, a month, or even a day.
99. Defendants are required to report their staffing levels for RNs, LPNs and aides, the combination of which is commonly called “direct-care providers.”
100. By failing to provide adequate RN and other staffing, Defendants saved significant dollars to increase their profits, and put their residents, including Charles Rudd, at greater risk.
101. Indeed, Charles Rudd’s death is directly attributable to a lack of assessment and care planning because of the lack of RN staffing
102. The lack of RN staffing leads to lack of assessments or allowing unqualified LPNs to assess which is outside their scope of practice in violation of the Board of Nursing’s

Advisory Opinions.

103. According to the South Carolina Board of Nursing Advisory Opinion #21 which constitutes competent and safe nursing practice, the State Board of Nursing for South Carolina has determined that it is NOT within the role and scope of practice for the licensed practical nurse (LPN) to perform physical assessments. It is within the role of the LPN to assist with the collection of patient health data to be used for the complete physical assessment. However, the analysis and synthesis of clinical information and the formulation of problem statements and/or nursing diagnoses requires the knowledge base and skills that are within the scope of practice of the registered nurse (RN) and may NOT be delegated to the LPN.
104. According to the South Carolina Board of Nursing Advisory Opinion #46 which constitutes competent and safe nursing practice, the Board of Nursing for South Carolina recognizes that it is NOT within the role and scope of the licensed practical nurse (LPN) to evaluate and/or stage vascular, diabetic/neuropathic or pressure ulcers. However, the LPN may collect and document health data related to vascular, diabetic /neuropathic and/or pressure ulcer(s) in order to assist the RN with decisions regarding wound classification/stage and continued management.
105. S.C. Code § 40-33-20 (48) states the scope of practice for registered nursing which means the performance of health care acts in the nursing process that involve assessment, analysis, intervention, and evaluation. This practice requires specialized independent judgment and skill and is based on knowledge and application of the principles of biophysical and social sciences.

106.S.C. Code § 40-33-20 (48) states the scope of practice of registered nursing includes, but is not limited to:

- a. assessing the health status of persons and groups;
- b. analyzing the health status of persons and groups;
- c. establishing outcomes to meet identified health care needs of persons and groups;
- d. prescribing nursing interventions to achieve outcomes;
- e. implementing nursing interventions to achieve outcomes;
- f. administering and delivering medications and treatments prescribed by an authorized licensed provider;
- g. delegating nursing interventions to qualified others;
- h. providing for the maintenance of safe and effective nursing care rendered directly or indirectly;
- i. providing counseling and teaching for the promotion and maintenance of health;
- j. evaluating and revising responses to interventions, as appropriate;
- k. teaching and evaluating the practice of nursing;
- l. managing and supervising the practice of nursing;
- m. collaborating with other health care professionals in the management of health care;
- n. participating in or conducting research, or both, to enhance the body of nursing knowledge;
- o. consulting to improve the practice of nursing; and
- p. performing additional acts that require special education and training and that are approved by the board.

107.This information on “Nursing Home Compare” is compiled into what is commonly called a “Star Rating.” A portion of the CMS Star rating formulation includes a calculation of the differential between reported and expected staffing levels for a facility.

108.Medicare/CMS clearly states on their website and in their manuals to providers, including Defendants, that part of the reason for their star rating system is that there “is evidence of a relationship between nursing home staffing levels, staffing stability, and resident outcomes.

109.The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which

residents are at a substantially higher risk of quality problems.” Nursing Home Compare Five Year Report. The staffing rating is a combination of RN and total nurse staffing.

110. Staffing is the biggest issue in the star rating system as CMS has noted that “staffing has the lowest proportion of any domain receiving five stars.”

111. The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems. See Kramer AM, Fish R. “The Relationship Between Nurse Staffing Levels and the Quality of Nursing Home Care.” Chapter 2 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II Final Report. Abt Associates, Inc., Winter 2001.

112. Defendants knew or should have known that the US GAO (2009a) found that the most poorly performing nursing homes in the United States tended to be owned by for-profit chains.

113. Defendants knew or should have known that studies have found that poor nursing home quality is directly related to inadequate staffing levels (Harrington et al. 2000; US Centers for Medicare and Medicaid Services [CMS] 2001; Schnelle et al. 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

114. Defendants knew or should have known that nurse staffing levels have been documented to have a positive impact on both the process and the outcomes of nursing home care, such as fewer pressure ulcers, improved functional status, better mortality rates, and fewer deficiencies for poor quality (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Castle and Engberg 2007, 2008; Castle 2008).

115. Defendants knew or should have known that a systemic review of 87 research articles and reports from 1975 to 2003 found that high total staffing levels, especially licensed staff, were associated with higher quality of care (Bostick et al. 2006).
116. Defendants knew or should have known that the Relationship of Nursing Home Staffing to Quality of Care at HSR: Health Services Research 39:2 (April 2004) study is supported by other correlational data documenting a relationship between staffing (particularly RNs) and a variety of outcomes, including: lower death rates, higher rates of discharges to home, improved functional outcomes fewer pressure ulcers, fewer urinary tract infections, lower urinary catheter use, and less antibiotic use (Linn, Gurel, and Linn 1977; Nyman 1988; Munroe 1990; Cherry 1991; Spector and Takada 1991; Aaronson, Zinn, and Rosko 1994; Bliesmer et al. 1998; Harrington et al. 2000; U.S. Department of Health and Human Services 2000b).
117. Defendants knew or should have known that inadequate staffing has been associated with inadequate feeding assistance during meals, poor skin care, lower activity participation, and less toileting assistance (Spector and Takada 1991; Kayser-Jones 1996, 1997; Kayser-Jones and Schell 1997).
118. Defendants knew or should have known that lower staffing levels, especially RN staffing, translate into lower labor costs, which appears to be a management strategy by the top 10 chains as well as other for-profit facilities to reduce costs. Nurse Staffing and Deficiencies in the Largest For-Profit Nursing Home Chains and Chains Owned by Private Equity Companies. DOI: 10.1111/j.1475-6773.2011.01311.x
119. Defendants knew or should have known that low staffing levels are a major concern because low staffing, especially RN staffing, have been associated with more federal

deficiencies and poorer resident outcomes as noted in previous studies (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Bostick et al. 2006; Castle and Engberg 2007, 2008; Castle 2008; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

120. Defendants knew or should have known that a clear link has been demonstrated between lower nurse staffing levels in nursing homes and adverse patient outcomes.

121. Defendants knew or should have known that more RN direct care time per resident per day (examined in 10-minute increments up to 30 to 40 minutes per resident per day) was associated with fewer pressure ulcers, hospitalizations, and UTIs; less weight loss, catheterization, and deterioration in the ability to perform ADLs; and greater use of oral standard medical nutritional supplements.

122. Defendants knew or should have known that more certified nursing assistants and licensed practical nurse time was associated with fewer falls.

123. Defendants knew or should have known that numerous studies have shown positive relationships between staffing levels for different types of staff (RN, LPN, nursing assistant) and a range of quality measures (e.g. number of deficiencies, functional improvement, pressure ulcer rates, and discharged home). See Feuerberg M, Reilly K, Kramer AM, Kane RA. "Review of selected research on nursing home staffing and resident outcomes. Chapter 6 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." Health Care Financing Administration, 2000; Bliesmer MM, Smayling M, Kane RL, Shannon I. The relationship between nursing staffing levels and nursing home outcomes. J Aging Health 1998; 10(3):351-371; Cohen JW, Spector WD. The effect of Medicaid reimbursement on quality of care in nursing homes. J Health Econ 1996;

15:23-48; Harrington C, Zimmerman D, Karon S, Robinson J, Bjorkling F. Nursing home staffing and its relationship to deficiencies. (This research was funded by the Health Care Financing Administration and the Agency for Health Policy & Research). 1999; and Spector WD, Takada HA. Characteristics of nursing homes that affect resident outcomes. J Aging Health 1991; 3(4):427-454.

124. Defendants knew or should have known that a number of studies have found that for-profit ownership is related to poorer quality of care than nonprofit ownership (Hillmer et al. 2005; Comondore et al. 2009).

125. Defendants knew or should have known that there is evidence that nursing home chains, defined as companies that own or operate two or more facilities, also have lower staffing, poor resident outcomes, and more deficiencies (violations of regulations) (Cohen and Spector 1996; Grabowski 2001a, b; Harrington et al. 2001; Banaszak-Holl et al. 2002; O'Neill et al. 2003; Harrington, Mullan, and Carrillo 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

126. Because of their joint venture, Defendants had a joint obligation to sufficiently fund Pepper Hill to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with their residents' comprehensive assessments and plans of care.

127. This joint obligation required Defendants to sufficiently fund Pepper Hill so that there would be enough staff and resources in order to meet the needs of their residents.

128. Pepper Hill was totally dependent on Defendants' generosity in their decision-making process as to whether they would allow them to keep the money they were earning.

129. Plaintiffs allege that the overpayments to related parties left Pepper Hill with insufficient

cash to provide sufficient and qualified staff to meet the individual needs of the residents in their facility during Charles Rudd's period of residency therein.

130. Plaintiffs allege that throughout 2016, Defendants, through their operational, budgetary, consultation, and managerial decisions and actions, provided grossly inadequate capitalization as measured by the nature and magnitude of the corporate undertaking of ensuring that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with each residents' comprehensive assessments and plans of care including those of Charles Rudd.

131. In other words, Defendants' actions in 2016 resulted in an underfunded nursing home during Charles Rudd's residency.

132. Plaintiffs allege that this underfunding and corresponding understaffing, although profitable for Defendants and their related parties, directly resulted in their failure to provide the necessary and basic services to Charles Rudd that he needed in order to keep him safe and avoid injury from preventable falls.

133. Because of their joint venture, Defendants have a joint obligation to sufficiently staff the facility to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

134. This joint obligation required Defendants to base the number of Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nurse Aides (CNAs) to be provided at Pepper Hill not only upon the number of residents residing in their facility (commonly referred to as "resident census") but also on the intensity of nursing care or acuity required

by their residents' needs.

135. Plaintiffs allege that Defendants jointly exercised control over the operation and management of the facility prior to and during Charles Rudd's period of residency therein, including but not limited to, the creation, setting, funding and/or implementation of budgets; the monitoring of resident acuity levels; the monitoring of staffing levels; control over resident admissions and discharges; and control over the number of hours of direct care provided to the residents by RNs, LPNs, and CNAs.

136. Plaintiffs allege that each of these managerial and operational functions had a direct impact on the amount and quality of care delivered to Charles Rudd while he resided at Pepper Hill and were taken in furtherance of operational and managerial objectives of Shiloh.

137. Plaintiffs allege that Defendants engaged in a systematic process of under-staffing which made it impossible for the staff to meet the individual needs of their residents including fall prevention during Charles Rudd's residency.

138. Plaintiffs allege that this understaffing, although quite profitable for Defendants, directly resulted in their failure to provide the necessary and basic services Charles Rudd needed in order to keep him safe and avoid injury from a preventable fall.

139. According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

140. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.
141. According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(11), a "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.
142. Plaintiff Charles Rudd was a resident of Defendant facility and was therefore a vulnerable adult under the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(11).
143. S.C. Regulation 61-17 Section 603(A) states that the facility must meet the following standard: "There shall be direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs.[care plans]"
144. S.C. Regulation 61-17 Section 803(B) states that the facility must meet the following standard regarding the resident's Individual Care Plan (ICP): The ICP shall describe:
1. The needs of the resident, including the services that are to be furnished, *i.e.*, what assistance, how much, who will provide the assistance, how often, and when;
 2. Advance directives and healthcare power-of-attorney, as applicable;
 3. Recreational and social activities that are suitable, desirable, and important to the resident;
 4. Dietary needs and preferences of resident as approved by a physician;

5. Discharge planning, to include assessing continuing care needs and developing a plan designed to assure the resident's needs will be met after discharge or transfer.

145.S.C. Regulation 61-17 Section 605(A) states that the facility must meet the following standard: "An adequate number of licensed nurses shall be on duty to meet the total nursing needs of residents. Licensed nursing staff shall be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation.

146.S.C. Regulation 61-17 Section 605(B) states that the facility must meet the following standard for unlicensed Nursing Staff: "The required number of nurse aides and other unlicensed nursing staff shall be determined by the number of residents assigned to beds at the facility. Additional staff members shall be provided if the minimum staff requirements are inadequate to provide appropriate care and services to the residents of a facility."

147.S.C. Regulation 61-17 Section 601(E) states that the facility must meet the following standard regarding staffing information: "Time schedules shall be maintained indicating the numbers and classification of all staff, including relief staff, who work on each shift of duty. The time schedules shall reflect all changes so as to indicate who actually worked."

148.S.C. Regulation 61-17 Section 601(H) states that the facility must meet the following standard regarding third party providers: "When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, recreation, meal service, social services, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and

when the services are to be provided, the exact services to be provided, and the requirement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, treatment, services, and rights.

149.S.C. Regulation 61-17 Section 607(A) states that the facility must meet the following standard regarding training: "Staff members shall be provided the necessary training to perform the duties for which they are responsible."

150.S.C. Regulation 61-17 Section 607(B) states that the facility must meet the following standard regarding training: "Before performing any duties, all newly-hired staff members shall be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members shall be instructed in the provisions of S.C. Code § 43-35-5 et seq., "Omnibus Adult Protection Act" and S.C. Code § 44-81-10 et seq., "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in this regulation.

151.S.C. Regulation 61-17 Section 607(C) states that the facility must meet the following standard regarding training: "All staff shall be provided in-service training programs that identify training needs related to problems, needs, care of residents and infection control and are sufficient to assure staff's continuing competency. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, and/or services delineated in Section 1000."

152.S.C. Regulation 61-17 Section 601(D) states that the facility must meet the following standard regarding employee information: "There shall be accurate current information maintained regarding all staff members of the facility that shall include:

1. Name, address and telephone number;
2. Date of hire;

3. Past employment, experience, and education;
4. Professional licensure or registration number or certificate or letter of completion;
5. Position in the facility and job description;
6. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, job duties, in-service training and on-going education;
7. Health status, health assessment, and tuberculin testing results;
8. Evidence that a criminal record check has been completed;
9. For former staff members, the date of separation;
10. Date of initial resident contact may be maintained by the facility.

153.S.C. Regulation 61-17 Section 805(B) states that the facility must meet the following standard regarding the resident's Electronic Resident Records: "A facility that maintains electronic records shall:

1. Retain the hard copy originals of any materials that cannot be electronically stored;
2. Employ an off-site backup storage system as protection in the event that the on-site system is damaged or destroyed;
3. Use an imaging mechanism that is able to copy documents with signatures;
4. Assure that records, once put in electronic form, are unalterable.

154.S.C. Regulation 61-17 Section 805(C) states that the facility must meet the following standard regarding the resident's **Electronic Resident Records**: "Electronic signatures may be used any place in the resident or outpatient record that requires a signature, provided signature identification can be verified and an electronic signature may be legally used. Electronic authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry to preclude the improper or unauthorized use of any electronic signature.

155.The facility as a health care provider maintains electronic records which requires the facility to maintain an audit trail. See the requirements of 45 CFR §164.312.

156.The audit trail is a document that shows the sequence of events related to the use of and access to an individual patient's electronic health records (EHR). For instance, the audit

trail will reveal who accessed a particular patient's records, when, and where the health care provider accessed the record.

157. The audit trail shows what the provider did with the records—e.g., simply reviewed them, prepared a note, or edited a note. Each time a patient's EHR is opened, regardless of the reason, the audit trail documents this detail.

158. The audit trail cannot be erased and all events related to the access of a patient's EHR are permanently documented in the audit trail.

159. 45 C.F.R. § 164.306(a)(1) commands the facility to "[e]nsure the confidentiality, integrity, and availability of all electronic protected health information [that it] creates, receives, maintains, or transmits."

160. 45 C.F.R. § 164.304 provides that "availability" in this context means "that data or information is accessible and useable upon demand by an authorized person."

161. 45 C.F.R. § 164.308(a)(7)(ii) provides that a facility must "[e]stablish and implement procedures to create and maintain retrievable exact copies of electronic protected health information."

162. 45 C.F.R. § 164.312(b) provides that a facility must "[i]mplement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information."

163. 45 C.F.R. § 170.210(b) requires that "[t]he date, time, patient identification, user identification must be recorded when electronic health information is created, modified, accessed, or deleted; and an indication of which action(s) occurred and by whom must be recorded."

164.21 C.F.R. § 11.10(e) provides that a facility shall employ procedures and controls including the "[u]se of secure, computer generated, time-stamped audit trails to independently record the date and time of operator entries and actions that create, modify, or delete electronic records" and that "[s]uch audit trail documentation shall be retained for a period at least as long as that required for the subject electronic records"

165.21 C.F.R. § 11.10(k)(2) states that a facility shall employ appropriate controls over systems documentation including "[r]evision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation."

166.42 U.S.C. §1320d-2(d)(2) provides that a facility "shall maintain reasonable and appropriate administrative, technical, and physical safeguards —(A) to ensure the integrity and confidentiality of the [health] information; (B) to protect against any reasonably anticipated—(I) threats or hazards to the integrity of the information; and (ii) unauthorized uses or disclosures of the information"

167.42 U.S.C. § 1320d(6) [provides that] "individually identifiable health information" is defined to include "any information created or received by a health care provider [that] relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual; or can be used to identify the individual."

168. According to §483.20 applicable to nursing homes, a Resident Assessment requires the facility to provide with ongoing assessment information necessary to develop a care plan, to provide the appropriate care and services for each resident, and to modify the care plan

and care/services based on the resident's status. The facility is expected to use resident observation and communication as the primary source of information when completing the RAI. In addition to direct observation and communication with the resident, the facility should use a variety of other sources, including communication with licensed and non-licensed staff members on all shifts and may include discussions with the resident's physician, family members, or outside consultants and review of the resident's record.

169. According to CMS' Long-Term Care Facility Resident Assessment Instrument 3.0 User's Manual Section 2.4, the Federal regulatory requirement at 42 CFR 483.20(d) requires nursing homes to maintain all resident assessments completed within the previous 15 months in the resident's active clinical record.

170. According to §483.20(k) applicable to nursing homes related to Comprehensive Care Plans:

(1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following:

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §483.25; and

(ii) Any services that would otherwise be required under §483.25 but are not provided due to the resident's exercise of rights under §483.10, including the right to refuse treatment under §483.10(b)(4).

171. Defendants' facility had a duty to properly assess, care plan, and attempt interventions to prevent falls, and other preventable injuries.

172. According to §483.25 related to Quality of Care requires the facility to provide the necessary care and services to attain or maintain the highest practicable physical, mental,

and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

173. According to §483.25(h) related to Accidents, the facility must ensure that:

- (1) The resident environment remains as free from accident hazards as is possible; and
- (2) Each resident receives adequate supervision and assistance devices to prevent accidents.

174. S.C. Regulation 61-17 Section 701(A) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall maintain a record of each accident and incident, including each serious accident and incident as defined in Section 701.B, involving residents or staff members or volunteers, occurring in the facility or on the facility grounds. A facility's record of each accident and incident shall be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures, and retained by the facility for six (6) years after the resident stops receiving services.

175. S.C. Regulation 61-17 Section 701(E) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall retain a copy of every serious accident and incident with all of the information provided to the Department and the names, injuries, and treatments associated with each resident, staff, and/or visitor involved. A facility shall retain all serious accident and incident records for six (6) years after the resident stops receiving services."

176. S.C. Regulation 61-17 Section 801(B) states that the facility must meet the following standard regarding documentation in the resident record: "Contents of the resident record may be stored in separate files, in separate areas within the facility, and the record shall include the following information:

1. Medical history and physical examination;

2. Consent form for treatment signed by the resident or his legal representative;
3. Care and services agreement;
4. Healthcare directives and special information, *e.g.*, advance directive information, do-not-resuscitate (DNR) orders, and allergies;
5. **Incidents involving the resident;**
6. Medical treatment;
7. Orders, including telephone and standing orders, for all medication, care, services, therapy, procedures, and diet from physicians or other legally authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted;
8. Individual Care Plan;
9. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician;
10. **Assessments and progress notes**, *e.g.*, dietary, activity, therapy;
11. Record of administration of each dose of medication;
12. Record of the use of restraints, if applicable, including time, type, reason and authority for applying;
13. Treatment, procedure, wound care report (dictated or written into the record after treatment, procedure, or wound care) to include at least:
 - a. Description of findings;
 - b. Techniques utilized to perform treatments and procedures;
 - c. Specimens removed, if applicable;
 - d. Name of provider;
 - e. Progress notes generated by physicians and healthcare professionals;
 - f. Notes of observation, including temperature, pulse, respiration, blood pressure and weight when indicated by physician's orders or by a change in the resident's condition;
 - g. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms, diagnosis, and/or treatment of infectious conditions including but not limited to tuberculosis, influenza, pneumonia, therapies;
 - h. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated;
 - i. Consultations by physicians or other healthcare professionals;
 - j. Photograph of resident, if the resident or **him** responsible party approves;
 - k. Date and hour of discharge or transfer, as applicable;
 - l. Discharge and/or transfer summary, including care and condition at discharge or transfer, date and time of discharge or transfer, instructions for self-care, instructions for obtaining post-treatment or procedure emergency care, and signature of physician authorizing discharge or transfer;
 - m. Date and circumstances of death, as applicable.

177. The federal regulation at §483.75(l) related to documentation in the clinical records requires:

(1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are--

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

178. Defendants' facility had a duty to document the respective interventions and incidents adequately in the nurses' notes.

179. S.C. Regulation 61-17 Section 701(D) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall submit a written report of its investigation of every serious accident and incident to the Department within five (5) days of the serious accident or incident. A facility's written report to the Department shall provide at a minimum:

- 1. Facility name;
- 2. License number;
- 3. Type of accident or incident;
- 4. Date accident or incident occurred;
- 5. Number of residents directly injured or affected;
- 6. Resident record number or last four (4) digits of Social Security Number;
- 7. Resident age and sex;
- 8. Number of staff directly injured or affected;
- 9. Number of visitors directly injured or affected;
- 10. Name(s) of witness(es);
- 11. Identified cause of accident or incident;
- 12. Internal investigation results if cause unknown; and
- 13. Brief description of the accident or incident including the location of occurrence and treatment of injuries."

180. S.C. Regulation 61-17 Section 701(B) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall report every serious accident and incident that results in resident's death or significant loss of function or damage to a body structure, not related to the natural course of a resident's illness or underlying condition or normal course of treatment, and resulting from an accident or incident

occurring to resident within the facility or on the facility grounds. Serious accidents and incidents requiring reporting include, but are not limited to:

1. Crime(s) against resident;
2. Confirmed or suspected cases of abuse, neglect, or exploitation;
3. Medication error with adverse reaction;
4. Hospitalization as a result of the accident or incident;
5. Severe hematoma, laceration, or burn requiring medical attention or hospitalization;
6. Bone fracture or joint fracture;
7. Severe injury involving use of restraints;
8. Attempted suicide; or
9. Fire.

181.S.C. Regulation 61-17 Section 500(A) states that the facility must meet the following standard: "There shall be written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The written policies and procedures shall accurately reflect actual facility practice regarding care, treatment, procedures, services, record keeping and reporting, admission and transfer, physician services, nursing services, social services, resident rights and assurances, medication management, pharmaceutical services, meal service operations, emergency procedures, fire prevention, maintenance, housekeeping and infection control, the operation of the facility, and other special care and procedures as identified in this section. The policies and procedures shall address the provision of any special care offered by the facility that would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically or developmentally disabled, in accordance with any laws that pertain to that service offered, for example, Alzheimer's Special Care Disclosure Act."

182.S.C. Regulation 61-17 Section 500(C) states that the facility must meet the following standard: "All policies and procedures shall:

1. Establish a time period for review of policies and procedures in writing and such reviews shall be documented;
2. Be revised as appropriate in order to reflect actual facility practice; and
3. Be accessible to staff, printed or electronically, at all times."

183.The facility Administrator shall be licensed as a nursing home Administrator in accordance with S.C. Code § 40-35-30. In addition, all other applicable provisions of S.C. Code Title 40, Chapter 35, shall be followed.

184.S.C. Regulations applicable to nursing homes found in 61-17 Section 602 requires that "each facility shall have a full-time licensed Administrator".

185.S.C. Code § 40-35-110 states that "Misconduct" includes the following:

- (1) acting in a manner inconsistent with the health or safety of the patients of the nursing home or community residential care facility;
- (2) failing to ensure that the nursing home or community residential care facility in which he is an administrator complies with the provisions of law and regulations of the licensing or supervising authority or agency, whether federal, state, or local, having jurisdiction over the operation and licensing of the nursing home or community residential care facility;
- (3) intentional or knowing, direct or indirect, violation of or the aiding and abetting in the violation of this chapter or a regulation promulgated under this chapter;
- (4) failing to operate a nursing home or community residential care facility in a manner that ensures the safety, health, and welfare of the patients;
- (5) use of a false, fraudulent, or forged statement in the practice of nursing home administration or community residential care facility administration.

186.The federal regulation at §483.75(k) requires that: "The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services."

187.What while at Pepper Hill, Charles Rudd suffered a hospitalization and preventable fall that caused mental anguish, pain and suffering, including one that resulted in a brain bleed.

188.The complications from Charles Rudd's brain bleed contributed to his untimely and

wrongful death.

189. That the facility failed to keep Charles Rudd safe from preventable falls.

190. That the facility failed to utilize safety devices with Charles Rudd.

191. That the facility failed to monitor Charles Rudd for changes in condition.

192. Defendants' facility had a duty to ensure that proper preventative measures were in place to keep the resident safe and free from avoidable and preventable injuries.

193. Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.

194. That at all times relevant hereto, Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.

195. That the facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical nursing, nutritional, mental, and psychological needs as identified in the comprehensive assessment.

196. That the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

197. That the nursing home had a duty to ensure that Charles Rudd received necessary treatment and services to prevent falls, hospitalization, and to keep him safe.

198. That treatment and prevention of falls and injuries in the nursing home should be part of an interdisciplinary approach.

199. That several types of personnel have essential roles in the assessment, care planning, prevention, and treatment of fall prevention.

200. That evaluation, multi-disciplinary documentation of treatment, and detailed individual care plans must be developed and implemented.
201. That the acts and delicts of Defendants caused, and were the proximate causes of, Charles Rudd's falls, multiple hospitalizations, loss of dignity, conscious pain and suffering, mental distress, medical bills and disability to the Charles Rudd.
202. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.
203. That the Plaintiffs institute this action in order to recover for Charles Rudd's injuries and wrongful death, and for damages to the statutory heirs of Charles Rudd, deceased, pursuant to and under the authority of S.C. Code § 15-51-10.
204. Pursuant to S.C. Code § 15-51-20, the wrongful death beneficiaries and claimant as defined by S.C. Code § 15-31-26(2) is Charles Rudd's widow: Thelma Rudd.
205. As a result of the death of Charles Rudd, the wrongful death beneficiaries have suffered grief and sorrow, mental shock and suffering, wounded feelings, loss of companionship, and deprivation of the use and comfort of the Charles Rudd's society. These damages were the proximate result of the acts and delicts of Defendants.
206. That the Defendants were jointly, directly, and vicariously liable and responsible for the acts and delicts of their employees, agents, and servants.
207. That the Defendants hold themselves out as specialists in the field of adult geriatric care with the expertise necessary to maintain the health, safety, and highest practicable quality of life of persons unable to adequately care for themselves.

208. That the Defendants were under a duty to provide reasonable, appropriate and adequate care to Charles Rudd pursuant to state and federal laws, rules, regulations, guidelines, and existing industry standards.

- a. Defendants failed to provide the highest practicable level of care, training, and competency. (42 CFR § 483.75)
- b. Defendants repeatedly failed to maintain nursing and other staffing at levels necessary to meet the needs of Charles Rudd. 42 CFR §§ 483.30 and 483.25)
- c. Defendants failed to provide proper and timely assessments, and provide a 1:1 sitter, throughout Charles Rudd's stay and on the days of the subject falls. 42 CFR §§ 483.35, and 483.25)
- d. Defendants repeatedly failed to follow proper skilled nursing care standards to maximize the health, safety, and well-being of Charles Rudd.
- e. Defendants repeatedly failed to ensure that Charles Rudd was safe, free from abuse, neglect, and accorded the dignity and respect owed.

209. Defendants failed to follow, implement, and adhere to all physician's orders.

210. Defendants failed to establish and implement a resident care plan for Charles Rudd based upon his needs.

211. That at all times pertinent hereto, Charles Rudd resided at the above-named facility and as such was under the exclusive control and care of Defendants and their employees, agents, officers, and servants while a resident.

212. That the Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.

213. That, upon information and belief, at all times during Charles Rudd's residency, the facility was understaffed, suffered a high turnover rate, and failed to properly screen, train, supervise, and discipline their staff, and failed to put them in suitable positions for their skills, experience, and competence.

214. That, upon information and belief, Defendants were involved in the budget and staffing decisions of the facility, and were more concerned about profits and siphoning funds to

the billion dollar national chain than creating a budget that provided quality care to the residents.

215. That, upon information and belief, at all times during Charles Rudd's residency, the facility was underfunded, under-supplied, and under-equipped to care for residents, and was forced to operate on a budget that did not allow for the best care of the residents, including Charles Rudd.

216. That, upon information and belief, Defendant Shiloh is jointly, directly, and vicariously liable and also liable as alter ego defendants in creating the budget for the facility and siphoning money away from the facility to related entities with common ownership to the Defendants.

ALLEGATIONS REGARDING DEFENDANTS' JOINT VENTURE

217. Relevant and consistent allegations contained in paragraphs 1-216 are incorporated by reference as if written verbatim herein.

218. Plaintiffs allege that Defendants were engaged in a joint venture in the operation of Pepper Hill nursing home.

219. Defendants' joint venture in the operation of Pepper Hill included:

- a. an agreement, express or implied, among the members of the group;
- b. a common purpose to be carried out by the group;
- c. a community of pecuniary interest in that purpose, among the members; and
- d. an equal right to a voice in the direction of the enterprise, which give an equal right of control.

220. Because of the joint venture, Defendants owed a joint duty to Charles Rudd to provide the same level of care and treatment as any other reasonable, prudent, similar business that owns, operate, manages, and/or controls a nursing facility would have provided under the same or similar circumstances taking into consideration Charles Rudd's known medical condition.

FIRST CAUSE OF ACTION
(Negligence/Recklessness)

221. Relevant and consistent allegations contained in paragraphs 1-220 are incorporated by reference as if written verbatim herein.

222. That Defendants Shiloh and Pepper Hill, had a duty of due care to their patients and residents, to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

223. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More particularly the Defendants were negligent in the following particulars:

- e. failing to properly supervise as required, and as promised to the family upon admission;
- f. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for his health and safety;
- g. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Charles Rudd;
- h. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- i. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- j. failing to hire a sufficient number of trained and competent staff;
- k. failing to follow the licensing and regulatory rules of the State of South Carolina;
- l. failing to develop and follow an appropriate Plan of Care;
- m. failing to properly train employees to deal with residents who were unable to care for themselves;
- n. failing to properly monitor Charles Rudd;
- o. failing to appropriately diagnose Charles Rudd's condition;
- p. failing to provide timely emergency services to Charles Rudd;
- q. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- r. failing to prevent Charles Rudd from suffering from a fall;
- s. failing to prevent Charles Rudd's hospitalization;

- t. failing to monitor and assess Charles Rudd adequately for pain and discomfort;
- u. failing to treat Charles Rudd with dignity and respect;
- v. failing to exercise due care; and
- w. by other negligent acts and/or omissions yet to be determined or defined.

224. That the Defendants independently and through their agents, servants, and employees demonstrated conscious and intentional disregard of and indifference to the rights and safety of Charles Rudd and other patients at Pepper Hill as demonstrated by:

- x. Their business practice of attempting to care for residents with an inadequate number of trained staff, which their officers and managers knew or should have known was reasonably likely to result in injury to Charles Rudd and their other patients; and
- y. Their business practice of failing to supervise and train their staff in order to ensure that their policies and procedures were known to and adhered to by licensed staff, and that licensed staff practiced within their scopes of practice.

225. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

226. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's damages, injuries and death, and were the sole and proximate cause of the damage and injuries sustained by the wrongful death beneficiaries.

SECOND CAUSE OF ACTION
(Corporate Negligence)

227. Relevant and consistent allegations contained in paragraphs 1-226 are incorporated by reference as if written verbatim herein.

228. That Defendants had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

229. That the Shiloh facility was negligently administered and managed by Defendants who were working together to manage and operate the facility.

230. That the facility was negligently administrated in violation of 42 C.F.R. 483.75 by Defendants Pepper Hill and Shiloh who were working together to govern, administer, control, manage and operate the facility.

231. That the Defendants, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless, and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More specifically, the Defendants were negligent in the following particulars:

- z. failing to properly supervise as required, and as promised to the Plaintiffs upon admission;
- aa. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for his health and safety;
- bb. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Charles Rudd;
- cc. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- dd. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- ee. failing to hire a sufficient number of trained and competent staff;
- ff. failing to follow the licensing and regulatory rules of the State of South Carolina;
- gg. failing to develop and follow an appropriate Plan of Care;
- hh. failing to properly train employees to deal with residents who were unable to care for themselves;
- ii. failing to follow physicians' orders;
- jj. failing to properly monitor Charles Rudd;
- kk. failing to appropriately diagnose Charles Rudd's condition;
- ll. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- mm. failing to keep Charles Rudd's chart free of fraudulent documentation;
- nn. failing to prevent Charles Rudd from suffering preventable falls;
- oo. failing to prevent Charles Rudd from being hospitalized;
- pp. failing to prevent Charles Rudd from sustaining a fracture;
- qq. failing to treat Charles Rudd with dignity and respect;

- rr. failing to exercise due care; and
- ss. by other negligent acts and/or omissions yet to be determined or defined.

232. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

233. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's injuries and wrongful death.

THIRD CAUSE OF ACTION **(Joint Venture)**

234. Relevant and consistent allegations contained in paragraphs 1-233 are incorporated by reference as if written verbatim herein.

235. That a joint venture is an association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation.

236. That the elements of joint venture in the State of South Carolina are:

- tt. an agreement;
- uu. a joint interest in a common business;
- vv. an understanding that profits and losses will be shared, and;
- ww. a right to joint control.

237. That a joint venture exists when there is:

- xx. contribution of resources by both parties;
- yy. joint proprietorship and control over the subject matter of the property engaged in the venture;
- zz. sharing of profits by express or implied agreement, and;
- aaa. an express or implied contract showing joint venture.

238. That Defendants Pepper Hill and Shiloh, were involved in a joint venture.

FOURTH CAUSE OF ACTION
(Alter Ego/Piercing the Corporate Veil)

239.Relevant and consistent allegations contained in paragraphs 1-238 are incorporated by reference as if written verbatim herein.

240.That, upon information and belief, Pepper Hill was dominated and controlled by Defendant Shiloh before, during, and after Charles Rudd's residency. This Defendant and its related entities, agents, and managers siphoned profits from the nursing home chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries, death and suffering, including that of Charles Rudd at Pepper Hill.

FIFTH CAUSE OF ACTION
(Neglect of a Vulnerable Adult)

241.Relevant and consistent allegations contained in paragraphs 1-240 are incorporated by reference as if written verbatim herein.

242.That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Charles Rudd was considered a vulnerable adult.

243.That, according to the South Carolina Adult Protection Act, ANeglect@ means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health and safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has

caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.

244. That Defendants failed to supervise Charles Rudd and allowed him to suffer preventable falls.

245. That Defendants failed to provide care, goods, and services to Charles Rudd in the form of fall prevention and fall prevention devices.

246. That Defendants failed to provide care and medical services to Charles Rudd by not transferring him to the hospital in a timely manner after a change of condition.

247. That Charles Rudd trusted in, confided in and relied upon Defendants to use their expertise and discretion for Plaintiff's care.

248. That Defendants Pepper Hill and Shiloh, accepted Charles Rudd's trust and reliance and so became responsible for Charles Rudd's health while residing at the nursing home facility.

249. That as a result of aforementioned reliance and trust upon Defendants Pepper Hill and Shiloh, Charles Rudd's physical, mental and emotional health was placed in the hands of Defendants Pepper Hill and Shiloh.

250. That Defendants Pepper Hill and Shiloh received compensation for the care and treatment they were responsible for providing to Charles Rudd during his residency but did not provide that care and treatment.

SIXTH CAUSE OF ACTION
(Wrongful Death)

251. Relevant and consistent allegations contained in paragraphs 1-250 are incorporated by reference as if written verbatim herein.

252. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, Charles Rudd was severely injured in Pepper Hill.

253. That the injuries so inflicted on Charles Rudd were the cause of Charles Rudd's wrongful death on May 10, 2018.

254. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Charles Rudd and by the wrongful death beneficiaries was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of the action, and for such other and further relief as this Court may deem just and proper.

s/Raymond P. Mullman, Jr.

GARY W. POLIAKOFF S.C. Bar # 4488

atty@gpoliakoff.com

RAYMOND P. MULLMAN, JR. S.C. Bar #8662

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P. O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Attorneys for the Plaintiffs

Date: November 20, 2019
Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd,)
deceased, through the duly appointed)
Personal Representative, Thelma)
Rudd, individually and on behalf of)
statutory beneficiaries,)

Plaintiff,)

v.)

Pepper Hill Nursing & Rehab Center,)
LLC d/b/a Pepper Hill Nursing &)
Rehab Center n/k/a The Place at)
Pepper Hill, LLC, and Shiloh)
Management, Inc.)

Defendants.)

Civil Action No. 2019CP0202840

MOTION TO DISMISS
AND TO COMPEL ARBITRATION

TO: GARY W. POLIAKOFF, ESQUIRE, AND RAYMOND P. MULLMAN, JR.,
ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF
ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that Pepper Hill Nursing & Rehab Center, LLC
d/b/a Pepper Hill Nursing & Rehab Center n/k/a The Place at Pepper Hill, LLC, and Shiloh
Management, Inc. (“Defendants”), by their undersigned counsel will move before the Presiding
Judge of the Aiken Court of Common Pleas at the Aiken County Courthouse on the tenth day after
service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Plaintiff’s
Complaint and compelling arbitration of Plaintiff’s claims. This motion is filed in lieu of an answer
at this time, pursuant to Rule 12(b), SCRPC.

This motion is made pursuant to Rules 12(b)(1), (2), (3) and (6) of the South Carolina Rules
of Civil Procedure, the Federal Arbitration Act, the applicable Admissions Agreement (Exhibit A),

including the provision compelling arbitration, and all applicable federal and South Carolina case law and statutes.

The basis for the motion is that the responsible party for resident Charles S. Rudd entered into an Admission Agreement containing an arbitration provision applicable to the allegations of plaintiff's complaint (Exhibit A at pp. 13-14).

This motion may be supplemented by a memorandum of law to be filed at a later date.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/ Mark V. Gende
Mark V. Gende, SC Bar No. 72835
Brandon R. Gottschall, SC Bar No. 100621
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

March 2, 2020

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION
PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL
ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION
ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
(1976), AS AMENDED.

ADMISSION AGREEMENT
PEPPER HILL NURSING & REHAB CENTER

Resident's Name: Charles S. Rudd

Responsible Party: P. Thelma C. Rudd 7-27-16

Legal Designation: _____

Date of Admission: 7/27/16 Room: 401 A

The above named Resident, individually or by and through their Responsible Party or Legal Representative, has considered appropriate care settings and is desirous of receiving care at Pepper Hill Nursing & Rehab Center.

Resident/Representative has reviewed this ADMISSION AGREEMENT, has had opportunity to ask questions of Pepper Hill Nursing & Rehab Center personnel about the Agreement and understands that admission to Pepper Hill Nursing & Rehab Center constitutes agreement to be bound by said ADMISSION AGREEMENT.

Resident/Representative acknowledges full and complete understanding that Pepper Hill Nursing & Rehab Center is a licensed nursing facility and will provide the services set forth below in accordance with licensure laws, certification requirements and standards of the industry, none of which cause Pepper Hill Nursing & Rehab Center to become an insurer or guarantor of the health and safety of this Resident, or for that matter, the insurer or guarantor of this Resident's personal property.

Resident/Representative acknowledges that Pepper Hill Nursing & Rehab Center participates in the Medicare and Medicaid Programs as a service to Resident on a voluntary and limited basis, and that Pepper Hill Nursing & Rehab Center may further limit or terminate its participation in either program at its discretion, and may not have a participating bed available at the time the Resident may be eligible for transfer to such a bed.

Pepper Hill Nursing & Rehab Center complies with all Federal and State civil rights and non-discrimination laws, rules and regulations. Residents are admitted without regard to sex, age, race, religion or physical handicap. Employees are hired for positions if available, compatible with their physical handicap, if any, and without regard to sex, age, race or religion.

NOW, THEREFORE, in consideration of the prompt payment by Resident/Representative (and the applicable state, federal, or private insurance program) of the charges made to Resident's account in accordance with the charge structure of Pepper Hill Nursing & Rehab Center and in further consideration of the mutual covenants and promises herein, the parties agree as follows:



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 IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL
 ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION
 ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
 (1976), AS AMENDED.

SERVICES:

A. Pepper Hill Nursing & Rehab Center agrees to offer care including but not limited to: room accommodations, food services, professional nursing services, social services, activities, restoration services, physical therapy, occupational therapy, speech therapy, beauty shop services, barber services, daily housekeeping, laundry services, and Patient trust fund services.

B. The Resident/Responsible Party is responsible for choosing and retaining an attending physician who presently is Dr. MDA. Resident understands that the attending physician must see the resident at regular intervals and document orders and progress in the medical chart. Should these requirements not be met, the Resident/Representative will be asked to change physicians.

C. Pepper Hill Nursing & Rehab Center retains the right to control the source of supply of any items and contract services used in this Facility. Resident/Representative acknowledges that Resident/Representative has exercised freedom of choice by applying for admission at Pepper Hill Nursing & Rehab Center and thereby agrees and contracts with Pepper Hill Nursing & Rehab Center to supply said supply items and contract services as requested.

D. Pepper Hill Nursing & Rehab Center makes room and bed assignments in accordance with the Resident's physical and mental condition. Resident/Representative acknowledges that bed assignments may be changed in order to provide a proper environment for all Residents. Resident family/legal representative will be notified, when applicable, of room or roommate changes.

E. Pepper Hill Nursing & Rehab Center cannot and does not guarantee that it will have an appropriately certified bed if and when the Resident's level of care needs change.

CHARGES:

A. The charges made to you by this Center are:

a. Daily Rate for Room and Board:

Semi private room \$175
 Private rooms \$195
 Private room difference \$20

b. Personal Laundry Services: \$20 per month – private pay

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION IN PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

B. Notification of Changes in Rates:

In the event it becomes necessary to change this charge structure Pepper Hill Nursing & Rehab Center agrees to give thirty (30) days notice. Advance notice of other charges will be made whenever possible as required by State law.

C. Daily Rate Includes:

The routine daily rate includes room and board, routine nursing services, routine social services, activities, routine restoration services, housekeeping and maintenance.

D. Additional Charges:

Treatments by licensed therapists, such as physical therapy, speech therapy, occupational therapy; personal laundry service; television service; over the counter drugs; beauty shop and barber services; medications ordered by physician; central supply items ordered and/or used by particular Resident; special equipment; Oxygen, IV fluids, braces and splints are each subject to additional charge by Pepper Hill Nursing & Rehab Center as directed by payment source.

E. Services Billed Separately:

Physician charges, any laboratory work ordered by the physician, any pharmacy charges, and any services furnished to the Resident as physician requested consultation, including but not limited to dental services, podiatry, optometry, audiology or mental health services are billed directly to Resident by provider of service as directed by payment source.

Sitters and private duty nurses are allowed at Pepper Hill Nursing & Rehab Center only if said sitter or private duty nurse complies with all applicable Rules and Regulations of the Facility. Any sitter or private duty nurse must be approved by Pepper Hill Nursing & Rehab Center and can be removed from the premises by Pepper Hill Nursing & Rehab Center without reason at any time. The financial arrangement with such persons is private (See packet insert).

Bedside telephones, personal televisions, are arranged by Resident/Representative with the Utility service involved.

Dry cleaning, personal shopping & clothing repair are the responsibility of the Resident/Representative.

Transportation services, whether emergency or routine, are billed to the Resident by the service provider.

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F. Bed Reservations:

At the request of the Resident and/or the family, rooms may be reserved for residents absent from Pepper Hill Nursing & Rehab Center provided the usual room and board rate is paid to hold the room.

In the event the Resident/Family chooses not to reserve a bed by paying the usual rate and if the Resident wishes to return to Pepper Hill Nursing & Rehab Center, and there is no legally justifiable nor medical reason for denying re-admission, the Resident will be offered the next available bed appropriately certified.

Resident/Representative will be contacted in the event of a hospital discharge to decide whether to pay for bed hold. Resident understands the risk of delayed access to a bed not reserved. Resident agrees to personally contact Pepper Hill Nursing & Rehab Center social worker or bookkeeper to cancel this bed reservation.

G. Failure to Pay:

Failure to pay an account at Pepper Hill Nursing & Rehab Center when due is a breach of this agreement and will allow Pepper Hill Nursing & Rehab Center to discharge the Resident upon giving thirty (30) days notice, during which thirty (30) day period the breach may be cured by payment of the account in full.

There is a service charge for late payment equal to the highest rate permitted by law, not to exceed 1.5% per month for all accounts over thirty (30) days.

H. Payment in Advance:

It is the policy of Pepper Hill Nursing & Rehab Center to collect payment for room and board thirty (30) days in advance.

Resident hereby makes payment in advance of _____.

Resident expecting Medicare or Medicaid coverage as determined by Pepper Hill Nursing & Rehab Center's professional staff or other private insurance for which benefits are to be paid to Pepper Hill Nursing & Rehab Center will pay in advance that portion of expected charges specifically not covered by plan.

Resident expecting Medicare coverage specifically understands that Medicare co-insurance is the responsibility of the Resident. Payment of co-insurance is required when due. Payment is not expected until services are rendered.

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 (1976), AS AMENDED.

I. Refunds:

Pepper Hill Nursing & Rehab Center will refund to the Resident or legal representative any payment collected in advance and not needed to cover charges.

The refund will be made as soon as practicable, not to exceed number of days required by state and never before the settling of account. Note: Medicare, Medicaid and private insurance accounts sometimes take several months to resolve. Refunds contingent upon insurance payments will be made when Pepper Hill Nursing & Rehab receives resolution of claim.

Monies held for a Resident in trust will be paid to Resident's estate within 30 days of death.

J. FINANCIAL RESPONSIBILITY:

Resident/Representative guarantees that financial information provided Pepper Hill Nursing & Rehab Center is correct, and that Resident assumes full responsibility for taking all steps necessary to establish Medicaid eligibility when/if funds are depleted.

When Pepper Hill Nursing & Rehab Center has determined that the Resident is eligible for insurance benefits, including but not limited to Medicare or Medicaid, it will submit a claim for payment. Pre-certification of insurance, if required, will be the responsibility of Pepper Hill Nursing & Rehab unless otherwise requested by insurance.

The fact that Pepper Hill Nursing & Rehab Center submits a claim for payment does not relieve the Resident from liability for the cost of care for any days determined by the Insurance Companies to be non covered, or for the Resident's portion of the liability as determined by the appropriate individual insurance company.

Resident's personal liability will be billed as follows:

1. Medicare co-insurance days will be billed to the resident on the first day of the month following the utilized days. Co-insurance for this resident will begin on: _____
2. Private insurance days will require resident's payment in advance. Refunds for unused days will be made to resident as applicable.
3. Medicare/Medicaid co-insurance liability will be calculated based on the amount of the resident's social security income and the amount of co-insurance days to be paid each month.

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MEDICARE COVERAGE

Medicare Part A pays for the following services except when another payment source is primary:

- Room and Board (excluding parenteral feeding)
- Specialized rehabilitation services: Physical, Speech and Occupational Therapies
- Medications ordered by physicians
- Ancillary Central Supply items including certain special equipment such as air fluidized beds
- Oxygen, IV Fluids, Braces
- Over the counter drugs
- Television

Medicare Part B pays 80% of the cost of certain services as provided with consent of the Resident:

- Specialized Rehabilitation Services when Part A unavailable
- Physician ordered consultations
- Prosthetic items: Examples: urological supplies and enteral feeding supplies

Medicare Part A does not pay for the following services which are subject to change if requested by Resident:

- Beauty and Barber shop services
- Telephone
- Private duty nurses and sitters
- Payment to hold bed when Resident hospitalized
- Services determined not to meet Medicare coverage criteria, and the Resident has been so notified in writing by Pepper Hill Nursing & Rehab Center
- Transportation, emergency and routine

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COMPLETE THIS SECTION IF RESIDENT HAS A MEDICARE CARD OR NUMBER

Mark (a) if Resident placed in Medicare certified bed; mark (a) and (b) if Resident placed in bed certified for Medicare and Medicaid

a. ☒ If the Resident has a Medicare card or number, then the Resident acknowledges that an explanation as to the Resident's eligibility for Medicare benefits on this admission have been fully made and understood by Resident. It is the professional judgment of Pepper Hill that Resident's care ☒ will ☐ will not be covered by Medicare. (If Resident will not be covered and is placed in a Medicare certified bed, a letter explaining denial of benefits on admission will be attached.)

b. ☐ Resident placed in bed certified for both Medicare and Medicaid acknowledges that a change to a lower level of care renders Resident subject to assignment to any nursing facility certified bed at Pepper Hill Nursing & Rehab Center

Non-qualifying services furnished the Resident in a non-certified bed are not payable by Medicare.

However, Resident understands that Resident or someone acting on Resident's behalf may request Pepper Hill Nursing & Rehab Center to file a claim for Medicare benefits. Based upon this claim, Medicare will make a formal determination and advise whether any benefits are payable.

RESIDENT CERTIFICATION AND AUTHORIZATION TO RELEASE INFORMATION AND PAYMENT REQUEST:

I certify that the information given by me in applying for payment under Title XVIII of the Social Security Act or my private insurance is correct. I authorize the holder of medical or other information about me to release to the Social Security Administration or its intermediaries or carriers or my private insurance carriers any information needed for this or a related Medicare health claim. I request that payment or authorized benefits be made on my behalf.

Resident/Representative: Thelma C. Rudd 7-27-76

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MEDICARE REVIEW:

Pepper Hill Nursing & Rehab Center continues to monitor the Resident's progress, reporting to the Resident's physician and to the physicians belonging to Pepper Hill Nursing & Rehab Center's Utilization Review Committee. This committee will determine the necessity for and the effectiveness of the treatment the Resident receives, determining ongoing Medicare coverage.

You will be notified in writing of the Utilization Review Committee's non coverage decision at the same time that your physician is notified of the opportunity to present his/her view.

MEDICAID PROGRAM

Resident ____ has ☒ has not applied for Medicaid eligibility. Resident ____ does ____ does not intend to request medical approval Medicaid eligibility within 30 days of admission.

Resident eligible for Medicaid acknowledges that his/her monthly income will be applied toward the cost of care in accordance with Federal and State regulations.

Request Change of Payee: YES ____ NO ☒

____ Resident has established eligibility for Medicaid and will have a Resident liability amount of \$ ____.

____ Resident plans to apply for Medicaid and understands that the State will determine the amount of the Resident's income to be paid to Pepper Hill Nursing & Rehab Center. Resident acknowledges that failure to meet Medicaid eligibility requirements in a timely fashion will render Resident liable for payment in full.

If Resident is located in a bed not certified for Medicaid participation, Resident understands that Pepper Hill Nursing & Rehab Center cannot and does not guarantee or promise that a Medicaid certified bed will be available at such time as the Resident may be eligible for same.

The State Medicaid plan pays for the following services:

- Room and Board
- Specialized Rehabilitation Services
- Prescription Medications up to State limits
- Over the counter drugs (as outlined in State plan)
- Personal Laundry Services
- Payment to hold bed up to 10 days when Resident is discharged to hospital.

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Services not paid for under the state plan include:

- Private room accommodations
- Beauty and Barber shop services
- Dry cleaning
- Telephone and Television
- Private duty nurses and sitters
- Services for patients not meeting the medical criteria of the state program

MEDICAL RECORDS:

Resident understands and agrees that the medical records concerning Resident are and will continue to be the property of Pepper Hill Nursing & Rehab Center, provided that Pepper Hill Nursing & Rehab Center will not disclose same to any person or party other than the Resident and agencies authorized by law without either the consent of Resident or a legal order.

PATIENT RESPONSIBILITIES:

1. Providing such personal clothing and effects as needed or desired by Resident. Everyday street clothing that is comfortable and easy to move in, is preferred unless the resident is bed-bound.
2. Paying hospital and any ambulance service charges, also to be responsible for physician's fees, medications, x-rays. Laboratory charges and any other treatment ordered by Resident's physicians, which are not covered by the resident's insurance(s).
3. Providing all non-medically necessary transportation.
4. Paying all costs, expenses and reasonable attorney's fees incurred by Pepper Hill Nursing & Rehab Center in the collection of any and all sums due and owing by the Resident, including a service charge equal to the highest rate permitted by law, not to exceed 1.5% per month for all accounts over thirty (30) days.
6. It is the responsibility of the Resident to give advance notice when Resident is terminating this agreement, except when prevented by Resident's medical condition.

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TRANSFER AND DISCHARGE:

1. Resident agrees and understands that this contract is applicable and in full force and effect until the discharge of Resident, regardless of payment source changes. Resident further understands and agrees that Pepper Hill Nursing & Rehab Center has not promised or guaranteed to remain in either the Medicare or Medicaid programs and that if Resident is covered by either and Pepper Hill Nursing & Rehab Center terminates its participation therein, the Resident must either vacate Pepper Hill Nursing & Rehab Center or remain as a private paying Resident. Additionally, Pepper Hill Nursing & Rehab Center cannot and does not guarantee that it will have a certified bed if Resident's level of care needs change.
2. Pepper Hill Nursing & Rehab Center will assist the Resident so that relocation is accomplished as smoothly as possible. Pepper Hill Nursing & Rehab Center will only initiate the transfer or discharge of a Resident when:
 - a. the welfare of the Resident cannot be met at Pepper Hill Nursing & Rehab Center;
 - b. within 30 days of admission to the extent that care in a licensed nursing facility is not medically approved for insurance coverage;
 - c. non-payment by the Resident or the appropriate third party payer has occurred;
 - d. Pepper Hill Nursing & Rehab Center ceases to operate or discontinues a particular program on which patient relies for funding;
 - e. safety of the individual is endangered; or
 - f. health or safety of individuals at Pepper Hill Nursing & Rehab Center is threatened or endangered.
3. Pepper Hill Nursing & Rehab Center will give the Resident 30 days written notice before discharge or transfer when and if any of the above criteria are met except when the health or safety of individuals is endangered or when the transfer or discharge is required by the Resident's urgent medical need, or when the Resident has not resided in the Facility for at least 30 days.
4. Individuals not eligible for admission or retention are:
 - a. Anyone who is destructive of property, self-destructive, suicidal, disturbing or abusive to other residents as determined by a physician or other legally authorized healthcare provider, unless the facility had and uses sufficient resources to appropriately manage and care for the person.

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(1976), AS AMENDED.

GRIEVANCE RESOLUTION:

The Parties agree to follow the Grievance Procedure described in this Admissions Agreement packet for any claims or disputes arising out of or in connection with the care rendered to Resident by Pepper Hill Nursing & Rehab Center and/or its employees.

LIMITATIONS OF LIABILITY:

Resident and Representative agree to the following Limitations of Liability:

- A. Resident and representative hereby release Pepper Hill Nursing & Rehab Center from and acknowledge that Pepper Hill Nursing & Rehab Center shall not be liable for personal injuries death or other conditions of any kind suffered by resident while under the care of Pepper Hill Nursing & Rehab Center unless caused by gross negligence or willful criminal act on the part of its employees.
- B. Pepper Hill Nursing & Rehab Center shall not be liable for any harm or loss for failure of resident or representative to provide private duty nursing services or other services or care as may be required by resident's condition.
- C. Except for resident trust funds administered in accordance with state and federal regulations, Pepper Hill Nursing & Rehab Center shall not be responsible for loss, theft or destruction of money, papers or personal property of resident or any other person.
- D. Pepper Hill Nursing & Rehab Center shall not be liable for and resident hereby releases Pepper Hill Nursing & Rehab Center and holds Pepper Hill Nursing & Rehab Center harmless for any and all harm, injury or loss suffered by resident outside the physical confines of Pepper Hill Nursing & Rehab Center and not in the custodial care of Pepper Hill Nursing & Rehab Center.
- E. Resident's failure to accept any nursing care, medical or other treatment or other item of service that is deemed necessary and proper by Pepper Hill Nursing & Rehab Center from any and all liability which may result from resident's failure to accept said care, treatment, item or service.

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OBLIGATIONS OF REPRESENTATIVE:

The representative is anyone authorized by the Resident to act on the Resident's behalf. The Representative, by signing this contract, acknowledges acceptance of the duties and responsibilities of this role.

The Representative who is authorized to accept Resident finances will not incur personal financial liability except for breach of duty or contract in properly directing the Resident's resources to pay for the Resident's care.

TERMINATION OF AGREEMENT:

This Agreement can be terminated by Resident upon the giving of notice to Pepper Hill Nursing & Rehab Center, and this Agreement can be terminated by Pepper Hill Nursing & Rehab Center upon the giving of 30 days written notice to Resident in accordance with the licensure laws of this state and applicable Medicare/Medicaid regulations.

SEVERABILITY:

If any provision of this agreement shall be invalid or unenforceable to any extent, the remainder of this agreement shall not be affected by such provision and shall be enforced to the greatest extent permitted by law.

SUCCESSORS:

This agreement shall be binding upon Resident/Representative, Pepper Hill Nursing & Rehab Center, and each of their heirs, successors and assigns. This agreement may not be amended or modified except in writing signed by the parties hereto.

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION
RSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL
ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION
ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
(1976), AS AMENDED.

ARBITRATION:

Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this agreement or resident's stay in this facility, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the Uniform Arbitration Act, Section 15-48-10, et. seq., Code of Laws of South Carolina), the rules of practice and procedure for the arbitration of disputes of J.A.M.S. Arbitration or any successor thereof ("J.A.M.S.") and the "special rules" set forth below. In the event of any inconsistency, the special rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any part to the Admissions Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

- (a) Special Rules. The arbitration shall be conducted in Aiken, South Carolina and administered by J.A.M.S. who will appoint an arbitrator. If J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All Arbitration hearings will be commenced within 120 days of the demand for arbitration; further, upon a showing of cause, the arbitrator shall only be permitted to extend the commencement of such hearing for an additional 60 days.
- (b) Reservation of Rights. Nothing in this agreement shall be deemed to limit the applicability of any otherwise applicable statutes of limitation or waivers contained in this agreement.
- (c) Waiver of Right to Trial by Jury. Resident and responsible party hereby expressly waive any right to trial by jury of any claim, demand, action or cause of action arising out of or relating to this agreement, including any claim based on or arising from any alleged tort.

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PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL
ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION
ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
(1976), AS AMENDED.

Resident's Initials:
 Responsible Party's Initials:
 Pepper Hill Nursing & Rehab Center:

P. (TP) 7-27-16
ACA

I have read this Admissions Agreement and the information packet and have been given an opportunity to ask questions relevant to this admission. A copy of the signed agreement will be provided to the resident or legal representative.

RESIDENT:

Date: _____

REPRESENTATIVE:

Thelma C. Rudd

Date: 7-27-16

PEPPER HILL NURSING &
 REHAB CENTER, L.L.C.

By: ACA

Title: SS

Notification and Consent

Pepper Hill Nursing and Rehab Center

RESIDENT'S NAME: Charles S. RuddREPRESENTATIVE'S NAME: Thelma C. Rudd 7-27-16DATE OF ADMISSION: 7/27/161. RESIDENT'S RIGHTS:

I have been informed both orally and in writing of resident's rights.

2. FACILITY RULES AND REGULATIONS:

I have been informed both orally and in writing of the rules and regulations of this facility. Any changes in these rules and regulations will be addressed and discussed at monthly resident council meetings. I understand that resident council meeting minutes reflecting changes in the facility rules and regulations will be available for my review.

3. VISITATION RIGHTS:

Residents have the right to receive visitors of their choice unless otherwise restricted. We request that for the security of our residents and staff, general visiting hours between 8:00 a.m. and 8:00 p.m. be observed for friends and volunteers. Family members may visit any time during visiting hours and may gain entry into the building through the front entrance. In semi-private rooms, please limit visitors to 2 people per Resident, or ask that the resident be brought out of the room to visit with larger groups.

4. MEDICARE AND MEDICAID:

I have received information regarding the services and benefits provided by both Medicare and Medicaid and have been advised as to how to receive these benefits if so needed.

5. PHYSICIAN SERVICES:

I have designated the physician identified below as my personal attending physician. If he/she fails to fulfill a given requirement, the facility will have the right, after consulting with me, to seek another physician to assure that I am appropriately and adequately cared for and treated.

Physician Name: _____ Phone: _____

Address: _____

RESIDENT'S NAME: Charles S. Rudd

6. DENTAL SERVICES:

Upon admission to this facility, I understand that an initial oral examination may be provided by designated medical personnel. If further examination or treatment is required by professional dental practitioners, I understand that the cost would be my responsibility and that it is my right to refuse any further treatment.

7. SELF-ADMINISTRATION OF DRUGS:

Residents in nursing facilities have the right to self-administer certain medications if this is requested and appropriate. I understand that the interdisciplinary team, with the Physicians discretion, will ultimately determine whether or not to grant this request only after thorough assessment of the resident's capabilities and needs and in compliance with facility policy.

****PLEASE DO NOT BRING IN ANY MEDICATIONS TO THE RESIDENT!**

8. MAIL:

All mail will be delivered timely and unopened unless otherwise indicated.

9. CARE PLAN MEETINGS:

Interdisciplinary care team meetings are held on a quarterly basis. You are welcome and encouraged to attend these meetings. You will receive an invitation by mail at least 1-2 weeks in advance to notify you of the care plan date and time. Please note that these dates are subject to change.

10. OMBUDSMAN EXAMINATION OF RECORDS:

I hereby authorize the facility to allow the ombudsman to examine my clinical record if needed.

Yes ☒ No ☐

11. PHOTOGRAPH AUTHORIZATION:

I give permission to take my photograph for identification and medical documentation within the facility to be maintained as a part of the medical record.

Yes ☒ No ☐

RESIDENT'S NAME: Charles S. Rudd

12. INFECTION CONTROL AUTHORIZATION:

I authorize staff of Pepper Hill Nursing & Rehab Center to complete Infection Control rounds in my room. I give them permission to rectify any matters of sanitation that could threaten my well-being or the overall infection control of this facility. I understand that I have the right to be present.

Yes ☒ No ☐

13. PERMIT FOR USING ELECTRICAL APPLIANCES:

I hereby understand that I use electrical appliances in my room while residing here at my own risk and hereby absolve the Pepper Hill Nursing & Rehab Center from all and any responsibility from burns, injuries or property damage which may result from or because of said appliance(s).

Yes ☒ No ☐

I am in agreement with items 1-13 as signified by my signature or noted otherwise:

Signature: Thelma C. Rudd Date 7-27-16

14. AUTHORIZATION FOR RELEASE OF INFORMATION:

I hereby authorize Pepper Hill Nursing & Rehab Center to furnish such professional information in accordance with the policy of this facility, as may be necessary for the completion of my health care claims, or from the medical records compiled during my stay at Pepper Hill and release Pepper Hill from all legal liability that may arise from the release of the information requested. I authorize the release of complete and accurate information from the resident's record in sufficient detail to provide for the continuity of care, from any facility or institution transferring the resident into Pepper Hill Nursing & Rehab Center or another health care provider to which resident is transferring.

Signature: Thelma C. Rudd

RESIDENT'S NAME:

Charles S. Rudd15. RELEASE FROM RESPONSIBILITY FOR VALUABLES:

I understand that Pepper Hill Nursing & Rehab Center will not be responsible for the loss or damage to any clothing, furs, money, checks, credit cards, documents, jewelry, glasses, dentures, hearing aides, or other articles of unusual value and small compass and shall not be liable for loss or damage to any other personal property of resident's visitors.

Signature:

Thelma C. Rudd7-27-1616. RELEASE OF RESPONSIBILITY FOR LEAVE OF ABSENCE:

I understand and accept complete responsibility for resident while off of the premises of Pepper Hill Nursing & Rehab Center and absolve the management of Pepper Hill Nursing & Rehab Center, its personnel and the attending physician of responsibility for any deterioration in condition, or accident that may happen while the resident is away. I agree to sign Resident in and out of the facility at the nurse's station and notify staff when LOA. **Residents receiving care under Medicare are requested not to leave the premises except for emergency leaves. All residents, regardless of pay source, must be certain not to miss any therapy sessions or medication passes. Medicare residents remaining on LOA after midnight must be discharged in accordance with Medicare guidelines.

Signature:

Thelma C. Rudd7-27-1617. CONSENT FOR TREATMENT:

This constitutes consent and authorization to all routine nursing home care as rendered by the staff of Pepper Hill Nursing & Rehab Center and ordered by the attending physician. The resident and/or legal representative is encouraged to participate in the resident's care planning process. Approval of the Resident Care Plan is the preferred manner in which consent for most treatment is obtained.

Signature:

Thelma C. Rudd7-27-1618. ELIGIBILITY CONSENT:

I hereby consent to having the agency processing any eligibility application I have made to release information regarding the status of my application, whether pending or approved, to the bookkeeper or social services department of Pepper Hill Nursing & Rehab Center.

Name of Agency:

Signature:

[Signature]

RESIDENT'S NAME:

Charles S. Rudd19. AUTHORIZATION FOR BARBER AND BEAUTICIAN SERVICES:

I understand that permanent waves, hair coloring, and/or other treatments are usually harmless to hair; however due to age, health and/or medication; this may not stand true in this resident's particular circumstance. With full knowledge of this, I hereby accept full responsibility for any damage that may result, directly or indirectly, to the named resident by using the above mentioned products.

 I wish to utilize the Beautician/Barber services provided by Pepper Hill Nursing & Rehab Center as desired by Resident/Representative. (See #22 Resident Trust Account)
✓ Family will make independent Beautician/Barber arrangements.

20. LAUNDRY CONSENT: FACILITY TO DO LAUNDRY
✓ FAMILY TO DO LAUNDRY

I choose to have the facility to do my personal laundry and understand there will be a \$20 charge which will be billed to me monthly when resident is paying privately. I understand that only 7-10 outfits of clothing should be brought in due to the closet space provided. I understand that all clothing items must be labeled by the facility, regardless of who is doing laundry. If at any time I should decide to have my laundry done by someone else, I understand that I should let the facility know. I understand and agree to provide a closed plastic container with a lid should the laundry be done by someone other than the facility. Pepper Hill Nursing & Rehab Center staff will clean and sanitize such container on a regular basis.

*Laundry is a covered service when Medicare/Medicaid is primary payee.

21. IN-ROOM CABLE AUTHORIZATION AND CONSENT:

✓ Yes, please hook up cable No, I do not wish to have cable

I choose to have the facility provide active cablevision in my room (TV not provided) and understand that there will be a \$25 charge which will be billed to me monthly if paying privately or Medicaid is primary payee.

*Television is a covered service when Medicare is primary and televisions are supplied in most short term rehabilitation designated rooms.

I am in agreement with items 19-21 as signified by my signature or otherwise noted:

Signature: Thelma C. Rudd 7-27-16

RESIDENT'S NAME:

Charles S. Rudd22. RESIDENT TRUST ACCOUNT AUTHORIZATION:

I hereby authorize and delegate the responsibility for handling my personal monies deposited in the resident's trust account to Pepper Hill Nursing & Rehab Center, to make authorized financial transactions involving my account on my behalf.

I understand that no person other than myself or those persons I have designated in writing shall at any time be authorized to withdraw funds from my account, and that all withdrawals of my funds be made with my prior knowledge and consent

If for any reason I become incapacitated, I authorize my representative, designated in writing on the admission agreement, to act in my behalf in authorizing the disbursement of funds from my account on my behalf.

I understand that I will have the balance and summary of the account activity communicated to me each quarter (every three months) or as reasonably requested, so that I may review the specifics of transactions and have any questions answered that I have at this or any other time.

I consent for any money in the resident's fund account to be applied toward any unpaid bills at this facility upon discharge or death of the above named resident.

If I wish to utilize the beauty/barber shop services, I understand that funds must be available in my trust account for Pepper Hill Nursing & Rehab Center to pay for the services that I choose.

Signature:

Thelma C. Rudd 7-27-1623. CONSENT REVOCATION:

I understand that I have the right to, at any time, revoke any of the previously mentioned consents, authorizations, and releases. I understand that this must be done in writing and added to my record as an addendum.

Signature:

Thelma C. Rudd 7-27-16

RESIDENT'S NAME: Charles S. Rudd

24. RECURRING INCOME DUE TO THE FACILITY

I understand that all income (i.e. Social Security check, VA Pension, Retirement etc.) is to be paid to Pepper Hill Nursing & Rehab Center if the resident has Medicaid as their secondary insurance during a Medicare Part A stay or if the resident is admitted with Medicaid as their primary insurance. All checks must be sent directly to the facility from their respective sources. Pepper Hill Nursing & Rehab Center will become the payee for services rendered during the residents' stay.

Direct Medicaid Admit from home – Payment is due on the first day of the following month.

Direct Medicaid Admit from another facility – Payment is due immediately. Amount will be prorated accordingly.

Medicare A Admit; Medicaid secondary or no secondary insurance – Payment is due on day 21.

If payment is not received as stated above, I understand that the resident will be discharged for nonpayment.

Signature: Thelma C. Rudd Date: 7-27-16
Pepper Hill Representative: [Signature]

Resident/Representative Notification
For
Restraint Free Facility

Resident: _____

Charles S. Ruddy

It is the policy of Pepper Hill Nursing and Rehab Center, LLC that all residents are allowed to maintain his or her highest practicable well-being in an environment that prohibits the use of both physical and chemical restraints.

There are two types of restraints, physical and chemical. A physical restraint is any manual method, physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. A chemical restraint is defined as any drug that is used for discipline or convenience and not required to treat medical symptoms. Medical symptoms are defined as an indication or characteristic of a physical or psychological condition (ex: behaviors due to dementia).

Reasons for having a restraint free environment may include but are not limited to: decline in resident's physical functioning and muscle condition, contractures, increased incidence of infections, development of pressure ulcers, delirium, agitation and incontinence. Restraints have also been found in some cases to increase the risk of falls or head trauma, strangulation or entrapment, loss of autonomy, dignity and self respect. This may cause withdrawal, depression, or reduced social contact, functional capacity and quality of life.

Alternatives to restraint use will be considered and discussed with the resident and/or responsible party. These alternatives may include modifying the resident's environment and/or routine.

The legal representative cannot give permission to use restraints for the sake of discipline, staff convenience or to prevent injury.

I have read and/or had the negative outcomes associated with restraint use explained to me and I was given the opportunity to discuss and/or ask questions. I understand that residents are allowed to maintain their well-being at Pepper Hill Nursing and Rehab Center and that restraints will not be used.

Signature: _____

P. Thelma C. Ruddy

Relationship: _____

Wife

Date: _____

7-27-16

Pepper Hill Representative: _____

GMM

ACKNOWLEDGEMENT CERTIFICATE

I, Thelma C. Rudd, certify that

I have received a copy of the **Resident's Bill of Rights** issued by Pepper Hill Nursing Center. The contents of the document have been explained to me, and I understand my rights as set forth therein.

Thelma C. Rudd 7-27-16

Signature of Resident

[Signature]

Witness

Dated this 27 day of July, 2016

NOTICE OF PRIVACY PRACTICES

Record of Acknowledgements

Name of Resident:

Charles S. Rudd

Date:

7/27/16

We are committed to preserving the privacy and confidentiality of your health information whether created by us or maintained on our premises. We are required by certain state and federal regulations to implement policies and procedures to safeguard the privacy of your health information. We are required by state and federal regulations to abide by the privacy practices described in the notice provided to you including any future revisions that we may make to the notice as may become necessary or as authorized by law.

Effective Date of This Privacy Notice

The effective date of this *Privacy Notice* is April 14, 2003.

Changes or Revisions to our Privacy Notice

We reserve the right to change our facility's *Privacy Notice* at any time and to make the revised or changed notice effective for health information we already have about you as well as any information we receive in the future about you. Should we revise or change our *Privacy Notice*, we will post a copy of the new or revised notice in our main lobby. You may obtain a copy of the new/revised *Privacy Notice* from the business office or download a copy from our website (as applicable).

[] Our *Privacy Notice* was revised on _____ [] No changes since the effective date listed above.

Privacy Notices, Information Restrictions, Record Amendments/Corrections, Disclosures of Information, Revoking an Authorization, Inspection and Copying of Records, Confidential Communications, Filing Complaints, Etc.

Should you have any questions concerning our facility's privacy practices, obtaining copies of our privacy notice, requesting restrictions on the release of your information, revoking an authorization, amending or correcting your health information, obtaining a listing of the information we disclosed concerning your health information, requests to inspect or copy your medical information, requests that we communicate information about your health matters in a certain way, denial of access to your health information, filing complaints, or any other concerns you may have relative to our facility's privacy practices, please contact:

YOU MAY ALSO FILE COMPLAINTS WITH:

Wade H. Jones, III
3525 Augustus Road
Aiken, South Carolina 29801
Phone: 803-642-8376
Fax Number: 803-642-8356
Email Address: wadejones@pepperhill.org

U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
(202) 619-0257
Toll Free 1-877-696-6775

Acknowledgement

I certify that I received a copy of this facility's *Privacy Notice* and that I have had an opportunity to review this document and ask questions to assist me in understanding my rights relative to the protection of my health information. I am satisfied with the explanations provided to me and I am confident that the facility is committed to protecting my health information.

Date:

My Signature:

My Printed Name:

Signature of Witness:

Date:

I certify that I am the authorized representative of _____

and that I have received the *Privacy Notice* on behalf of this individual and that the facility provided me with an opportunity to review this document and ask questions to assist me in understanding his/her privacy rights. I am satisfied with the explanations provided to me and I am confident that the facility is committed to protecting health information.

Date:

Signature of Representative:

Printed Name:

Relationship to Individual:

Signature of Witness:

Date:

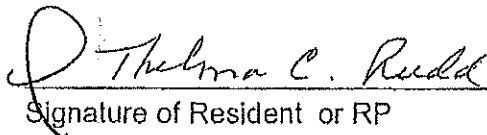
A copy of this document must be provided to the person to whom the *Privacy Notice* was provided and a copy must be filed in the medical record.

4. **EFFECT ON INDIVIDUAL OF NOT PROVIDING INFORMATION.** The information contained in the LTC MDS System of Records is generally necessary for the facility to provide appropriate and effective care to each resident.

If a resident fails to provide such information, e.g. thorough medical history, inappropriate and potentially harmful care may result. Moreover, payment for services by Medicare, Medicaid and third parties, may not be available unless the facility has sufficient information to identify the individual and support a claim for payment.

NOTE: Residents or their representative must be supplied with a copy of the notice. This notice may be included in the admission packet for all new nursing home admissions, or distributed in other ways to residents or their representative(s). Although signature of receipt is NOT required, providers may request to have the Resident or his or her Representative sign a copy of this notice as a means to document that notice was provided and merely acknowledges that they have been provided with this information.

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


Signature of Resident or RP

7-27-16
Date

MEDICARE SECONDARY PAYER QUESTIONNAIRE

Name of Beneficiary: Charles S. Rudd Claim #: _____

1. Is the beneficiary covered by Veterans Adm., Black Lung or Worker's Compensation?

2. Is this hospitalization caused by an accident that occurred at work? Yes ___ No ☒3. Was illness due to an automobile injury? Yes ___ No ☒

a. Date of accident: _____

b. What type of accident caused illness/injury? _____

c. Is the beneficiary filing or intending to file a liability suit? Yes ___ No ___

4. Are beneficiary or spouse employed (Medicare disabled beneficiaries under age 65 or Medicare beneficiaries over 65) covered by a company group health plan?

Yes ___ No ☒

5. Is the beneficiary entitled to benefits solely on the basis of end stage renal disease?

Yes ___ No ☒

a. Has the patient been undergoing kidney dialysis for more than 12 months?

Yes ___ No ___

6. Have you revoked standard Medicare in lieu of Hospice or HMO? Yes ___ No ☒

If you answered yes to any of the above questions, you will need to fill out the information on the reverse side.

Remember it is the provider's responsibility to bill primary insurers

Signature: Charles S. RuddDate: 7-27-16

Remarks:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd,	)	
deceased, through the duly appointed	)	
Personal Representative, Thelma Rudd,	)	
Individually and on behalf of statutory	)	PLAINTIFFS' MEMORANDUM IN
beneficiaries,	)	OPPOSITION TO DEFENDANTS'
	)	MOTION TO DISMISS AND COMPEL
Plaintiffs,	)	ARBITRATION
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center,	)	
LLC d/b/a Pepper Hill Nursing &	)	
Rehab Center and Shiloh Management	)	
Company, Inc.	)	
Defendants.	)	

COMES NOW the Plaintiffs submit this memorandum of law in opposition to Defendants' Motion to Dismiss and Compel Arbitration. This case involves a tort action for nursing home abuse and neglect which occurred while Mr. Rudd was a resident of a skilled nursing facility owned and operated by the Jones Family through the above Defendants.

See the Application for License which lists the role (Administrator, CFO, President, and Secretary) that each family member had in operating and managing the facility including as managing members of the governing body. **(Exhibit 1)**. On the Center for Medicare and Medicaid Services website Nursing Home Compare, the ownership and management indicate members of the Jones Family as owners and managers. **(Exhibit 2)**. The Medicaid Cost Reports also show their personal and direct involvement, and the substantial financial benefits they derived from siphoning funds away from the facility to themselves and related entities. **(Exhibits 3a-c)**. For example, the lease agreement between the facility and the landlord (also owned by the Jones Family) was signed by Wade Jones for both entities indicating self-dealing and unnecessary diversion of funds away

from the facility into the pockets of the Jones Family. (**Exhibit 4**). In fact, the Jones Family treated the taxpayer funds going into the facility as their own piggybank to be used for sports and entertainment for the Family. (See **Exhibit 5a-d**). The 2018 Medicare Cost Report shows that Wade Jones diverted \$1,740,000 to related shell companies; his family, and himself. (**Exhibit 6**).

The Jones family used these companies as their personal piggy bank at the expense of residents. Defendants failed to develop and implement policies and procedures including properly training enough staff at the facility to monitor, supervise, and assist high fall risk residents like Mr. Rudd. This neglect caused Mr. Rudd to suffer a traumatic brain injury which hastened his wrongful death. (**Exhibit 7 – Expert Affidavit**). Since the wrongful death of Mr. Rudd, Defendants have sold the facility, and allegedly possess no assets or insurance coverage to pay any claims.

Based on current case law in South Carolina, Defendants' Motion is frivolous. The same arguments were rejected recently in the same Court. (**Exhibit 8**). The true purpose of Defendants' attempt to compel a clearly unenforceable arbitration provision is to create delay to enable the Jones Family to continue dissipating assets derived from the recent sale of the facility, and to delay justice for the widow, Mrs. Rudd. If arbitration is ordered or if Defendants appeal the denial, Plaintiffs respectfully request a bond be set by the Court to ensure Defendants have adequate resources to cover the costs of arbitration and any potential award. Plaintiffs would show that the Arbitration Agreement is unenforceable for the following reasons:

- 1. The Arbitration Agreement is unenforceable because the signatory had no legal authority to bind Charles Rudd to the Arbitration Agreement.**
- 2. Defendants cannot meet the elements of the affirmative defenses of equitable estoppel, ratification and third-party beneficiary under the facts and circumstances in this case.**
- 3. The Arbitration Agreement is both procedurally and substantively unconscionable, and should not be enforced.**
- 4. The Arbitration Agreement does not govern the wrongful death claim.**
- 5. A jury trial is demanded under 9 U.S.C. §4 if needed to determine if a valid arbitration agreement exists.**

I. FACTUAL BACKGROUND

Charles Rudd was admitted to Defendants' facility on July 27, 2016. On May 10, 2018 Charles Rudd died from injuries sustained at Defendants' facility. Mr. Rudd never signed the Arbitration Agreement. There is no evidence he was aware of the Agreement. Thelma Rudd was not his power of attorney and had no legal authority to waive Mr. Rudd's constitutional right to a jury trial at the time of the admission. Mrs. Rudd was told to sign the Admission paperwork but was not aware of the Arbitration Agreement. The signing of the Arbitration clause is not a condition of admission.¹ There were dozens of pages of documents requiring multiple signatures throughout the entire voluminous admissions packet that Thelma had to sign during the hasty and ill-explained admissions process.

In June of 2019, Plaintiffs filed the Notice of Intent alleging negligence and wrongful death arising from Defendants' failure to monitor and supervise Charles' safety and well-being while at the Facility. On March 2, 2020 the Facility filed a frivolous Motion to Dismiss and Compel Arbitration. Defense counsel knows or should know that no valid or enforceable arbitration agreement exists based on well-established case law in South Carolina including the Coleman, Hodge, and Thompson cases. Defendants are clearly using this Motion to delay and obstruct the orderly progression of this litigation. Defendants have refused to fully respond to discovery or participate in this litigation. The Facility must show a valid and enforceable arbitration agreement

¹ Facilities must "not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan...any other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay at the facility." 42 U.S.C. § 1396r(c)(5)(A)(iii)(emphasis added). Any nursing home facility that accepts Medicare or Medicaid funds for resident care is *expressly forbidden* from accepting any other money, benefit or other consideration as a precondition for admitting a patient to the facility or as a requirement for continued stay in a facility.

between Charles and the Facility to prevail on its motion. Defendants know that they cannot meet this burden.

II. BURDEN OF PROOF

The Facility seeks to compel arbitration. Courts interpret a jury trial waiver narrowly and construe contract ambiguities against Defendant who drafted the Arbitration Agreement² Defendant carries the burden to prove a valid and enforceable arbitration contract. Not all arbitration clauses are per se enforceable as Defendant represents.³ Whether the parties agreed to arbitrate is a question of substantive state law.⁴ The recent South Carolina Supreme Court case Wilson v. Willis, 827 S.E.2d 167 (2019) discusses a presumption against arbitration when it involves a nonsignatory as it does in this case:

Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts.” Moreover, because arbitration, while favored, exists solely by agreement of the parties, **a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.**

In Chassereau v. Global Sun Pools, Inc., 644 S.E.2d 718 (S.C. 2007), the Supreme Court stated:

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the arbitration agreement at issue in the instant case.

Thus, the presumption favoring arbitration only applies *after* the court finds there is a valid, enforceable arbitration agreement.⁵ The mandatory language in the Federal Arbitration Act

² Nat'l Acceptance Co., 381 F.Supp. at 271.

³ See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008).

⁴ Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.”).

⁵ EEOC v. Waffle House, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003).

("FAA") only applies in instances where a valid arbitration agreement has been well established. This is self-evident from the FAA provisions: "The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement...is not in issue." 9 U.S.C. § 4. The U.S. Supreme Court has often cited the FAA's savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability.⁶

The Court must look to state law to decide the threshold questions of contract formation.⁷ Arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts.⁸ The judicial inquiry includes an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability.⁹ In short, pro-arbitration policy does not validate a contract lacking the building blocks of a binding contract especially consent. Charles never assented to the Arbitration Agreement and did not empower anyone else to assent on his behalf.

III. LEGAL ANALYSIS

Defendants' motion to compel arbitration is effectively a motion to enforce a contract. In the ordinary course, a nursing home resident who alleges injury would bring her claims before the Court as Plaintiff has done here and the nursing home would mount its defense in the same forum. A valid contract to arbitrate their disputes is the only way for the parties to opt out of the litigation

⁶ Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2.

⁷ Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'").

⁸ Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) Simpson, 373 S.C. at 14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

⁹ See Sydnor v. Conesco Fin. Servicing Corp., 252 F.3d.302, 205 (4th Cir.2001).

process. Defendants had no such contract with Charles Rudd. The “Arbitration Agreement” on which Defendants’ motion relies is invalid because, under bedrock contract principles, there can be no contract without the mutual assent of its proposed parties.

A. Signatory had no Legal Authority to Waive Jury Trial

Thelma Rudd was not power of attorney. Thelma was not Mr. Rudd’s agent related to anything other than possibly health care decisions under the S.C. Health Care Surrogate Act which does not empower her to waive his right to a jury trial. "The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32). Thelma did not have that authority. Defendants have produced no evidence indicating that Thelma had authority to enter a contract on Charles’ behalf to waive Charles’ right to a jury trial.

For agency situations, the legal burden is on the party asserting that an agency exists.¹⁰ In this case, Defendants must show all necessary elements of an agency relationship are “clearly established” by the facts. Id. A party dealing with an agent has a duty to use due care to ascertain the scope of the agent’s authority to act. Id. An agency may not, however, be established solely by the declarations and conduct of an alleged agent.¹¹

The basis of apparent authority is representations *made by the principal* to the third party and reliance by the third party on those representations.¹² South Carolina law requires that to prove apparent authority the Defendants must show: 1) that the purported principal consciously or impliedly represented to another to be his agent, 2) that there was reliance upon the representation,

¹⁰ Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996).

¹¹ Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 142-143, 399 S.B.2d at 433 (Ct. App. 1990) overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000)).

¹² Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

and 3) that there was a change of position to the relying party's detriment.¹³ The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that between the principal and the third party.¹⁴ Defendants have failed to provide any evidence beyond Thelma's signature to suggest she had legal authority to waive his right to a jury trial. The fact that Thelma signed documents so that Charles could receive health care in no way indicates a manifestation of authority by Charles to waive his right to a jury trial or agree to arbitration. Charles never manifested any form of assent establishing Thelma as his agent for any purpose and certainly not to waive his right to a jury trial.

Our Supreme Court has held that a surrogate without proper legal authority cannot bind a person to arbitration.

The scope of Sister's authority to consent to "decisions concerning Decedent's health care" extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. **The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement.** We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 353-54, 755 S.E.2d 450, 454 (2014).

Coleman is directly on point with the facts of the case at hand. In Coleman, the circuit court refused to compel arbitration because the sister of a nursing home resident who signed the arbitration and admission agreements lacked authority to bind her sister to the arbitration agreement. In affirming the circuit court's order, the Supreme Court found that, although the South Carolina Adult Healthcare Consent Act gave the sister authority to make 'healthcare decisions' on behalf of her sister, consent for medical treatment is not the same as binding an incompetent person

¹³ Cownburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005).

¹⁴ Vereen v. Liberty Life Insurance Company, 306 S.C. 423, 412, S.E.2d 425 (Ct. App. 1991).

to a legally binding contract such as an arbitration agreement. Coleman, 407 S.C. at 352, 755 S.E.2d at 453-54. The court reasoned that the Act extends authority to surrogates to make traditional healthcare decisions and financial decisions that arise out of those decisions. Id. Thelma had no legal authority to sign the Arbitration Agreement, and from the record so far, Defendants knew or should have known this fact but demanded she sign anyway.

Defendants misunderstands the legal distinction between health care and dispute resolution decisions. It is not at all unusual for a family member to have authority to admit a loved one to a nursing home while lacking authority to waive the loved one's jury trial right. That is precisely what the Adult Health Care Consent Act does. It provides statutory authority for family members to make an incapacitated loved one's "health care" decisions but leaves the conferral of authority to arbitrate for powers of attorney or other legal instruments outlined in the probate code. Coleman, 407 S.C. at 353, 755 S.E.2d at 454 (finding statutory power to make "health care" decisions limited to nursing home admission and related financial decisions). Plus, Defendants misrepresents Plaintiffs' claims. Plaintiffs are not asserting any claim based on the Admission Agreement; Plaintiffs allege only common-law negligence claims.

Defendants also argue that under the Bill of Rights for Residents of Long-Term Care Facilities found at S.C. Code Ann § 44-81-30(2) that since Charles had no representative with legal authority at the time, and that they gave Thelma paperwork that this should make her a defacto attorney-in-fact. That argument has been rejected since Coleman was decided. The Bill of Rights for Residents of Long-Term Care Facilities, as the name implies, is meant to protect the rights of vulnerable adults in these facilities. Defendants attempt to argue this allows them to strip Plaintiffs of their constitutional right to a jury trial. The Honorable Michael Nettles in a Court Order described Defendants argument under the Bill of Rights for Residents of Long-Term Care

Facilities as, “**inappropriate as S.C. Code Ann. § 44-81-10 confers no authority on family members or next of kin to execute contracts or make healthcare decisions.**” (Exhibit 8). Instead, The Honorable Michael Nettles rightly concluded that authority is governed by the S.C. Code Ann. § 44-66-20, the South Carolina Adult Health Care Consent Act, which has been interpreted in the following seminal cases. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014), Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), and Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016). These cases as a whole stand against Defendants claim that Thelma had the authority to bind Charles or that equitable estoppel applies under these circumstances. Ultimately, having reviewed the same arguments under similar circumstances Defendants make here in trying to compel arbitration, The Honorable Michael Nettles denied Defendants Motion to Compel Arbitration. Since Thelma lacked legal authority to enter into a contract to waive Plaintiffs’ constitutional right to a jury trial, the arbitration agreement is unenforceable as to the Estate of Charles Rudd and the statutory beneficiaries.

B. Elements of Affirmative Defenses Not Met

Upon information and belief, Defendants may assert the affirmative defenses of equitable estoppel, ratification and third-party beneficiary theories. However, these defenses do not apply under the facts and circumstances of this case. Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts.¹⁵ No proof exists in this case. Further, the party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the

¹⁵ Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. Defendants cannot meet this evidentiary burden.

For a party to be estopped in these circumstances the Court in Hodge and reaffirming its stance in Thompson stated that the elements for a party to be estopped 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. See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813, S.E.2d. 292 (Ct. App. 2018). Mr. Rudd never made a false representation or concealed any material fact. Since there was no false representation or concealed material fact there cannot be any intention that it would be acted upon.

Defendants incorrectly allege Mr. Rudd is equitably estopped from opposing enforcement of the Arbitration Agreement. Equitable estoppel is a contract defense for which the asserting party “bears the burden of establishing all the elements.”¹⁶ “Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly.” Wilson, supra. In Wilson, our Supreme Court held that a claim must be premised or arise based on the contract and a nonsignatory resident must “knowingly exploit” the benefits of the arbitration agreement to be estopped from denying enforcement. Wilson, supra. Mr. Rudd never embraced the arbitration agreement during the life of the contract. He was never aware of the existence of the arbitration agreement. The case arises from common law tort theories and not as a breach of contract. The Court in Wilson went as far to state that the allegations of neglect did not arise from any agreement

¹⁶ Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009).

between the parties, and to hold otherwise would “allow Defendants to... conspire to abuse and neglect vulnerable adults while shielding themselves from the possibility of a jury trial with an arbitration clause agreed to only by the conspiring parties.” Wilson, 426 S.C. at 342.

Defendants cannot satisfy the elements as the moving party for estoppel. Defendants are in the business of providing skilled nursing care to individuals. As part of their standard admissions process they require all new residents to fill out the same paperwork as Charles did. Defendants as a sophisticated business had, or should have had, the knowledge of knowing who can legally bind an individual to a contract. Defendants’ position was not prejudiced by Thelma signing the admission paperwork. Defendants still offered their services as a skilled nursing facility, and were compensated for their services accordingly. Unless Defendants suggest they would have cared for Charles differently absent a valid arbitration agreement, they have not been prejudiced by there not being a valid arbitration agreement.

The Court must conclude that the arbitration provision could not be enforced against Plaintiffs based solely on an equitable estoppel theory, where Plaintiffs were unaware of the Arbitration Agreement, have never sought to obtain any direct benefit under that contract, and seek only to vindicate their rights under South Carolina tort law.

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.**

Wilson, at 343. Defendants’ argument that equitable estoppel should apply in this situation is expressly contradicted by our Supreme Court’s opinion in Wilson. This is a state tort action and

Defendants have breached common law duties. This falls squarely within the Court's opinion that estoppel is not implicated. Estoppel was not allowed in Wilson and it should not be allowed here.

Since admission is unavailable as a "direct benefit" to support estoppel, Defendants would be required to point to some benefit Charles received from the Arbitration Agreement alone. However, Charles derived no benefit from the Arbitration Agreement. Hodge, 422 S.C. at 563, 813 S.E.2d at 302 (finding family members, resident, and resident's estate "received no benefit from the Arbitration Agreement"). Even if they had, "any possible benefit emanating from the Arbitration Agreement alone is offset by the Arbitration Agreement's requirement that Mother waive her right to access the courts and her right to a jury trial." Thompson, 416 S.C. at 60, 784 S.E.2d at 688.

Defendants then argue ratification simply by his continued residency in Defendants' facility. To establish a ratification of the Arbitration Agreement Defendants must show (1) acceptance **by the principal** of the benefits of the agent's acts, (2) the **principal's full knowledge** of the facts, and (3) circumstances or an **affirmative election demonstrating the principal's intent** to accept the unauthorized arrangement.¹⁷ Here the Defendants cannot show that Plaintiffs meet any of the elements required for ratification. No evidence supports the elements for the affirmative defense of ratification.

Defendants' may argue that somehow Charles' presence alone can constitute an "affirmative" representation despite his cognitive decline. However, the Hodge decision rejected the notion that a nursing home resident represents her/her family member has authority to enter an arbitration agreement on the resident's behalf simply by failing to object to the family member's signature. 422 S.C. at 573-74, 813 S.E.2d at 308 (noting home argued resident "represented" her

¹⁷ Lincoln v. Aetna Gas. & Sur. Co., 300 S.C 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989).

husband had authority by “allowing him to procure her admission” but still finding “no evidence . . . that [the resident], as the principal, represented husband was her agent”). Defendants make the precise argument Hodge rejected. This is frivolous and violates Rule 11 and the South Carolina Frivolous Proceedings Act.

Unmoored from logic and precedent Defendants then make a broader argument that it would be “manifestly inequitable” for Plaintiffs to pursue a tort claim while denying Thelma’s authority to sign the Arbitration Agreement. The tort claim does not arise from signing the admission paperwork. See Hodge, 422 S.C. at 563, 813 S.E.2d at 302 (“because [resident and estate] are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement” and are not estopped from challenging the Arbitration Agreement).

C. Unconscionable

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.¹⁸ If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the agreement. S.C. Code Ann. § 36-2-302(1) (2003). In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.¹⁹ It is under this general rubric that courts must determine whether a contract is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms.

¹⁸ Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).

¹⁹ See Hooters of Am., Inc. v. Phillips, 173 F.3d 933, 938 (4th Cir.1999).

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue.²⁰ In determining whether a contract was "tainted by an absence of meaningful choice,"²¹ courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.²²

The choice of a nursing home is made in the midst of a crisis brought on by a precipitous deterioration in health status, disability level, or the loss of a care giver or spouse.²³ The need to find a placement arises quickly²⁴ and nursing home admissions are often unplanned; there is little time to investigate options or to wait for an opening at a nursing home of choice.²⁵ Time pressure significantly impairs the ability to seek and carefully consider alternatives.²⁶ Thelma had no choice or time in making such a decision. Many facilities lack a coherent admissions process,

²⁰ See Carlson v. General Motors Corp., 883 F.2d 287, 295 (4th Cir.1989).

²¹ Id. at 295

²² Id. at 293. See also Holler v. Holler, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005) ("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17A Am.Jur.2d Contracts§ 279 (2004))); see also Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007).

²³ See, e.g., Podolosky v. First Healthcare Corp., 58 Cal.Rptr. 2d 89, 101 (Cal. Ct. App. 1996) (citing Donna Ambrogio, *Legal Issues in Nursing Home Admissions*, 18 Law Med. & Health Care 254, 258 (1990)); see also Marshall B. Kapp, *The "Voluntary" Status of Nursing Facility Admissions: Legal, Practical, and Public Policy Implications*, 24 N.E. J. on Crim. & Civ. Confinement. 1, 3 (1998) (stating that an older person's move to a nursing home also follows a period of acute hospitalization, when their care giving family is unable to adequately manage the demands of home care).

²⁴ In the 1980's, the government changed the way hospitals were paid for their Medicare patients; since the change, hospital discharge planning occurs "quicker and sicker." Linda S. Whitton, *Navigating the Hazards of the Eldercare Continuum*, 6 J. Mental Health and Aging 145, 150 (2000). See also Maureen Armour, *A Nursing Home's Good Faith Duty "to" Care: Redefining A Fragile Relationship Using the Law of Contract*, 39 St. Louis L.J. 217, 222 (1994).

²⁵ Denise Ashbugh Vlosky, et al., "Say-so" as a Predictor of Nursing Home Readiness, 93 J. of Family & Consumer Science 59 (2001).

²⁶ Potential residents and their family members can experience panic when they feel there is insufficient time to consider different facilities, and they may choose a facility they would not have chosen if they had more time to weigh their options. Whitton, *supra*, at 150.

adding to the chaos surrounding the admission of a resident.²⁷ Residents and their family members do not have time to read and deliberate on complex or obscure contract terms. An arbitration clause is not part of the core transaction involved in a contract for medical care or service.²⁸ It is not, therefore, likely to get much attention from the non-drafting party.²⁹ As is true in the present action, facilities often present the contract *after* the person decides to apply for admission, rather than beforehand, when the individual can assess the rights affected by the contract.³⁰

The Honorable Judge Diane Goodstein found an arbitration agreement unconscionable in a similar circumstance in Rawl v. West Ashley Rehab (**Exhibit 9**) based on the following facts that also apply to the circumstances in this case:

1. Resident lacked a meaningful choice and the terms in the Arbitration Agreement are oppressive, one-sided terms.
2. Upon admission the standard Arbitration Agreement form was presented on a take-it-or leave it basis.
3. Resident did not contribute to the drafting of the Arbitration Agreement
4. Resident did possess the bargaining power to negotiate the terms of the Arbitration Agreement.
5. An inherent disparity in bargaining power between the parties to the transaction.
6. The Arbitration Agreement was inconspicuous.
7. Resident did not have sufficient time to allow any meaningful explanation of the terms and significance of the alleged arbitration agreement, considering the number and complexity of admission documents other than that alleged arbitration agreement.

In summary, this arbitration agreement is also procedurally and substantively unconscionable. The Arbitration Agreement references the Commercial Rules of JAMS which

²⁷ Donna Ambrogi & Frances Leonard, *The Impact of Nursing Home Admission Agreements on Resident Autonomy*, 28 *The Gerontologist* 82, 83-88 (1988).

²⁸ See Stanley D. Henderson, *Contractual Problems in the Enforcement of Agreements to Arbitrate Medical Malpractice*, 58 VA. L. REV. 947, 987 (1972) (“The arbitration provision, viewed from the perspective of the patient, is indeed subsidiary to the primary exchange of medical services for an undertaking of payment.”)

²⁹ The drafting party, on the other hand, has a great deal of information about these repetitive transactions and a great deal of incentive to prepare form contracts so that they are optimal from the drafter’s perspective. Melvin Aaron Eisenberg, *The Limits of Cognition and the Limits of Contract*, 47 *Stan.L.Rev.* 211, 243 (1995).

³⁰ California Advocates for Nursing Home Reform, *Better Read the Small Print! An Analysis of Admission Agreements in California’s Residential Care Facilities for the Elderly* 1 (Mar. 2003).

contradicts JAMS Due Process Rules which require consumer cases to be administered with Consumer Rules including that Defendants as a commercial entity would pay 100% of the fees and costs of JAMS. (**Exhibits 10a & 10b**). Through a rushed admission process, and nondisclosure of material facts to the agreement Defendants now attempt to strip Plaintiffs of their constitutional right to a jury trial. Plaintiffs ask the Court to deny Defendants' motion because the arbitration agreement is substantively and procedurally unconscionable.

D. The Arbitration Agreement does not apply to the Wrongful Death Claim

Even if there is a valid and enforceable arbitration agreement, it should not include the wrongful death cause of action because no one with legal authority could enter into an agreement that waives the right to a jury trial on behalf of the statutory beneficiaries. No person other than the court-appointed personal representative can waive the rights of the statutory beneficiaries. The wrongful death claims are separate claims apart from the survival action. According to South Carolina's Wrongful Death Act:

Whenever the death of a person shall be caused by the wrongful act, negligent or the fault of another and the act, negligent or the fault is such as would, if death had not ensued, had entitled party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued shall be liable to an action for damages.

South Carolina Code Ann. §15-51-10 (1977)

The wrongful death beneficiaries are as follows:

Every such action shall be for the benefit of the wife, or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none, for the benefit of the heirs or the person whose death shall have been so caused

S.C. Code Ann. § 15-51-20.

As decided in Young v. NHC (**Exhibit 11**) the wrongful death cause of action should not be included in the arbitration proceeding if a valid and enforceable arbitration agreement is found by the Court for the Survival cause of action:

It appears that the question of whether a wrongful death action is subject to mandatory arbitration pursuant to the terms of a contract is one of first impression in South Carolina. Case law across many jurisdictions within the United States is split as to whether an arbitration agreement covers a wrongful death claim brought by the Ms. Owens's statutory beneficiaries who were not a party to the contract. [cite omitted]

This Court finds persuasive the reasoning of those jurisdictions that have held that an arbitration agreement executed by a Ms. Owens cannot bind the Ms. Owens's statutory beneficiaries who were not parties to the agreement. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries, and that such claims are distinct and separate claims from those that are brought under the survival statute. See Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914).

However, this Court agrees with the Supreme Court of Kentucky which said regarding binding non-signatory wrongful death beneficiaries in Ping v. Beverly Enterprises, "[A]s interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract's procedural provisions, including arbitration clauses, merely by being referred to in the contract. It is one thing to say that a third party for whose substantive benefit a contract is made may not enforce his or her rights under the contract without also abiding by the contract's other terms. That is the general third-party beneficiary rule discussed above. It may even be that tort claims by such a directly benefitting third party are appropriately subjected to the contract's arbitration provisions, at least where the tort and the contract are significantly intertwined. It is something else entirely, however, to say that incidental beneficiaries of a contract-individuals or entities with no substantive rights under the contract and no direct benefits-may have their tort claims against the parties swept up into the contract's arbitration provisions merely by being mentioned in the contract as potential claimants."

Ping, 376 S.W.3d at 599-600.

A similar analysis and holding can be found in Wilson v. NHC by the Honorable Judge Michael Nettles (**Exhibit 12**) which held:

[T]he Arbitration Agreement is unenforceable against the Ms. Owens's wrongful death statutory beneficiaries under South Carolina contract law defenses. The Arbitration Agreement neither covers the wrongful death statutory beneficiaries' claims within the scope of the agreement nor was the Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries.

South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims. Bennett v. Spartanburg Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914). The alleged Arbitration Agreement by its own terms is an agreement between “Kenneth Wilson (‘patient’)” and “NHC Healthcare/Mauldin, LLC (‘center’)”. While at some point during Ms. Owens’s admission to the facility, he might have had the authority to bind himself and his claims to arbitration but was never given the chance. However, even if Ms. Owens had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries who are not parties to the Arbitration Agreement. The signatories to the agreement are Daughter on behalf of Ms. Owens and NHC Healthcare/Mauldin, LLC. No other persons are parties to this agreement. The scope of the agreement does not include the statutory beneficiaries’ claims.

However, even if the Arbitration Agreement did contemplate the wrongful death statutory beneficiaries’ claims, Ms. Owens and/or Daughter had no authority to waive the statutory beneficiaries’ claims. Daughter signed the Arbitration Agreement in her *individual capacity*. However, as the Hodge court noted, actions taken by Daughter in her *individual capacity* will not be held against the estate as the estate has other beneficiaries and may have other creditors.

Further confirming the separateness of each statutory beneficiary’s claim from that of the survival action, a Federal District Court in South Carolina has analyzed this issue under the South Carolina Non-Economic Awards Act of 2005. Diane Boyle as Personal Representative of the Estate of John Francis Boyle v. United States of America, 944 F.Supp.2d 577 (D.S.C. 2012). In Boyle, the Court concluded that the wrongful death beneficiaries’ claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants. This analysis supports the contention that the wrongful death claimants have separate and distinct claims apart from that of the survival action.

The wrongful death claim is separate from the survival action. The wrongful death claim should not be covered by arbitration. If the Court finds a valid arbitration agreement exists then the wrongful death claim should be allowed to continue separately outside of arbitration.

E. Jury trial under 9 U.S.C. §4

Plaintiffs maintain that there is no valid Arbitration Agreement with the Defendants. However, in the alternative, under Section 4 of the Federal Arbitration Act if there exists a genuine question of whether a valid arbitration agreement was formed, then a jury trial may be conducted to

determine if a valid arbitration agreement was entered into.³¹ The Court may only order the parties to arbitrate “...upon being satisfied that the making of the agreement for arbitration...is not in issue.”³² This is not a novel concept under the law and courts have granted trials under this section before.³³ (**Exhibit 13**). A demand for a jury trial on a valid question regarding the making of an arbitration agreement is timely when a petition to move for arbitration has been filed. (**Exhibit 14**).

Plaintiffs request for a jury trial if Defendants’ Motion is not outright denied is timely requested. Thelma Rudd not having the legal authority to bind Charles Rudd to a contract creates a fatal issue for Defendants’ proposition that this is a valid Arbitration Agreement. If the Court should choose to give weight to any of Defendants’ affirmative defenses then Plaintiffs contend that a jury trial would be necessary to ensure justice is fully carried out, and a jury can determine the facts at issue.

IV. CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss and Compel Arbitration, or Alternatively, to Compel Arbitration and Stay Proceedings, must be denied. In the alternative, Plaintiffs request a jury trial under 9 U.S.C. §4 in determining whether a valid arbitration agreement exists. Charles did not sign the Arbitration Agreement and Thelma lacked any legal authority to sign on his behalf. In the absence of a valid Arbitration Agreement, Defendants’ motion must be denied.

³¹ See *Generally Ryan D. Burch v. P.J. Cheese, Inc* 861 F.3d 1338 (11th Cir. 2017) (stating that 9 U.S.C. §4 does create a statutory right to a jury trial.)

³² 9 U.S.C. §4

³³ See also *Gib, LLC v. Salon Ware, Inc.*, 2016 WL 463429 (9th Cir. 2016); *Guidotti v. Legal Helpers Debt Resolution*, 2016 WL 521173 (3rd Cir 2016); *Dannelly Enterprises, LLC v. Palm Beach Grading, Inc.*, 2016 WL 360668 (Ala. 2016).

The Jones family, through these businesses were allowed to substantially enrich themselves. Now they seek to shield their assets and thwart justice by delaying the ligation and trial of this case.

Defendants have sold the facility; have no insurance coverage; and plead poverty while at the same time moving to compel an expensive arbitration proceeding. Nursing home abuse and neglect cases that involve corporate malfeasance, short-staffing, and undercapitalization are complicated matters that typically require a minimum of a week to fully arbitrate. A week of arbitration is a significant cost, paired with any potential award, and the fact that Defendants claim no insurance coverage concerns Plaintiffs that Defendants would not be able to cover all the costs should the Court decide this matter be compelled to arbitration. Therefore, Plaintiffs would request the Court issue a bond against Defendants in a sufficient amount to ensure any costs and awards may be covered.

Respectfully Submitted,

s/ E. John Waelde

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Dated: May 1, 2020
Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd,)
deceased, through the duly appointed)
Personal Representative, Thelma)
Rudd, individually and on behalf of)
statutory beneficiaries,)

Plaintiff,)

v.)

Pepper Hill Nursing & Rehab Center,)
LLC d/b/a Pepper Hill Nursing &)
Rehab Center n/k/a The Place at)
Pepper Hill, LLC, and Shiloh)
Management, Inc.)

Defendants.)

Civil Action No. 2019CP0202840

**MEMORANDUM SUPPORTING MOTION
TO DISMISS
AND TO COMPEL ARBITRATION**

Defendants Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center and Shiloh Management Inc. (hereinafter “Defendants”) offer this Memorandum in support of their Motion to Compel Arbitration, which was filed March 2, 2020.

FACTS BEARING ON THE MOTION

I. Admission to Pepper Hill

Mr. Rudd was admitted to Pepper Hill for care pursuant to the July 27, 2016 Admissions Agreement attached as Exhibit A. According to the Plaintiff, at all times during Mr. Rudd’s residency at Pepper Hill, he was a “vulnerable adult” as defined by S.C. Code Ann. § 43-35-10. Complaint at ¶ 9. Under this section, a “vulnerable adult” is a person who is substantially impaired “from adequately providing his or her own care or protection,” including “a person who is impaired... because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction.” Plaintiff’s

Memorandum in Opposition to the Motion to Compel further notes that Mr. Rudd had suffered cognitive decline. *See* Plaintiff's Memorandum in Opposition at 12.

As a result, Mr. Rudd's wife, who has also filed this suit, signed the Admissions Agreement as the Representative for Mr. Rudd. In executing this Admissions Agreement, Mrs. Rudd indicated in writing to Pepper Hill that she was the representative and responsible party for Mr. Rudd. *See, e.g.*, Admissions Agreement at 1, 12, 14. Per the agreement, the "representative" is someone "authorized by the Resident to act on the Resident's behalf." Mrs. Rudd further indicated through the Admissions Agreement that, "by signing this contract," she accepted "the duties and responsibilities" as Mr. Rudd's representative. In addition, Ms. Rudd expressly acknowledged that "[the Admissions Agreement] shall be binding upon Resident/Representative, Pepper Hill Nursing & Rehab Center, and each of their heirs, successors and assigns." Admissions Agreement at 12.

II. Arbitration Agreement

Defendants move to compel arbitration because the Admissions Agreement includes a conspicuous and enforceable Arbitration Agreement. The Admissions Agreement includes, underlined and in bold at the top of *every single page*:

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

Exhibit A at 1-14. In addition, the Admissions Agreement's full arbitration provision is set forth on its own page under the word "ARBITRATION" in all caps. It states in relevant part as follows:

ARBITRATION

Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this agreement or resident's stay in this facility, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the Uniform Arbitration Act, Section 14-48-10, et. Seq., Code of Laws of South Carolina), the rules of practice and procedure for the arbitration of disputes of J.A.M.S. Arbitration or any successor thereof ("J.A.M.S.") and the "special rules" set forth below. In the event of any inconsistency, the special rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any part to the Admissions Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which the agreement applies in any court having jurisdiction over such action.

Exhibit A at 13.

Notably, Mrs. Rudd, who signed the Admissions Agreement, is the same individual who has filed this lawsuit. Thus, the signatory to the Admissions Agreement and the Plaintiff in this lawsuit are the same party.

III. Underlying Incident

Ms. Thelma Rudd, as Mr. Rudd's Personal Representative, alleges that Mr. Rudd was injured after he fell from his wheelchair while he was a resident at Pepper Hill. Per the nurse's affidavit filed with Plaintiff's Complaint, Mr. Rudd reported that he slipped from his chair while eating breakfast and that he hit his head on the wheelchair when he slid out. Affidavit of Paige Swatman, RN, LNC, at ¶ 3. Mr. Rudd indicated his head hurt but he had no signs of bruising or hematomas on his head or body. Id. Mrs. Thelma Rudd, the Plaintiff in this suit and his representative per the Admissions Agreement, was called about the incident. Id. However, Ms. Rudd did not want to send Mr. Rudd to the hospital that night and instead wanted to wait until the morning to see how he was doing. Id. at ¶ 4. The next morning, Mr. Rudd indicated he was still in pain and wanted to go the hospital. Mrs. Rudd was again contacted and wanted Mr. Rudd

sent to the Veterans Hospital. Ultimately, because an ambulance was not available, Mr. Rudd went to Aiken Regional and was diagnosed with a slight hemorrhage, for which he was treated. See id. at ¶ 4.

Mr. Rudd then re-entered another long term care facility on December 13, 2016. Id. at ¶ 7. He did not pass away until May 10, 2018, Complaint at ¶ 253, and Defendant is aware of no evidence that Mr. Rudd's death, which occurred over a year and a half later, was related to his fall.

IV. Motion to Strike

A substantial portion of the Plaintiff's Memorandum in Opposition to the Motion to Compel Arbitration contains arguments, references, and citations to exhibits irrelevant to the matter before the Court and which seek to cast the Defendants and individuals who are neither parties to the suit nor involved in the current motion in a negative light and in an apparent effort to litigate this straightforward motion to compel on issues aside from the merits. Defendants have addressed these issues in a Motion to Strike which is being filed concurrently with this Memorandum.

ARGUMENT

Defendants request the Court grant their Motion to Compel Arbitration for the following reasons: (1) the Agreement covering the claim asserting in this suit is binding and enforceable on Mrs. Thelma Rudd, who is suing as the Personal Representative for the Estate of Mr. Rudd and who also signed the Admissions Agreement as Mr. Rudd's representative; (2) the Plaintiff is equitably estopped from denying the existence of a valid, enforceable agreement; and (3) the decedent was a third-party beneficiary to the Agreement and, thus, arbitration is bound to his estate.

I. Plaintiff is Bound by the Enforceable Arbitration Agreement.

The Federal Arbitration Act (FAA) requires courts to enforce negotiated agreements to arbitrate, like other contracts, in accordance with their terms. *See Zabinski v. Bright Acres Associates*, 346 S.C. 580, 553 S.E.2d 110 (2001). “When interpreting arbitration agreements within the scope of the FAA, due regard must be given to the federal policy in favor of arbitration, and any ambiguity in the scope of the arbitration clause must be resolved in favor of arbitration.” *Vestry and Church Wardens of Church of Holy Cross v. Orkin Extermination Co., Inc.*, 356 S.C. 202, 207, 588, S.E.2d 136, 138 (Ct. App. 2003). *See also Towles v. United HeathCare Corp.*, 338 S.C. 29, 41-42, 524 S.E.2d 839, 846 (Ct. App. 1999) (stating a motion to compel arbitration should be denied only where the arbitration clause is not susceptible of any interpretation that would cover the asserted claim). The FAA expresses a strong national policy in favor of arbitration and “establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Construction Corp.*, 460 U.S. 1, 24-25, 103 S.Ct. 927 (1983). The FAA enforces arbitration agreements as written to prevent a party from avoiding their contractual obligations to arbitrate. *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); *see also Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985).

South Carolina also favors arbitration of disputes. *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). “Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration,” and “unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.” *Id.* *See also Carolina Care Plan, Inc. v. United Healthcare*

Servs., Inc., 606 S.E.2d 752, 755 (S.C. 2004) (“South Carolina law generally favors arbitration.”).

Under the Federal Arbitration Act, arbitration is required when two prongs are met: (1) there is a valid arbitration agreement; and (2) the dispute that exists is within the scope of the agreement. Here, both prongs are satisfied. First, as set forth below, there is a valid arbitration provision. Second, Plaintiff’s claims are clearly within the scope of the arbitration provision because they stem from the care and treatment Mr. Rudd received under the Agreement as a resident of Pepper Hills.

As to the first prong, Plaintiff is bound by the Arbitration Agreement because Mrs. Thelma Rudd, the Representative who signed for Mr. Rudd in the Admissions Agreement and who now brings this suit, had actual and apparent authority to execute the Admissions Agreement on Mr. Rudd’s behalf. Mrs. Rudd was Mr. Rudd’s wife and signed the Admissions Agreement as his Representative. In the Admissions Agreement, Mrs. Rudd expressly represented that she was “authorized by the Resident to act on the Resident’s behalf.” Admission Agreement at 12. Furthermore, Mrs. Rudd, to this date, has never contested that she was Mr. Rudd’s representative, and in fact in her response opposing the Motion to Compel Arbitration, Plaintiff concedes that Mrs. Rudd may have been Mr. Rudd’s agent for purposes of making healthcare decisions. Plaintiff’s Response in Opposition to Motion to Compel Arbitration at 6.

In addition, Mrs. Rudd had actual authority to execute the Admissions Agreement under the Adult Health Care Consent Act (“Adult Health Care Act”) (*see, e.g.*, S.C. Code Ann. ¶ 44-66-30). Under this Act, Mrs. Rudd was authorized to act on Mr. Rudd’s behalf because Mr. Rudd was impaired and Mrs. Rudd was Mr. Rudd’s spouse. This is further supported by South Carolina’s Bill of Rights for Residents of Long-Term Care Facilities (“Bill of Rights”). *See* S.C.

Code Ann. § 44-81-10, et. seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin or other person acting as an agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(2); *See also* S.C. Code Ann. § 62-2-103(1) (if no surviving spouse, the child of a decedent becomes next of kin). As Mr. Rudd’s spouse and by expressly acknowledging she was acting on behalf of Mr. Rudd, Mrs. was further qualified to act as Mr. Rudd’s representative.

Furthermore, the available evidence demonstrates that Mrs. Rudd had actual authority *and* apparent authority to enter the Admissions Agreement. Mrs. Rudd brought Mr. Rudd to the facility and through the Admissions Agreement obtained him a room and care at the facility. She signed the Admissions Agreement representing that she was Mr. Rudd’s representative, and she had the authority to authorize the release of information and payment to Pepper Hill. *See, e.g.*, Admissions Agreement at p. 7. She further initialed the admissions Agreement following the Agreement’s arbitration provision. In addition, her status and authority to act as Mr. Rudd’s Representative is further confirmed by her appearance now as Mr. Rudd’s Personal Representative in this suit. To date, no one has challenged Mrs. Rudd’s actions in placing Mr. Rudd at Pepper Hill or her authority to make healthcare and related decisions for Mr. Rudd.

Plaintiff cites *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), a contract dispute between insurance customers and their insurance agents, for the principal that there is a presumption in South Carolina against arbitration where the dispute involves a nonsignatory to the agreement. *Wilson* involved insurance contracts in which it was “undisputed” that the petitioners were “nonsignatories to the arbitration agreement.” *Id.* at 338, 827 S.E.2d at 173. Moreover, the petitioners there “never sought to obtain any direct benefit under [the] contract.” *Id.* at 336, 827 S.E.2d at 172. In addition, even where a dispute involves nonsignatories, the

South Carolina Supreme Court stated in *Wilson* that this state “has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel.” *Id.* at 326, 338, 827 S.E.2d at 174.

Wilson simply does not control in this matter. Not only does *Wilson* involve wildly different facts in an entirely different context involving a dispute between insureds and insurance agents, but further, it involved a dispute where the parties who filed the suit did not sign the insurance agreements, sought no benefits from the insurance agreements, and had no reason to know the agreements were ever signed. Here, in contrast, Mrs. Thelma Rudd filed this suit and also signed Mr. Rudd’s admissions agreement. She brings this suit in her role as Mr. Rudd’s representative, and she signed the Admissions Agreement in her role as his representative. Further, both Mrs. Rudd and Mr. Rudd received extensive benefits under the Admissions Agreement, including but not limited to the services listed on Page 2 of the Admissions Agreement. Thus, Plaintiff’s attempt to obtain the services listed in the Admissions Agreement while not attempting to repudiate the arbitration clause in the Admissions Agreement fully distinguishes *Wilson* from this case. *See id.* at 426 S.C. at 342, 827 S.E.2d at 176. In addition, as set forth below, estoppel and other grounds exist to enforce the Admissions Agreement.

Likewise, Plaintiff’s citation to *Chassereau v. Glob. Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 719 (2007) is without merit. *Chassereau* involved allegations by a plaintiff that after she bought a pool from the defendant, the defendant began harassing her, disclosing private information to friends, relatives, and co-workers, and making defamatory statements. The plaintiff sued the defendant, and the defendant moved to compel arbitration pursuant to arbitration provisions in the pool installation contract. The Court found that the alleged

harassment was not related to the pool installation contract, nor was such harassment foreseeable at the time the agreement was executed, and that the arbitration clause thus did not apply.

Chassereau is entirely unrelated to the allegations in the present case. There, a customer suffered harassment and defamation which the court found were unrelated to a pool installation contract. Here, in contrast, Mrs. Rudd has brought suit in relation to alleged deficiencies in Mr. Rudd's care, which allegations arise out of and relate directly to the Admissions Agreement.

Plaintiff next relies heavily on *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) for the principal that while Mrs. Rudd may have had authority to make Mr. Rudd's healthcare decisions, she lacked authority to sign an arbitration agreement. Plaintiff's reliance on *Coleman* is entirely misplaced because *Coleman*, unlike the present case, *specifically* involved the representative's execution of an entirely *separate* arbitration agreement which involved no healthcare or financial services. *Id.* at 354, 755 S.E.2d at 454 ("The *separate* arbitration agreement *concerned neither health care nor payment*, but instead provided an *optional* method for dispute resolution between Facility and Decedent or Sister should issues arise in the future.") (emphasis added).

This exact distinction was discussed at length in *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185, at *2 (D.S.C. Mar. 19, 2015). In *THI*, the court upheld an arbitration agreement after finding that *Coleman* was distinguishable because unlike the separate arbitration and admissions agreements in *Coleman*, "the admission agreement [at issue in *THI*] *contained* the arbitration provision." The court found that a representative's authority to sign an arbitration agreement "is simply not implicated" where the arbitration and admissions terms were contained in the same agreement. *Id.* See also Thompson

v. Pruitt Corp., 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016) (noting that *Coleman* involved an arbitration agreement *separate* from the admissions agreement).

Here, Mrs. Rudd had both actual and apparent authority to enter into the Admissions Agreement, including its arbitration provision. As Mrs. Rudd's representative under the Health Care Act, she had the authority to enter into contracts such as the Admissions Agreement. The Arbitration Agreement was simply part of this Admissions Agreement and, unlike the agreement in *Coleman*, was indisputably not a separate, voluntary contract. *See Coleman*, 407 S.C. 346, 356, 755 S.E.2d 450, 455 (2014); *THI*, 2015 WL 1268185, at *2 (D.S.C. Mar. 19, 2015).

Next, Plaintiff improperly relies on Judge Nettles' recent order in *Foreman v. Shiloh Management Company et al*, 2019-CP-20-2824. *See* Plaintiff's Exhibit 8. While Defendants contend the circuit court wrongly denied the motion to compel arbitration in *Foreman*, and the circuit court's decision is on appeal, the present case is easily distinguished from *Foreman*. First, unlike *Foreman*, Mrs. Rudd has never contested that she lacked authority to enter the Admissions Agreement on behalf of Mr. Rudd. This in and of itself is sufficient to distinguish the two cases because absent a challenge to the Admissions Agreement, there is a binding and enforceable contract. Second, in the present case, the lawsuit has been brought by Mrs. Rudd, the same individual *who signed the Admissions Agreement*. Mrs. Rudd, as the Plaintiff, is bound by the contract to which she was a signatory, and to hold otherwise would be inequitable and contrary to South Carolina law and public policy.

Finally, regarding Plaintiff's request for a jury trial under 9 U.S.C. § 4 on the issue of whether an arbitration agreement exists, this request is without merit. This code section provides that "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate... may petition any United State district court...for an order directing that such arbitration proceed...." 9

U.S.C. § 4. This section provides no authority for the Plaintiff to request a trial whatsoever, much less a jury trial. Further, this section requires the request to be made by the party seeking to enforce the arbitration provision (in this case, the Defendants), and that the request be made to the federal District Court. None of these factors as required by § 4 are present in this case.

II. Plaintiff is equitably estopped from denying the existence of an enforceable admission agreement.

In regards to arbitration, the doctrine of equitable estoppel “recognizes that a party may be estopped from asserting that the lack of [their] signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that the other provisions of the same contract should be enforced to benefit him.” *Thompson v. Pruitt Corp.*, 416 S.C. 43, 59, 784 S.E.2d 679, 688 (Ct. App. 2016) (citing *Pearson v. Hilton head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012)). “In other words, ‘[w]hen 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.’” *Id.*

Applying South Carolina state law, the court in *THI of South Carolina at Columbia, LLC v. Wiggins* found a nursing home resident’s estate was equitably estopped from disclaiming the enforceability of the arbitration provision contained in the admissions contract. *THI of South Carolina at Columbia, LLC v. Wiggins*, 2011 WL 4089435 (D.S.C. 2011). In *Wiggins*, a daughter executed an admissions contract to a nursing home on behalf of her father. Following the death of the father and a subsequent filing of suit, the nursing home moved to compel arbitration. *Id.* at *2. The father’s estate argued that the arbitration provision was unenforceable because no evidence existed that the daughter had the “authority to act as her father’s agent, to legally bind her father, or waive her father’s right to a jury trial.” *Id.* at *5. In holding that it

would be inequitable for the estate to avoid the arbitration provision within the admissions contract, the court noted the father received the benefits provided under the admissions contract and the nursing home performed in reliance on the terms of the agreement. *Id.* at *6.

Here, the Admissions Agreement served as the foundation for Mr. Rudd's admission to Pepper Hill. It contained the duties and obligations which Mr. Rudd, his Representative, and Pepper Hill had to one another. *See, e.g.*, Admissions Agreement at 2, describing the services to be provided by Pepper Hill. All of the Plaintiff's claims are dependent on the duties which arise from the terms of the Agreement. After the execution of the Agreement, Mr. Rudd became a resident of Pepper Hill, and as such, received the benefits provided for in the Agreement. Plaintiff cannot disclaim the arbitration clause, which is part of the Admissions Agreement, while at the same time asserting claims arising under other provisions of Admissions Agreement. Thus, it would be inequitable for Mrs. Rudd as Personal Representative of Mr. Rudd's Estate avoid the Admissions Agreement's Arbitration Provisions which Mrs. Rudd herself executed as Mr. Rudd's Representative.

III. Arbitration should be compelled because Mr. Rudd was the intended and direct beneficiary of the Agreement containing the arbitration provision.

Even in the absence of the above grounds for enforcing the arbitration provision, Plaintiff would be bound to the arbitration provision because Mr. Rudd was a third-party beneficiary of the Agreement. Defendant's position is again supported by *Wiggins*.

"Under South Carolina law, '[a] third-party beneficiary is a party that the contracting parties intend to directly benefit.'" *Wiggins*, at *6 (quoting *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485, 488 (2005); *see also Touchberry v. Florence*, 295 S.C. 47, 367 S.E.2d 149, 150 (1988))("[t]he presumption that [a] contract is not enforceable by an

individual may be overcome by showing that he was intended to be the direct beneficiary of the contract”).

As set forth above, in *Wiggins*, the resident’s daughter signed an admission agreement containing an arbitration provision on behalf of her father, the decedent resident. *Wiggins*, at *2. The court found that while the resident did not sign the admission agreement, he was named as the resident to be admitted to the facility. *Id.* at *6. The court noted the admission agreement referred to the “benefits and responsibilities of the resident, the facility, and the fiduciary party” and that the resident’s care was “the essential purpose” of the agreement. *Id.* Based off the aforementioned reasons, it was determined that the resident was an intended third-party beneficiary of the admission agreement, signed by his daughter in her capacity as an immediate family member. *Id.* The court concluded that because the resident was the third-party beneficiary, he “was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remain[ed] binding on his estate.” *Id.*

In the present case, Mr. Rudd was a third-party beneficiary of the Admissions Agreement. Like the admission agreement in *Wiggins*, the Admission Agreement’s plain language shows that services set forth in the Admissions Agreement, including those on page 2, were intended for Mr. Rudd’s benefit. Further, the essential purpose of the Agreement from the Plaintiff’s perspective was to bind Pepper Hill to providing the services and responsibilities related to Mr. Rudd’s care and to provide services which, presumably, Mrs. Rudd was no longer in a position to provide. Similar to the resident in *Wiggins*, Mr. Rudd received those services and benefited from the Admissions Agreement with Pepper Hill. Mr. Rudd, and his representatives, estate, heirs, and successors, are thus bound to the Agreement’s provisions, including arbitration.

V. The Arbitration Agreement is not Unconscionable and Plaintiff has Provided Not a Single Piece of Evidence to the Contrary.

Plaintiff's Response further argues, without any factual support from the record, that the Arbitration Agreement was unconscionable. To the contrary, the Arbitration Agreement was clearly and conspicuously set forth in the Admissions Agreement, with bold, capitalized, and underlined notice on every page. Further, Mrs. Rudd separately initialed the Admissions Agreement immediately following the Arbitration provisions and directly underneath the bold, capitalized, and underlined notice. Mrs. Rudd indicated through her signatures and initials in the Admissions Agreement that she read the Admissions Agreement, that she was given the opportunity to ask question, and that she was given a copy of the signed Admissions Agreement. *See, e.g.,* Admissions Agreement, p. 14. Plaintiff has not submitted any evidence, affidavits, or supporting documents whatsoever that Mrs. Rudd was not aware of the Arbitration Agreement. There is also no evidence supporting Plaintiff's statement that the admissions process was "hasty" or "ill-explained," and there is no evidence presented to show that Mrs. Rudd lacked other options or even that she was "in the midst of a crisis" when she made the decision to place Mr. Rudd with Pepper Hill. Notably, Plaintiff's Memorandum provides not one personal example of how Mrs. Rudd's decision to place Mr. Rudd at Pepper Hill was the result of a crisis. *See* Plaintiff's Memorandum in Opposition at 14-15. Rather than providing personal examples of how she was deprived of her rights in this case, Plaintiff cites unrelated examples from other cases and secondary sources, all of which have no bearing whatsoever on the circumstances of this case. *Id.*

Regarding Plaintiff's references to fraud and duress, Plaintiff has neither pled these allegations in the Complaint, nor has Plaintiff presented any evidence supporting these meritless contentions. Mrs. Rudd voluntarily entered the Admissions Agreement, represented that she had

authority to enter the Agreement, represented that she had the opportunity to review and ask questions, and that she understood the Agreement. The terms of the Admissions Agreement are standard in the industry, and Mrs. Rudd was not coerced or under duress by Pepper Hill to place Mr. Rudd at their facility. These allegations in Plaintiff's Memorandum are, notably, lodged without even a single piece of evidence in support.

Finally, regarding Plaintiff's claims that the Arbitration Provision violates the JAMS arbitration rules, this is also without support. Plaintiff claims that the Arbitration Agreement references the Commercial Rules of JAMS in contradiction of the JAMS Due Process Rules. This is simply false. The Arbitration Agreement makes no reference to the "Commercial Rules" at all. *See* Admissions Agreement at 13.

VI. Wrongful Death Claims

Plaintiff's argument that the wrongful death claims should proceed to trial also fails. As argued above, the Plaintiff in this matter—Mrs. Rudd—was the signatory to the Arbitration Agreement. Thus, the cases cited by Plaintiff *support* arbitration of the Wrongful Death claim. Further, the Arbitration Agreement in this case is broad enough to include any wrongful death claims.

Finally, even in the absence of the above, Plaintiff's citations to two state circuit court orders are unavailing. The Supreme Court of the United States has previously held that state prohibitions against predispute agreements to arbitrate wrongful death claims against nursing homes are preempted. Specifically, in Marmet Health Care Ctr., Inc. v. Brown, 565 U.S. 530, 132 S. Ct. 1201, 182 L. Ed. 2d 42 (2012), the United States Supreme Court held that the Federal Arbitration Act (FAA) requires courts to enforce bargain of parties to arbitrate, with no

exception for personal-injury or wrongful-death claims. As a result, Plaintiff's arguments to the contrary should be given short shrift.

IV. Plaintiff's Request that the Court set a Bond is Contrary to the Law of South Carolina and is Untimely.

Finally, for the first time in the Response in Opposition to Defendants' Motion to Compel Arbitration, Plaintiff requests that, if the Court grants arbitration or if Defendants appeal the denial, the Court set a bond to ensure Defendants have adequate resources. As an initial matter, Plaintiff's request unsupported by any law and, upon information and belief, is without basis in South Carolina law. In addition, Plaintiff's request constitutes an untimely Motion before this Court without the required 10 days notice to Defendants. As a result, the request is not properly before the Court for a hearing on May 5, 2020. *See* Rule 6, S.C. R. Civ. P. ("A written motion other than one which may be heard *ex parte*, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing...."). Plaintiff's Request, filed on the eve of the hearing, should be denied or, in the alternative, should not be heard until Defendants have had the proper time as required under the Rules of Civil Procedure to brief and respond.

CONCLUSION

For the reasons set forth above, the Court should grant Defendants' Motion to dismiss and compel arbitration, or, in the alternative, to compel arbitration and stay proceedings.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Brandon R. Gottschall

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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

May 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd, deceased,	)	Civil Action No. 2019NI0200012
through the duly appointed Personal	)	
Representative, Thelma Rudd,	)	
individually and on behalf of statutory	)	
beneficiaries,	)	

Plaintiff,)

v.)

Pepper Hill Nursing & Rehab Center,)
 LLC d/b/a Pepper Hill Nursing & Rehab)
 Center n/k/a The Place at Pepper Hill,)
 LLC; and Shiloh Management, Inc.,)

Defendants.)

**PEPPER HILL NURSING & REHAB
 CENTER, LLC AND SHILOH
 MANAGEMENT, INC.'S ANSWER TO
 PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW, Defendants, Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center, (hereinafter "Pepper Hill") and Shiloh (improperly referred to as "n/k/a The Place at Pepper Hill, LLC") Management, Inc., (hereinafter "Shiloh") (collectively referred to as "Defendants"), by and through their undersigned attorneys, answering the Amended Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Amended Complaint not specifically admitted herein is denied.

2. Defendants lack sufficient knowledge and information to form an opinion as to Paragraphs 1 and 2, and therefore deny the same.

3. As to Paragraph 3, Defendants admit only that Pepper Hill was a South Carolina corporation and did business in Aiken County. Defendants deny the remaining responses contained in Paragraph 3.

4. As to Paragraph 4, Defendants admit only that Shiloh was a South Carolina corporation and did business in South Carolina. Defendants deny the remaining responses contained in Paragraph 4.

5. Paragraph 5 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

6. Paragraph 6 is denied.

7. As to Paragraph 7, Defendants admit that Pepper Hill operated a nursing home in Aiken County, South Carolina. The remaining allegations of Paragraph 7 are denied.

8. As to Paragraph 8, Defendants admit that Charles Rudd was a resident at Pepper Hill. The remaining allegations of Paragraph 8 are denied.

9. Paragraphs 9, 10, and 11 call for legal conclusions, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

10. Defendants lack sufficient knowledge and information to form an opinion as to Paragraphs 12 and 13 and therefore deny the same.

11. Paragraph 14 is denied.

12. Paragraph 15 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

13. Answering Paragraph 16, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

14. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 17 and therefore deny the same.

15. Paragraphs 18, 19, 20, and 21 are denied.

16. As to Paragraph 22, Defendants deny the allegations and crave reference to the notice referenced in Paragraph 22.

17. As to Paragraph 23, Defendants deny the allegations and crave reference to the note referenced in Paragraph 23.

18. Paragraph 24 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

19. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 25, crave reference to the note referenced therein and therefore deny the same.

20. Defendants lack sufficient knowledge and information to form an opinion as to Paragraphs 26, 27, and 28; and therefore deny the same.

21. Paragraph 29 is denied.

22. Paragraph 30 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

23. Paragraphs 31 and 32 are denied.

24. Defendants lack sufficient knowledge and information to form an opinion as Paragraph 33, and therefore deny the same.

25. Paragraph 34 is denied.

26. Defendants lack sufficient knowledge and information to form an opinion as Paragraph 35, and therefore deny the same.

27. Paragraph 36 is denied.

28. Paragraphs 37 (and its subparts), 38, 39, 40, 41, 42, 43, 44, 45, and 46 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny Paragraphs 37 (and its subparts) 38, 39, 40, 41, 42, 43, 44, 45, and 46.

29. Paragraph 47 is denied.

30. Paragraphs 48 and 49 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny Paragraphs 48 and 49.

31. Paragraphs 50, 51, and 52 are denied.

32. Paragraphs 53, 54, 55, 56, 57, 58, and 59 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny Paragraphs 53, 54, 55, 56, 57, 58, and 59.

33. Paragraph 60 is denied.

34. Paragraphs 61 and 62 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny Paragraphs 61 and 62.

35. Defendants lack sufficient knowledge and information to form an opinion as to Paragraphs 63 and 64; and therefore deny the same.

36. Paragraph 65 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

37. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 66 and therefore deny the same.

38. Paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny Paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78.

39. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 79; and therefore deny the same.

40. Paragraph 80 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

41. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 81; and therefore deny the same.

42. Paragraph 82 is denied.

43. Paragraph 83 calls for a legal conclusion, which the Defendants are not required to make. To the extent a response may be required, Defendants deny the same.

44. Defendants lack sufficient knowledge and information to form an opinion as Paragraph 84; and therefore deny the same.

45. Paragraphs 85 and 86 call for a legal conclusion, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

46. Defendants lack sufficient knowledge and information to form an opinion as Paragraphs 87, 88, 89, and 90; and therefore deny the same.

47. Paragraphs 91, 92, 93, 94, 95, and 96 call for legal conclusions, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

48. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 97 and 98; and therefore deny the same.

49. Paragraph 99 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

50. Defendants deny Paragraphs 100 and 101.

51. Paragraphs 102, 103, 104, 105, and 106 (with its subparts) call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

52. Defendants lack sufficient knowledge and information to form an opinion as Paragraphs 107, 108, 109, 110, and 111; and therefore deny the same.

53. Defendants deny Paragraphs 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, and 125.

54. Paragraphs 126 and 127 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

55. Defendants deny the responses contained in Paragraphs 128, 129, 130, 131, and 132.

56. Paragraphs 133 and 134 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

57. Defendants deny the responses contained in Paragraphs 135, 136, 137, and 138.

58. Paragraphs 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, and 152 (and its subparts) call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

59. Paragraphs 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, and 176 (and its subparts) call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

60. Paragraphs 177, 178, 179, 180 (and its subparts), 181, 182, 183, 184, 185, and 186 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

61. Paragraph 187 is denied.

62. Defendants lack sufficient knowledge and information to form an opinion as to Paragraph 188, and therefore deny the same.

63. Paragraphs 189, 190, and 191 are denied.

64. Paragraph 192 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

65. Paragraph 193 is denied.

66. Paragraphs 194, 195, 196, 197, 198, 199, and 200 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

67. Paragraph 201 is denied.

68. Paragraphs 202, 203, and 204 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

69. Paragraphs 205 and 206 are denied.

70. Paragraph 207 and 208 (and its subparts) call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

71. Paragraphs 209 and 210 are denied.

72. Paragraph 211 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

73. Paragraphs 212, 213, 214, 215, and 216 are denied.

74. Answering Paragraph 17, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

75. Paragraphs 218, 219 (and its subparts), and 220 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

76. Answering Paragraph 221, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

77. Paragraph 222 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

78. Paragraphs 223 (and its subparts), 224, 225, and 226 are denied.

79. Answering Paragraph 227, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

80. Paragraph 228 calls for a legal conclusion, which Defendants are not required to make. To the extent a response is required, Defendants deny the same.

81. Defendants deny Paragraphs 229, 230, 231 (and its subparts), 232, and 233.

82. Answering Paragraph 234, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

83. Paragraphs 235, 236 (and its subparts), and 237 (and its subparts) call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

84. Paragraph 238 is denied.

85. Answering Paragraph 239, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

86. Paragraph 240 is denied.

87. Answering Paragraph 241, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

88. Paragraphs 242 and 243 call for legal conclusions, which Defendants are not required to make. To the extent responses are required, Defendants deny the same.

89. Defendants deny the responses contained in Paragraphs 244, 245, and 246.

90. Defendants lack sufficient knowledge and information to form an opinion as the Paragraphs 247, 248, 249, and 250; and therefore deny the same.

91. Answering Paragraph 251, the responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth here verbatim.

92. Defendants deny the responses contained in Paragraphs 252, 253, and 254.

93. Defendants deny Plaintiff's prayer for judgment and punitive damages.

FOR A SECOND DEFENSE
(Arbitration)

94. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

95. Plaintiff and Defendants have mutually agreed, pursuant to a contract between them, to submit the claims made in this matter to a panel for binding arbitration. Therefore, this matter should be dismissed by the Court and referred to arbitration.

FOR A THIRD DEFENSE
(Comparative Negligence)

96. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

97. Defendants would show that such injuries or losses sustained by Plaintiff, if any, were due to and caused by his or her negligence, willfulness, wantonness, or recklessness, which exceeded that of Defendants, so Plaintiff's recovery is barred by the doctrine of comparative negligence.

FOR A FOURTH DEFENSE
(Non-Economic Damages Caps)

98. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

99. Defendants plead all limitations on noneconomic damage awards including but not limited those set forth within S.C. Code Ann. §15-32-200, et seq.

FOR A FIFTH DEFENSE
(Failure to Establish Proximate Cause)

100. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

101. Plaintiff has filed to establish by expert testimony that any act of the Defendants was the proximate cause of injury to the Plaintiff. Defendants would show that such injuries or damages sustained, if any, by the Plaintiff were the direct and proximate cause of one or more independent intervening, superseding causes, which acts a complete bar to this action.

FOR A SIXTH DEFENSE
(Failure to Establish Standard of Care)

102. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

103. Plaintiff has failed to provide expert testimony as required by our law, to establish the physician's standard of care and that such standard was breached. Plaintiff's injuries or damages were not the result of any departure from the generally accepted standard of care on the part of Defendant, and, therefore, Defendants are in no way liable to Plaintiff for the matter set forth in the Complaint.

FOR A SEVENTH DEFENSE
(Failure to State Claim)

104. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

105. Defendants would show that the Plaintiff's Complaint fails to state any claim upon which relief can be granted. Therefore, it should be dismissed pursuant to Rule 12 of the SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

FOR AN EIGHTH DEFENSE
(Intervening and Superseding Negligence)

106. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

107. Defendants would show that such injuries or losses that Plaintiff sustained, if any, were not caused by any negligence on the part of Defendants, but were rather due to and caused by the intervening and superseding fault, breach of warranty or act or omission of a third party, over which Defendants had no control.

FOR A NINTH DEFENSE

(Laches)

108. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

109. Defendants would show, upon information and belief, that Plaintiff's claims are barred by the doctrine of laches.

FOR A TENTH DEFENSE

(Waiver)

110. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

111. Defendants would show that Plaintiff's Complaint is barred by the doctrine of waiver.

FOR AN ELEVENTH DEFENSE

(Estoppel)

112. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

113. Defendants would show, upon information and belief, that Plaintiff's claims are barred by the doctrine of estoppel, inasmuch as Defendants relied on representation by the Plaintiff, and such reliance has proved to be detrimental.

FOR A TWELFTH DEFENSE

(Punitive Damages)

114. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

115. Defendants allege that Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the UNITED STATES CONSTITUTION and Article I, Section 3 of

the SOUTH CAROLINA CONSTITUTION in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

116. Defendants allege that Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the UNITED STATES CONSTITUTION and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

117. Defendants allege that Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the UNITED STATES CONSTITUTION and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION in that the amount of punitive damages is based upon the wealth of Defendant.

118. Defendants allege that Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

119. Defendants would show, upon information and belief, that Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the CONSTITUTION OF THE UNITED STATES OF AMERICA in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is

violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; violates Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Defendants' exercise of that right; violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; and violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards.

120. Defendants plead the applicable statutory caps on punitive damages, including but not limited to the caps described in S.C. Code Ann. 15-32-530, et seq., as amended.

121. Defendants demand bifurcation of the actual and punitive damages phases of the trial.

FOR A THIRTEENTH DEFENSE
(Standards of Care)

122. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth verbatim.

123. Plaintiff's alleged injuries and damages were not caused by any departure or deviation from any applicable standards of care by Defendant.

FOR A FOURTEENTH DEFENSE
(Statute of Limitations)

124. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth verbatim.

125. Defendants would show that this action is barred by the applicable Statute of Limitations, enforcement of which is a matter of public policy in South Carolina.

FOR A FIFTEENTH DEFENSE

(Unavoidable Accident)

126. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

127. Defendants would show that such injuries or losses that the Plaintiff sustained, if any, as alleged in the Complaint, were not due to or caused by the negligence on the part of either Plaintiff or Defendants, but were rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A SIXTEENTH DEFENSE

(Reservation and Non-Waiver)

128. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

129. Defendants reserves the right to assert and does not waive any additional further defenses which may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A SEVENTEENTH DEFENSE

(SC Code Ann. §15-38-15)

130. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

131. The Defendants reserves and asserts all rights under South Carolina Code Annotated §15-38-15.

FOR AN EIGHTEENTH DEFENSE

(Incorporation of Other Defendants' Defenses)

132. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

133. The Defendants hereby incorporate and assert all defenses, set-offs and credits asserted by any other party to this action, whether named at the time of this Answer or at a later date, to the extent not inconsistent with its Answer herein and its denial of any liability of any kind.

FOR A NINETEENTH DEFENSE

(Consent)

134. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

135. Defendants would show, upon information and belief that any conduct by the Defendants were expressly or impliedly consented to by the Plaintiff, and the Defendants plead Consent as a complete defense to the Plaintiff's Complaint.

FOR A TWENTIETH DEFENSE

(Assumption of the Risk)

136. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

137. Defendants would show that Plaintiff impliedly assumed the risks inherent in the activity in which he was engaged and thereby abrogated any duty that the Defendants would have to Plaintiff.

138. As asserted above, the Defendants assert that this suit should be compelled to arbitration pursuant to the arbitration provision of the Admissions Agreement. In filing this Answer, these Defendants do not waive their ongoing efforts to have this suit compelled to arbitration, including but not limited to Defendants' effort to appeal the Circuit Court's Order denying Defendants' motion to compel arbitration.

FOR A TWENTY-FIRST DEFENSE
(Non-Waiver)

139. The responses contained in the preceding paragraphs, not inconsistent herewith, are hereby re-stated as if set forth set forth here verbatim.

140. As asserted above, the Defendants assert that this suit should be compelled to arbitration pursuant to the arbitration provision of the Admissions Agreement. In filing this Answer, these Defendants do not waive their ongoing efforts to have this suit compelled to arbitration, including but not limited to Defendants' right to appeal the Circuit Court's Order denying Defendants' motion to compel arbitration, should such an order be granted.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Amended Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

Defendants demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark V. Gende
Mark V. Gende, SC Bar No. 72835
Brandon R. Gottschall, SC Bar No. 100621
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 8, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)

C. A No. 2019-CP-02-02840

The Estate of Charles S. Rudd, deceased,
through the duly appointed Personal
Representative, Thelma Rudd, Individually
and on behalf of statutory beneficiaries,

ORDER DENYING MOTIONS TO STRIKE,
DISMISS AND COMPEL ARBITRATION

Plaintiffs,

vs.

Pepper Hill Nursing & Rehab Center, LLC
d/b/a Pepper Hill Nursing & Rehab Center
and Shiloh Management Company, Inc.
Defendants.

This matter came before the Court on Defendants' Motion to Dismiss and Compel Arbitration filed on March 2, 2020 which was heard on May 5, 2020. Defendants also filed a related Motion to Strike on May 4, 2020 which was heard on May 19, 2020. Having listened to oral arguments from counsel and reviewed the parties' legal memoranda and exhibits, and for the reasons more fully set forth below, the Court hereby denies Defendants' Motion to Dismiss and Compel Arbitration, and Defendants' Motion to Strike.

This case involves a tort action with allegations of nursing home neglect and corporate negligence which Plaintiffs claim occurred while Mr. Rudd was a resident of a skilled nursing facility allegedly owned and operated by the Jones Family through the above related Defendants. Charles Rudd was admitted to Defendants' facility on July 27, 2016. Plaintiffs stated that they

are not asserting any contract claim based on the Admission Agreement; Plaintiffs allege only common-law negligence claims.

Defendants must show a valid and enforceable arbitration agreement between Charles Rudd and the Facility to prevail on its motion. Based on the evidence available to the Court, the Court is unable to determine at this time that the arbitration agreement is enforceable. It is undisputed that Mr. Rudd's signature does not appear on the Admission Agreement provided to the Court.

The Court finds that at this early stage of the litigation, it lacks sufficient grounds to enforce the "Arbitration Agreement" on which Defendants' motion relies because it cannot find that the Contract was entered with the mutual assent of its proposed parties. Defendants failed to meet this burden. The Court finds that it lacks evidence to establish at this time that Mr. Charles Rudd manifested assent establishing Thelma Rudd, his wife, as his agent for purposes of arbitration. The Court is also without evidence at this time demonstrating that Thelma Rudd was Mr. Rudd's power of attorney at the time she signed the Admission paperwork. The Court finds that it lacks evidence at this time to determine that Ms. Thelma Rudd had legal authority to bind Mr. Rudd to the Arbitration Agreement. The Court finds that Ms. Thelma Rudd's signature, standing on its own, is not sufficient to find that she had legal authority to bind Mr. Rudd to arbitration.

The recent South Carolina Supreme Court case Wilson v. Willis, 827 S.E.2d 167 (2019) discusses a presumption against arbitration in the insurance context where the party resisting arbitration is a non-signatory:

Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts.” Moreover, because arbitration, while favored, exists solely by agreement of the parties, **a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.**

The Court finds, based on well-established case law in South Carolina including the Coleman, Hodge, and Thompson cases, that it lacks sufficient evidence to enforce the arbitration agreement. Defendants asserted the affirmative defenses of equitable estoppel, ratification and third-party beneficiary theories. However, the Court finds that it lacks evidence to apply these defenses at this time. Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts.¹ The Court finds that the evidence presented at this time does not support application of equitable estoppel. Further, the party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. Defendants failed to meet this evidentiary burden.

For a party to be estopped in these circumstances the Court in Hodge and reaffirming its stance in Thompson stated that the elements for a party to be estopped 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

¹ Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

conduct shall be acted upon by the other party; and 3) knowledge, actual or constructive, of the real facts. *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813, S.E. 2d. 292 (Ct. App. 2018). The Court lacks evidence at this time that would demonstrate whether Mr. Rudd made a false representation or concealed any material fact. As a result, the Court lacks evidence that there was an intent that any such representation or concealment be acted upon.

To establish a ratification of the Arbitration Agreement Defendants must show (1) acceptance *by the principal* of the benefits of the agent's acts, (2) the *principal's full knowledge* of the facts, and (3) circumstances or an *affirmative election demonstrating the principal's intent* to accept the unauthorized arrangement.² Here the Court finds that the Defendants have not shown that Plaintiffs meet any of the elements required for ratification. The Court finds it lacks evidence establishing the elements for the affirmative defense of ratification. Defendants' Motion to Dismiss and Compel Arbitration is **DENIED**.

Defendants' Motion to Strike arose from Plaintiffs' Memo in Opposition to Defendants' Motion to Compel Arbitration. S.C.R.C.P. 12(f) provides, in part "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." "In a motion to strike as irrelevant, immaterial or redundant, only the pleadings may be considered."³ In determining whether to grant a motion to strike, the court "enjoys wide discretion... in order to minimize delay, prejudice and confusion by narrowing the issues for discovery and trial."⁴ "Rule 12(f) motions are generally viewed with disfavor because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a

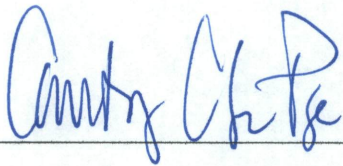
² *Lincoln v. Aetna Gas. & Sur. Co.*, 300 S.C 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989).

³ *Lancaster v. Sweat*, 239 S.C. 120, 124, 121 S.E.2d 444, 446 (1961).

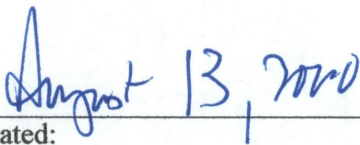
⁴ *Haley Paint Co. v. E.I. du Pont de Nemours & co.*, 279 F.R.D. 331, 335 (D. Md. 2012).

dilatory tactic.”⁵ In other words, the relevance of allegations may turn on disputed issues of fact or law so as to render it premature to strike them.

The Court finds that denial of this motion is appropriate and within its discretion, and therefore Defendants’ Motion to Strike is **DENIED**.



Judge Clyburn-Pope
Second Judicial Circuit


Dated:

⁵ Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd, deceased,	)	Civil Action No. 2019CP0202840
through the duly appointed Personal	)	
Representative, Thelma Rudd,	)	
individually and on behalf of statutory	)	
beneficiaries,	)	

	)	
Plaintiff,	)	

v.	)	

Pepper Hill Nursing & Rehab Center,	)	
LLC d/b/a Pepper Hill Nursing & Rehab	)	
Center n/k/a The Place at Pepper Hill,	)	
LLC, and Shiloh Management, Inc.	)	

**MOTION TO RECONSIDER ORDER
DENYING DEFENDANTS' MOTION TO
DISMISS AND COMPEL ARBITRATION**

Defendants.	)	

Defendants Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center, and Shiloh Management, Inc. move pursuant to Rule 59(e) of the South Carolina Rules of Rules of Civil Procedure for an Order altering or amending the Court's August 14, 2020 Order denying Defendants' Motion to Dismiss Compel Arbitration. For the reasons set forth below, an enforceable contract exists and further, equitable estoppel applies to bind Plaintiff to the contract.

FACTS BEARING ON THE MOTION

In this case, the Plaintiff case presents the Court with an incongruous proposal: Ms. Thelma Rudd, the putative personal representative of Mr. Rudd's estate, seeks to benefit by claiming in effect that she misrepresented her authority to admit Mr. Rudd to Pepper Hill but that she nonetheless now has the authority to sue on behalf of his estate. Specifically, Mr. Rudd was admitted to Pepper Hill for care pursuant to the July 27, 2016 Admissions Agreement, which Ms.

Rudd signed on his behalf. *See* Admissions Agreement, attached as Exhibit A to Defendants' March 2, 2020 Motion to Dismiss and Compel Arbitration. According to the Plaintiff, Mr. Rudd was a "vulnerable adult" and had suffered cognitive decline. Ms. Rudd now seeks to avoid the Admissions Agreement's arbitration provision by claiming that she lacked authority to execute the agreement.

Ms. Rudd's Complaint alleges that Mr. Rudd was injured after he fell from his wheelchair while he was a resident at Pepper Hill. Per the nurse's affidavit filed with Plaintiff's Complaint, Mr. Rudd reported that he slipped from his chair while eating breakfast and that he hit his head on the wheelchair when he slid out. *See* Affidavit of Paige Swatman, RN, LNC, at ¶ 3, filed with Court November 13, 2019. The next day, Mr. Rudd went to Aiken Regional and was diagnosed with a slight hemorrhage, for which he was treated. *See id.* at ¶ 4.

The Admissions Agreement signed by Ms. Rudd includes a conspicuous and enforceable Arbitration Agreement. The Admissions Agreement includes, underlined and in bold at the top of every single page:

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

Exhibit A at 1-14. In addition, the Admissions Agreement's full arbitration provision is set forth on its own page under the word "ARBITRATION" in all caps. This provision states in relevant part as follows:

ARBITRATION

Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this agreement or resident's stay in this facility, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act

(or if not applicable, the Uniform Arbitration Act, Section 14-48-10, et. Seq., Code of Laws of South Carolina), the rules of practice and procedure for the arbitration of disputes of J.A.M.S. Arbitration or any successor thereof (“J.A.M.S.”) and the “special rules” set forth below. In the event of any inconsistency, the special rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any part to the Admissions Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which the agreement applies in any court having jurisdiction over such action.

Exhibit A at 13.

I. Analysis

a. The Arbitration Agreement is Enforceable against Mrs. Rudd, a Signatory, in her Individual Capacity.

The Court’s Order does not address Ms. Rudd’s claims brought in her individual capacity. It is undisputed that Ms. Rudd executed the Admissions Agreement, which included the Arbitration Provision. Further, she has filed this suit in her individual capacity. As a result, even if some question existed as to claims brought by the estate, there is an enforceable agreement as to Ms. Rudd and her individual claims.

Further, Ms. Rudd’s dispute is within the scope of the Arbitration because they stem from the care and treatment Mr. Rudd received under the Agreement as a resident of Pepper Hills.

As a result, the Federal Arbitration Act applies and arbitration is required as to Ms. Rudd’s claims brought in her individual capacity, and Defendants request reconsideration of the Court’s Order.

b. Defendants Demonstrated an Enforceable Arbitration Agreement as to Mr. Rudd.

i. Actual Authority

The Court’s Order also does not address Mrs. Rudd’s actual authority to execute the Admissions Agreement under the Adult Health Care Consent Act (“Adult Health Care Act”)

(*see, e.g.*, S.C. Code Ann. ¶ 44-66-30). By Plaintiff's own representations, Mr. Rudd suffered cognitive decline and was a "vulnerable adult." Under the Adult Health Care Act, Mrs. Rudd, as Mr. Rudd's spouse, was authorized to act on Mr. Rudd's behalf. This is further supported by South Carolina's Bill of Rights for Residents of Long-Term Care Facilities ("Bill of Rights"). *See* S.C. Code Ann. § 44-81-10, et. seq. Under the Bill of Rights, a "representative" is defined as "a resident's legal guardian, committee, or next of kin or other person acting as an agent of a resident who does not have a legally appointed guardian." S.C. Code Ann. § 44-81-30(2); *See also* S.C. Code Ann. § 62-2-103(1) (if no surviving spouse, the child of a decedent becomes next of kin).

That Ms. Rudd had this authority was demonstrated, in a signed writing, by Ms. Rudd herself. In the Admissions Agreement, Mrs. Rudd expressly represented that she was "authorized by the Resident to act on the Resident's behalf." Admission Agreement at 12. Furthermore, Mrs. Rudd, to this date, has never contested that she was Mr. Rudd's representative, and in fact in her response opposing the Motion to Compel Arbitration, Plaintiff concedes that Mrs. Rudd may have been Mr. Rudd's agent for purposes of making healthcare decisions. Plaintiff's Response in Opposition to Motion to Compel Arbitration at 6.

In short, the only evidence in this case demonstrates that Mrs. Rudd had actual authority to admit Mr. Rudd, and Plaintiff has not even represented to the contrary.

ii. Apparent Authority

Furthermore, the only available evidence demonstrates that Mrs. Rudd also had apparent authority to enter the Admissions Agreement. Mrs. Rudd brought Mr. Rudd to the facility and, through the Admissions Agreement, obtained him a room and care at the facility. She signed the Admissions Agreement representing that she was Mr. Rudd's representative, and she had the

authority to authorize the release of information and payment to Pepper Hill. *See, e.g.*, Admissions Agreement at p. 7. She further initialed the admissions Agreement following the Agreement's arbitration provision. In addition, her status and authority to act as Mr. Rudd's Representative is confirmed by her appearance now as Mr. Rudd's Personal Representative in this suit. To date, no one has challenged Mrs. Rudd's actions in placing Mr. Rudd at Pepper Hill or her authority to make healthcare and related decisions for Mr. Rudd.

Thus, the evidence in this case demonstrates that Mrs. Rudd also had apparent authority to admit Mr. Rudd.

II. *Wilson v. Willis* Does Not Apply to Relieve Plaintiff of the Arbitration Requirements.

The Court's Order cites *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), a contract dispute between insurance customers and their insurance agents, for the principal that there is a presumption in South Carolina against arbitration where the dispute involves a nonsignatory to the agreement. *Wilson* involved insurance contracts in which it was "undisputed" that the petitioners were "nonsignatories to the arbitration agreement." *Id.* at 338, 827 S.E.2d at 173. Moreover, the petitioners there "never sought to obtain any direct benefit under [the] contract." *Id.* at 336, 827 S.E.2d at 172.

However, while the *Wilson* Court recognized a presumption against arbitration for nonsignatories, it further stated that "several theories ... could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel." *Id.* at 326, 338, 827 S.E.2d at 174. Several of these theories apply here.

First, as set forth above, Mrs. Rudd was a signatory to the Arbitration Agreement. Thus, the agreement is enforceable against her in her individual capacity.

Second, as to Mr. Rudd's estate, Ms. Rudd signed on behalf of Mr. Rudd, who was a "vulnerable adult" and had suffered cognitive decline. Mrs. Rudd thus acted as Mr. Rudd's agent, and the doctrine of agency applies to bind the Estate to the arbitration provision.

Third, even if Mr. Rudd had not been a "vulnerable adult" and had not suffered cognitive decline, Mr. Rudd received extensive direct benefits under the Admissions Agreement, including but not limited to the services listed on Page 2 of the Admissions Agreement. These were direct benefits because they flowed "directly from the agreement." *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176. *Wilson*, in contrast, involved entities who received no direct benefits under the contract. *See id.* (finding that petitioners did not receive direct benefits from the agreement). Thus, his estate is estopped under direct benefits estoppel from disclaiming the Admissions Agreement and Arbitration Provision and/or his estate assumed the Agreement.

III. *Coleman, Hodge, and Thompson* Involved Separate Arbitration Agreements and are Not Applicable.

Finally, the Order relies on three cases that by their own terms do not apply to the circumstances before the Court in the present case. Specifically, in each of the three cases-- *Coleman, Hodge, and Thompson*, the Arbitration Agreements under review were separate from the Admissions Agreement, which in each case was critical to the court's determination. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) ("The *separate* arbitration agreement *concerned neither health care nor payment*, but instead provided an *optional* method for dispute resolution between Facility and Decedent or Sister should issues arise in the future.") (emphasis added); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 562, 813 S.E.2d 292, 302 (Ct. App. 2018) (finding that the arbitration agreement and admissions agreement were separate "[l]ike in *Coleman*" and that the arbitration agreement and admission agreement "in this case did not merge."); *Thompson v. Pruitt Corp.*, 416 S.C. 43,

53, 784 S.E.2d 679, 685 (Ct. App. 2016) (finding that the arbitration agreement and admissions agreement were separate and did not merge).

In the present case, the Arbitration Agreement and Admissions Agreement *were the same document*. Thus, the above three cases do not apply. This exact distinction was discussed at length in *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185, at *2 (D.S.C. Mar. 19, 2015). In *THI*, the court upheld an arbitration agreement after finding that *Coleman* was distinguishable because unlike the separate arbitration and admissions agreements in *Coleman*, “the admission agreement [at issue in *THI*] contained the arbitration provision.” The court found that a representative’s authority to sign an arbitration agreement “is simply not implicated” where the arbitration and admissions terms were contained in the same agreement. *Id. See also Thompson v. Pruitt Corp.*, 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016) (noting that *Coleman* involved an arbitration agreement *separate* from the admissions agreement).

In another case applying South Carolina state law, the court in *THI of South Carolina at Columbia, LLC v. Wiggins* found a nursing home resident’s estate was equitably estopped from disclaiming the enforceability of the arbitration provision contained in the admissions contract. *THI of South Carolina at Columbia, LLC v. Wiggins*, 2011 WL 4089435 (D.S.C. 2011). In *Wiggins*, a daughter executed an admissions contract to a nursing home on behalf of her father. Following the death of the father and a subsequent filing of suit, the nursing home moved to compel arbitration. *Id.* at *2. The father’s estate argued that the arbitration provision was unenforceable because no evidence existed that the daughter had the “authority to act as her father’s agent, to legally bind her father, or waive her father’s right to a jury trial.” *Id.* at *5. In holding that it would be inequitable for the estate to avoid the arbitration provision within the

admissions contract, the court noted the father received the benefits provided under the admissions contract and the nursing home performed in reliance on the terms of the agreement. *Id.* at *6.

Defendants request reconsideration of the Court's order as it erroneously cites to *Coleman, Thompson, and Hodge*, which are distinguished and inapplicable, and does not address *Wiggins* or *Pruitt Corp.*, both of which involved cases analogous to the present case.

CONCLUSION

For the reasons set forth above, the Defendants respectfully request that the Court grant this motion for Reconsideration and revise its order to grant Defendants' Motion to dismiss and compel arbitration, or, in the alternative, to compel arbitration and stay proceedings.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

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Columbia, South Carolina
August 24, 2020

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0202840

Charles S Rudd et al
PLAINTIFF(S)

Pepper Hill Nursing And Rehab Center 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;
☐ 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:

Motion to Reconsider Order Denying Defendants' Motion to Dismiss and Compel Arbitration is denied.

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 10/29/2020 .

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.



Aiken Common Pleas

Case Caption: Charles S Rudd , plaintiff, et al VS Pepper Hill Nursing And Rehab Center Llc , defendant, et al

Case Number: 2019CP0202840

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2020-10-29 15:46:01 page 3 of 3

1	State of South Carolina	)	
2	County of Aiken	)	
3	Estate of Charles S.	)	
4	Rudd,	)	
5	Plaintiff,	)	
6	vs.	)	Transcript of Record
7	Pepper Hill Nursing and	)	
8	Rehab Center, et al.,	)	
9	Defendants.	)	

10
11 May 5, 2020
12 Aiken, South Carolina

13 BEFORE:
14 The Honorable Courtney Clyburn-Pope, Judge

16 APPEARANCES:
17
18 Raymond P. Mullman, Junior, Esquire
19 Attorney for the Plaintiff
20
21 Brandon R. Gottschall, Esquire
22 Attorney for the Defendants
23
24
25

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1 Thereupon, the following proceedings were had,

2 THE COURT: All right. Next we have a motion to
3 dismiss and compel arbitration, Pepper Hill Nursing and
4 Rehab Center.

5 MR. GOTTSCHALL: Yes, Your Honor.

6 THE COURT: And that is?

7 MR. GOTTSCHALL: This is Brandon Gottschall
8 representing Pepper Hill and the defendant Shiloh.

9 THE COURT: Mr. Gottschall?

10 MR. GOTTSCHALL: Yes. That's right, Your Honor.

11 THE COURT: And Mr. Mullman.

12 MR. MULLMAN: Yes, ma'am.

13 THE COURT: Good morning.

14 MR. MULLMAN: Here for the plaintiffs. Good
15 morning.

16 THE COURT: All right.

17 MR. MULLMAN: Did you receive my memo?

18 THE COURT: I did.

19 MR. GOTTSCHALL: And, Your Honor, the defendants
20 submitted a memo yesterday. Is that something that you
21 have?

22 THE COURT: I don't know that I have the defendants'
23 memo.

24 MR. GOTTSCHALL: Okay.

25 THE COURT: I have asked my admin to get that for

1 me, but I'm not sure that we have that. Do you know
2 where you emailed it to?

3 MR. GOTTSCHALL: I do. It was emailed to Judge
4 Clifton Newman.

5 THE COURT: Oh, okay.

6 MR. GOTTSCHALL: And our, my administrative
7 assistant was working to send that. She may have sent it
8 just about one or two minutes ago. It was filed
9 yesterday.

10 THE COURT: I do have it. I have it.

11 MR. GOTTSCHALL: Okay. Wonderful. I apologize.

12 THE COURT: Yes. I have the defendants' as well.
13 It's actually -- I'll send it to you. All right. We're
14 gonna -- I do have that, uhm, and I am going to forward
15 that on so that I can follow along with you all.

16 MR. GOTTSCHALL: Sounds great.

17 THE COURT: All right. Mr. Gottschall, this is
18 actually your motion?

19 MR. GOTTSCHALL: That's right, Your Honor.

20 THE COURT: All right. Let's gets started. She's
21 gonna bring - she's gonna bring the actual document to me
22 and I'll pull it up right here. You want to -
23 which would you prefer, your motion to dismiss -- Excuse
24 me. Motion to dismiss and compel arbitration. All
25 right.

1 MR. GOTTSCHALL: Yes, Your Honor, and I believe the
2 Court, Your Honor, we would - we've actually submitted
3 yesterday, and I apologize for the delay, we had notice
4 of the hearing a week ago and then we received the
5 plaintiff's memorandum which was included with the
6 exhibits, about 200 pages, so we wanted to be complete in
7 our response, but that's why the memorandum is a little
8 later than we prefer to do so I apologize about that.

9 THE COURT: All right.

10 MR. GOTTSCHALL: And, Your Honor, we also filed
11 yesterday a motion to strike which is related to the
12 plaintiff's memorandum, but I think with leave of the
13 Court it would probably be best to address that after we
14 go through the arbitration just to provide context and
15 background.

16 THE COURT: All right. So we'll just, uhm, today
17 we'll just be hearing the motion to dismiss and to compel
18 arbitration and, if necessary, we'll save that motion to
19 strike.

20 MR. GOTTSCHALL: I think that would work, Your
21 Honor.

22 MR. MULLMAN: Well, Judge, I would just object. I
23 got that motion about 5:00 last night.

24 THE COURT: Okay.

25 MR. MULLMAN: Haven't even reviewed it because I

1 haven't had the time to review that motion when I was
2 reading their memo that was given around 5:00 yesterday
3 and I thought they -- You know, it's their motion. They
4 should have filed their memo before mine. I don't think
5 the excuse that they had to respond to my memo is worthy
6 of it being so late. But I would object to the motion to
7 strike being heard since I need at least 10 days to read
8 it and respond. Thank you, Your Honor.

9 THE COURT: All right. Well, we're not gonna hear
10 that motion to strike today.

11 MR. MULLMAN: Thank you, Your Honor.

12 THE COURT: And so we'll move forward with the
13 motion to compel.

14 MR. GOTTSCHALL: That sounds great, Your Honor.

15 THE COURT: Motion to dismiss and to compel. All
16 right.

17 MR. GOTTSCHALL: Your Honor, my name again is
18 Brandon Gottschall and I represent the defendants here
19 Pepper Hill and Shiloh which I'll kind of refer to
20 jointly as Pepper Hill defendants or Pepper Hill
21 throughout the arguments this morning. Again we're here
22 primarily on our motion to dismiss. Our motion to strike
23 is simply regarding some background information in the
24 plaintiff's briefing, so again, I think that is something
25 that can be addressed later certainly with the leave of

1 the Court.

2 The case involves allegations by Ms. Thelma Rudd who
3 has filed this as the personal representative for the
4 estate of Mr. Charles Rudd. Mr. Rudd and Mrs. Rudd were
5 husband and wife. Mr. Rudd alleges that he was injured
6 while at Pepper Hill. He was admitted in the summer of
7 2016 and he slipped from his wheelchair and had a head
8 injury in November of 2016. Mrs. Rudd was notified of
9 the incident contemporaneously, but she did not want to
10 send Mr. Rudd to the hospital that night. He complained
11 of pain but there were no hematomas, no apparent bruising
12 and so she wanted to see how he did overnight. The next
13 morning he still had pain and so she wanted to send him
14 to the Veteran's Hospital. It was unavailable she said
15 -- Or I think there was no ambulance available so he
16 ended up at Aiken Regional the next day. Based on the
17 nursing notes that I have reviewed he was found to have a
18 slight hemorrhage. He recovered and went to another
19 nursing home later in 2016 and he continued to live for
20 another year and a half after the fall.

21 Your Honor, to provide some background on Mr. Rudd's
22 admission to Pepper Hill, Mr. Rudd was admitted on
23 signature of his wife due to his cognitive decline and
24 impairment and I think the parties agree on this portion.
25 Mr. Rudd's cognitive decline is in plaintiff's

1 memorandum, the notes about his impairment as a
2 vulnerable adult appear in their complaint and on
3 admission to Pepper Hill Mrs. Rudd signed the admissions
4 agreement as his representative. She was his wife and so
5 under the Adult Health Care Consent Act she was the
6 individual who was authorized to act on Mr. Rudd's
7 behalf.

8 Your Honor, I'm going to attempt to do a screen
9 share of the admissions agreement, that is with leave of
10 the Court.

11 THE COURT: Yes, sir.

12 MR. GOTTSCHALL: I'm a little new to this so I'll
13 see if this works. All right. Is that appearing on your
14 screen?

15 THE COURT: It is. I can see it clearly.

16 MR. GOTTSCHALL: Your Honor, this is a copy --

17 THE COURT: Mr. Mullman, can you see that?

18 MR. MULLMAN: Yes, ma'am.

19 THE COURT: Okay. All right.

20 MR. GOTTSCHALL: This is a copy of the admissions
21 agreement and packet. It's attached as exhibit 1 to our
22 motion and to our memorandum. It's not unduly long. The
23 admissions agreement is about 14 pages, a full packet is
24 only about 26 pages. Mrs. Rudd's signature and initials
25 are in the packet about 20 times, each time they're

1 written neatly and they're not scribbled and I think
2 that's important because there's been allegations that
3 Mrs. Rudd was rushed through this process. There's no
4 evidence that I can see from this agreement, there's been
5 no statements filed to that effect. Mrs. Rudd's
6 signature again appears about 20 times in this agreement.

7 Our motion is based on the arbitration provision
8 contained in this standard admission agreement. The
9 admission agreement is one document. It contains the
10 arbitration provision which as we'll get into later is
11 important under South Carolina law. The arbitration
12 terms are highly conspicuous. They're at the top of page
13 1 up here and they're underlined, they're in all caps and
14 bold print. Mrs. Rudd's signature appears right
15 underneath this and, Your Honor, that notice in bold
16 underlined print is on top of page 2, scroll down to
17 that, it's on top of page 3. Your Honor, it's on top of
18 all 14 pages of this document. In fact, on page 14, jump
19 to here, the agreement is at the top of the page and just
20 below that are, we believe are Ms. Rudd's initials right
21 here. This would have been the last thing she looked at,
22 this arbitration provision at the top of the last page
23 she looked at before initialing this document. Then
24 below is the signature block which she also signed down
25 here.

1 Your Honor, in addition, this agreement contains an
2 arbitration agreement which is one page back on page 13.
3 This arbitration provision is capitalized in all caps, it
4 appears separately on this page. Your Honor, it's
5 conspicuously set out underneath the arbitration notice
6 at the top of the page, and again, when you jump to page
7 14, Mrs. Rudd has initialed immediately following this
8 arbitration provision.

9 Your Honor, I know the Court is familiar with South
10 Carolina and the United States policies favoring
11 arbitration. The South Carolina Supreme Court has said
12 that unless the court can say with positive assurance
13 that the arbitration clause is not susceptible to an
14 interpretation covering a dispute, arbitration should be
15 ordered and our brief discusses that at length. I'm glad
16 to go into the public policy arguments if it's helpful.

17 Arbitration is required under South Carolina law and
18 under Federal law where there's a valid arbitration
19 agreement and where the dispute is within the scope of
20 the agreement. Here Mrs. Rudd executed the admissions
21 agreement, she executed as Mr. Rudd's representative.
22 She had authority under the Adult Health Care Consent Act
23 to make his health care decisions and I don't believe
24 that that is challenged. The arbitration provision is
25 part of the admissions agreement and so it's within the

1 scope of Mrs. Rudd's authority to make health care
2 decisions. This is supported by South Carolina law
3 including the Hodge and Coleman case which are discussed
4 in both plaintiff's and the defendants' brief. THI
5 versus Gilbert case which is a Federal District Court
6 case and the THI versus Wiggins case which are also cited
7 in our brief, those draw the distinction between an
8 arbitration agreement that is set out on a separate page
9 and is not part of a health care decision and an
10 arbitration provision that is within the admissions
11 document and because it's within the admissions document
12 it's deemed part of the health care decision just as any
13 other provision in the contract would be deemed as part
14 of the larger decision, larger purpose of the contract.

15 Your Honor, we also believe that this dispute is
16 squarely within the scope of the arbitration agreement.
17 The arbitration agreement that we are looking at here
18 covers any controversy or claim between or among the
19 parties including but not limited to those arising out of
20 or relating to this agreement or residents staying at the
21 facility including any claim based on or arising from an
22 alleged tort. And I'm attempting to highlight here in
23 the agreement. We have also cited in our brief the South
24 Carolina Supreme Court case Zabinski, Z-a-b-i-n-s-k-i v.
25 Bright Acres Associates. That's 346 South Carolina 580.

1 That was in 2001 and that is that language we cited
2 earlier. That was concerning the scope of arbitral
3 issues should be resolved in favor of arbitration and
4 then unless a court can say with positive assurance the
5 arbitration clause is not susceptible to an
6 interpretation covering a dispute arbitration should be
7 ordered. So as a result we believe that this provision
8 squarely covers the complaint in this case.

9 Your Honor, we've also argued in our brief equitable
10 estoppel. This is an alternative argument and I believe
11 that it's not necessary to reach this to decide the
12 arbitration issue, but we have set this forth and we
13 would incorporate it in all of our brief, but especially
14 right now the equitable estoppel is where I am on that
15 section. As we discussed, Mrs. Rudd had signed the
16 admissions agreement as Mr. Rudd's representative. She's
17 now brought this suit as his representative. Mr. Rudd
18 and Mrs. Rudd received benefits under the agreement.
19 Those include the services on page 2 of the agreement.
20 There's a whole list of services Mr. Rudd was provided
21 for months, nearly half a year. Care, accommodations,
22 meals, social activities, nursing services, housekeeping,
23 the list goes on. Mrs. Rudd was placing Mr. Rudd in the
24 care center presumably because she was unable or had
25 other issues with providing care to Mr. Rudd and so Mrs.

1 Rudd received benefits under this agreement as well.

2 Your Honor, we have cited in our brief the THI
3 versus Wiggins case. That cite is 2011 WL4089435, it's a
4 2011 case. I believe that's Judge Currie. She looked at
5 arbitration circumstances very similar to this case where
6 a family member had signed an admissions agreement for an
7 individual.

8 THE COURT: Where do you cite that?

9 MR. GOTTSCHALL: That, Your Honor, is --

10 THE COURT: I see Zabinski.

11 MR. GOTTSCHALL: Go to -- I'm sorry, Your Honor. I
12 see that only page 1 of our brief has a number.

13 THE COURT: That's okay.

14 MR. GOTTSCHALL: Section II in the bold heading,
15 plaintiff is equitably estopped, and Wiggins is cited
16 halfway down that page. It's about five pages from the
17 back, maybe six pages from the back of our brief.

18 THE COURT: Section II?

19 MR. GOTTSCHALL: Yes, Your Honor. Roman numeral II.

20 THE COURT: All right. I see it.

21 MR. GOTTSCHALL: This is a case where Judge Currie
22 found that the nursing home resident estate was equitably
23 estopped from disclaiming the arbitration provision. A
24 daughter had executed that provision in the admissions
25 agreement. Following the death of the father the nursing

1 home there moved to compel arbitration much like we have.
2 Judge Currie found equitable estoppel applied. The
3 reason that she found equitable estoppel applied was that
4 the father, and I guess it was attributed to his estate,
5 he received benefits under the agreement. He received
6 the services provided in the agreement. I know that
7 oftentimes a party who is challenging an arbitration
8 agreement will say, well, they didn't get the benefits of
9 those agreements because we have alleged that he's been
10 injured and we have alleged that there's wrongful death
11 and, Your Honor, I don't know that - if that's the
12 standard, then equitable estoppel would never apply to
13 any allegation in any case where there's an allegation of
14 a wrongful doing. An allegation of a wrongful act does
15 not erase benefits negotiated for under a contract and
16 Judge Currie's decision we believe supports that.

17 We have also discussed Judge Currie's decision in
18 our next section, Your Honor. This is about two pages
19 back I believe. Let's see. Should be under section IV
20 of our brief, Your Honor. Here we discussed that Mr.
21 Rudd was a third beneficiary so that under this theory
22 he's also prohibited from contesting the arbitration
23 provision. This was discussed in Judge Currie's opinion
24 in the end and as a third party beneficiary Mr. Rudd and
25 his estate would be bound. Mr. Rudd was clearly intended

1 to be a beneficiary of this contract. His name appears
2 all over this contract. I don't think there's really any
3 question about that issue. He received months of
4 accommodations, lodging and care. Mr. Rudd was a
5 resident. He's a third party beneficiary. He's the
6 intended beneficiary. I think the word intended
7 beneficiary is also important because that takes away I
8 believe some of the impetus of any argument that because
9 there's an allegation of negligence he didn't receive a
10 benefit. He was the intended beneficiary.

11 Your Honor, to briefly discuss -- Well, I guess
12 before I move on, those are our three larger theories
13 supporting arbitration. There are some, I guess,
14 peripheral issues, unconscionability that is discussed,
15 some separation. Well, I guess the plaintiffs have
16 alleged the wrongful death action should separately
17 survive. They have asked for a jury trial, just the
18 arbitrable, arbitration provision in the brief. Those
19 are kind of peripheral issues but before I move to that,
20 does the Court have any questions on our larger theories
21 as to arbitration?

22 THE COURT: No. I've, uhm -- No. No questions at
23 this time.

24 MR. GOTTSCHALL: Okay. Your Honor, plaintiff had
25 talked about in their brief this issue as to whether the

1 arbitration agreement or perhaps the admissions agreement
2 as a whole was unconscionable. There's discussion in the
3 plaintiff's brief and, in fact, citations in the
4 plaintiff's brief to cases where the courts had found
5 that sometimes individuals are admitted to nursing homes
6 in crises situations or where there's little time to
7 review and have the opportunity to ask questions about an
8 admissions agreement. There are allegations that
9 Mrs. Rudd's experience here involved a hasty explanation
10 of the arbitration provision of the agreement as a whole.

11 Your Honor, importantly there is no evidence
12 inserted into the record as to that point. There's no
13 affidavit from Mrs. Rudd saying, hey, this was hasty,
14 this was a situation that was not appropriate. There's
15 nothing like that. In fact, we had a case which was
16 before Judge Nettles recently. That order is cited in
17 plaintiff's brief. Judge Nettles found that there was,
18 ordered that the arbitration provision would not be
19 compelled and in that case the plaintiff had an
20 affidavit. Some of the facts are different in that case
21 as well, Your honor, but just briefly on the affidavit
22 issue, they had an affidavit from the individual who
23 signed the admissions agreement going through all the
24 different issues and setting forth why they believed that
25 admissions process was unconscionable. That's not

1 happened here. There's nothing in the record to suggest
2 that there was any flaw with the admissions process and
3 the contract is before us. We have her signature. It's
4 a very standard contract. The arbitration agreement is
5 plainly set forth. It's conspicuous. Ms. Rudd
6 represented in the contract on page 1 that she had time
7 to review and ask questions. That appears again on the
8 signature page, and there's no lack of any due process
9 here.

10 Your Honor, to address next the plaintiff's wrongful
11 death arguments in their brief, the arguments that the
12 plaintiff has raised in their brief are to the wrongful
13 death cause of action alone that our arbitration
14 provision is not sufficient to cover those wrongful death
15 allegations. Your Honor, we have already cited Zabinski.
16 South Carolina rule of law requires doubts resolved in
17 favor of finding claim of arbitration, the arbitration
18 agreement here covers all claims including explicitly the
19 tort claims. We have cited Marmet Health Care Center
20 case which is a Supreme Court case. In that case the
21 United States Supreme Court struck down a state law that
22 sought to exclude wrongful death claims from arbitration.
23 The court said, held that the Federal Arbitration Act
24 requires enforcement of the bargain of parties to
25 arbitrate with no exception for personal injury or

1 wrongful death claims. So we don't know that their
2 argument holds any weight even under South Carolina law,
3 but certainly the Supreme Court has struck that down.

4 We also note thereto that in this case we think
5 something that's very important. Mrs. Rudd is the
6 individual who signed the admissions agreement. She's
7 the one who read and signed the arbitration provision.
8 She's also the same individual who has brought the
9 lawsuit and so as the beneficiary of the estate, as the
10 signatory to the arbitration agreement it would be unjust
11 to now allow her to back away from the arbitration
12 provision.

13 Your Honor, just briefly and finally the plaintiff's
14 brief asks the Court to enter, if arbitration is ordered
15 or if there's an appeal in this case, they ask that the
16 Court order a bond to be presented. This issue might
17 really be better addressed with a motion to strike. It's
18 a request that came in with their brief on Friday and so
19 it's just another essentially a written motion, Your
20 Honor, for something that we haven't had the notice, the
21 10 days notice under Rule 6, but we are glad to address
22 that if the Court feels that this is the right time.

23 MR. MULLMAN: I would concur to move that to when
24 the motion to strike is heard.

25 THE COURT: All right. Very well. Yeah. With

1 regards to those issues we'll move that along with the
2 motion to strike at a later date.

3 MR. GOTTSCHALL: Thank you, Your honor. That's all
4 we have. Again, we just incorporate our brief in full
5 and we are glad to respond to any questions you have or
6 any issues that Mr. Mullman raises.

7 THE COURT: All right. Very well. Thank you.

8 MR. GOTTSCHALL: Thank you.

9 THE COURT: All right. Mr. Mullman. Good
10 morning.

11 MR. MULLMAN: If it pleases the Court, I don't know
12 if you want to keep this arbitration agreement up or
13 not.

14 THE COURT: You can keep it up, but I also do have a
15 --

16 MR. MULLMAN: I don't need it. Thank you, Your
17 Honor. If it pleases the Court, I have the pleasure of
18 representing the estate of Charles Steven Rudd. The
19 defendants are conflating the authority that Thelma Rudd
20 had at different time periods, okay? At the time he was
21 admitted to the facility in July of 2017 it is undisputed
22 that Mr. Rudd did not sign the arbitration agreement. He
23 was not a signatory. It is undisputed that one of the
24 defendants Shiloh Management did not sign the agreement
25 and is a non signatory to the agreement. It is

1 undisputed that we did not have a breach of contract in
2 our complaint, all negligence, corporate negligence,
3 breach of fiduciary duty, other tort issues. It is
4 undisputed that Mrs. Rudd is Mr. Rudd's wife, but she was
5 not power of attorney. She had no legal authority to
6 waive Mr. Rudd's constitutional right to a jury trial as
7 evidenced by the Coleman case in South Carolina.

8 I notice the defendants kind of ignore Coleman,
9 Hodge, Thompson, Wilson and Malloy which are the cases
10 right on point, and all of those cases would have changed
11 the opinions of those judges in Wiggins, Gilbert and
12 other cases cited in the defendants'. I think, Judge,
13 it's very important that the Supreme Court cases and
14 state law applies, are more important to the Court's
15 analysis than the Federal Circuit Court orders that
16 happened 10 years ago.

17 The estate of Mr. Rudd is the party to the lawsuit.
18 Thelma Rudd is not a party to the lawsuit. She is the
19 personal representative as appointed by the Probate Court
20 January 24th, 2019 which gave her permission to enter
21 into contracts for the estate. Remember, this contract
22 they're attempting to enforce was July of 2017, or 2016,
23 excuse me, way before she had any legal authority to bind
24 her husband or waive his constitutional right to a jury
25 trial and that's clearly shown in Coleman. They said

1 okay, well, a family member might have authority for
2 health care decisions, but certainly not authority to
3 waive his constitutional right to a jury trial without a
4 power of attorney which everybody agrees she did not have
5 as of July of 2016 when this was signed and her authority
6 at the time of the signing is what matters. If she gains
7 the authority in January 24th, 2019 by the Probate Court,
8 they can't retroactively give her the authority from July
9 2016.

10 THE COURT: When did she receive it from the Probate
11 court, 2017?

12 MR. MULLMAN: January 24th, 2019, Your Honor.

13 THE COURT: 2019. Okay. I'm sorry.

14 MR. MULLMAN: Yes. No problem. Once again, by the
15 way, it's very important to later on understand that they
16 have to accept Mr. Rudd with or without this arbitration
17 agreement, with or without this admission agreement.
18 They have a contract to provide, it's called a provider
19 agreement with Medicaid and Medicare and they basically
20 say if you want to get Medicaid and Medicare, you have to
21 accept Medicaid and Medicare residents if you have an
22 open bed so they have to take the resident. She doesn't
23 have to sign the admission and she certainly doesn't have
24 to sign the arbitration agreement so there's no prejudice
25 by signing over the admission agreement towards the

1 defendant. In other words, they didn't rely on this
2 admission agreement and this admission agreement does not
3 create a tort action. The statutes, the regulations, the
4 Adult Protection Act, the Federal Nursing Home Act,
5 42CFR483 all require them to provide the care. They
6 create the duty not this contract.

7 So, based on the Coleman case and based on the fact
8 that there is no power of attorney, she, Thelma Rudd, the
9 signatory, the only signatory on behalf of this side I
10 guess you would argue even though we don't think she had
11 any authority, would basically prove without that power
12 of attorney there's no actual authority, okay?

13 Now, let's go to apparent authority because they
14 once again they kind of conflate the argument. They keep
15 saying, well, she signed the arbitration agreement,
16 Thelma Rudd, which said she was the representative and
17 she made all these representations and she told us she
18 had authority. None of that matters. Judge, if I go up
19 to you and say I'm the agent of Oprah Winfrey and if you
20 give me \$10.00, I'm gonna give you a million next week,
21 do you think I'm Oprah Winfrey's agent, or are you gonna
22 check behind me? They have a duty. They're a
23 sophisticated nursing home. They have a duty to figure
24 out the scope of the authority, the level of authority or
25 if she has any authority at all.

1 So there's absolutely no evidence right now that
2 Mrs. Rudd was the apparent agent. There was no evidence
3 presented that Mr. Rudd represented Mrs. Rudd as his
4 agent. There's certainly no reasonable reliance by the
5 facility to believe that. It is not what the agent
6 allegedly represented to the facility. It's what the
7 principal, Mr. Rudd, represents and then what does the
8 defendant do about that. Due diligence. Reasonable
9 reliance. We don't even get to that point because
10 there's no evidence that Mr. Rudd represented anything to
11 this facility regarding the agency of Mrs. Rudd.

12 So, of course, there's no prejudice, there's no
13 change of condition in the facility by allowing Mr. Rudd
14 to be admitted. So that kind of - there's no actual
15 agency, no apparent agency. They are conflating the role
16 of Mrs. Rudd during this course of this activity. In
17 July she had no authority. By January 24th, 2019 when
18 the PR is appointed she had authority. Before then she
19 had no authority to bind the estate of Mr. Rudd who is
20 the party, okay? The party is the estate of Mr. Rudd and
21 the statutory beneficiaries. None of them signed the
22 contract as that role.

23 THE COURT: Mr. Mullman, I want to ask you a quick
24 question before you go too far down. You mentioned that
25 the defendants, there was no reliance on the part of the

1 defendants on that signed contract because they are
2 obligated under Federal law to accept Medicare and
3 Medicaid patients.

4 MR. MULLMAN: Yes, ma'am.

5 THE COURT: And so is that to say that Mr. Rudd
6 could have been admitted without any signature of a
7 contract?

8 MR. MULLMAN: Yes. And that actually happens all
9 the time. If somebody is demented and they're in an
10 adult protective services ward, you know, if they're a
11 ward of the state, they don't have to sign an arbitration
12 agreement or admission contract. Many times there's
13 nobody available to sign a contract so they admit them
14 without a contract and then maybe later on they find a
15 family member to sign it. But remember, the key is it
16 wasn't a condition of admission. They didn't make it
17 that if you don't sign this, you can't come in and that's
18 the key.

19 In fact, arguably, and I have seen it happen in
20 other states outside of South Carolina, the argument is
21 the resident is the third party beneficiary of the
22 Medicare/Medicaid contract with the facility and it would
23 be unconscionable to make them waive their right to a
24 jury trial when they are already deriving a benefit based
25 on their tax payer status or their Medicaid/Medicare

1 status and they did that for obvious reasons. They don't
2 want to discriminate against certain people who have
3 different payor sources. So you know why they do that
4 and why they want to make sure that Medicaid people have
5 access to health care and long term care.

6 So, obviously, well, just briefly the third party
7 beneficiary just doesn't apply without a valid contract
8 and there's no valid contract with Mr. Rudd in the
9 facility and once again, conflating something. In their
10 first argument with actual authority and apparent
11 authority they claim Mr. Rudd is the first party. And
12 now they're claiming he's the third party. So you can't
13 have it both ways. Either he's a party to the contract,
14 which he isn't because he didn't sign it and nobody with
15 authority has signed it so it's not a valid contract, or
16 he's a third party beneficiary which he's not because
17 there's no valid contract, and they discuss that ad
18 nauseam in Thompson and Hodge, those recent cases by the
19 Supreme Court and I don't want to regurgitate their
20 arguments, but suffice it to say it's pretty clear that a
21 third party beneficiary hasn't been established under the
22 nursing home circumstances in fact similar to this case.

23 Once again, equitable estoppel. It's a very
24 interesting argument. Once again they go to Wiggins and
25 Gilbert and all those old cases. They really just have

1 to go to Malloy v. Thompson and Wilson v. Willis and
2 Hodge, Coleman. Basically Mr. Rudd, there's no evidence
3 that he knowingly exploited the arbitration agreement.
4 The case is not one of breach of contract. I don't even
5 think we had the contract when we filed the lawsuit.
6 There was no concealment by Mr. Rudd of any true facts.
7 There was no false representation by Mr. Rudd. Once
8 again, they're conflating saying, well, Thelma lied and
9 Thelma misrepresented. It doesn't matter. Thelma is not
10 the agent. Mr. Rudd is. I mean, Mr. Rudd is the
11 principal. Mr. Rudd is the one they're trying to compel
12 to arbitration. Mr. Rudd, there's no evidence he was
13 even aware of the arbitration agreement or the admission.
14 He did not seek a benefit under the admission or the
15 arbitration agreement and once again, there's no breach
16 of contract. I just have to emphasize to the Court to
17 read Coleman, Hodge, Thompson, Willis and Malloy. I
18 think they're right on point with these nursing home
19 cases.

20 Equitable estoppel. Now, let's talk about that a
21 little more. It's ultimately a theory designed to
22 prevent injustice and it should be used sparingly and I
23 say that and that's why we brought in all that evidence
24 that Brandon is trying to strike that, you know, there's
25 no insurance. They don't operate the facility anymore.

1 There's no assets. They're making us go to arbitration
2 and they can't even pay for the arbitration and it makes
3 us feel like they really just want the appeal to delay
4 the inevitable of making the Jones family pay for this
5 judgment because nobody else is paying for the judgment
6 except the Jones family and for me to prove that --

7 MR. GOTTSCHALL: Your Honor, this is the subject of
8 our motion to strike so I don't know that this is
9 appropriately before the Court at this time.

10 MR. MULLMAN: Well, let me kind of bring it, why I
11 think it is. But, you know, because it's an equitable
12 argument, I think it is important to understand all the
13 factors and delay is inequitable and the fact that --

14 THE COURT: I want to make sure, Mr. Mullman, that
15 you don't get into the argument on the motion to strike
16 because the Court is, that's not gonna be before the
17 Court today.

18 MR. MULLMAN: I understand. I'm just explaining why
19 I did that just so it does factor into the equity of the
20 situation under equitable estoppel. But I'll move on.
21 It's in the memo and I think it's obvious. Most of that
22 information is public knowledge so I'm not really sure
23 what the problem is.

24 But defendants made a big issue about the
25 presumption of arbitration and the public policy, but

1 that's only if there is a valid contract. They skipped
2 that part. You have to prove that there's a valid
3 arbitration agreement, then there's a presumption that
4 everything applies to it, but here you don't have a valid
5 agreement between Mr. Rudd and the facility and certainly
6 not Shiloh Management. And, in fact, just recently in
7 the Wilson case in 2019 our Supreme Court said a
8 presumption against arbitration arises where the party
9 resisting arbitration is a non signatory to the written
10 agreement to arbitrate. Mr. Rudd is a non signatory so
11 the presumption is that there is no arbitration agreement
12 as it applies to him.

13 Further, Wilson says when the substance of the
14 claim, in our case simple negligence, wrongful death,
15 personal injury, those kind of things -- By the way, Mr.
16 Rudd was at home. He had a stroke, had to be
17 hospitalized briefly and then was put into this nursing
18 home for physical rehab to get better. They understood
19 upon admission that he was a high fall risk because he
20 had functional limitations from the stroke, one of those
21 being no trunk strength or balance so he can't control
22 himself like I'm doing right now. So if he reaches for
23 something, he's going to fall. They knew that. They
24 even put it in their care plan. Hey, we know he has
25 trunk weakness. The therapist mentioned it. What they

1 didn't do is anything about it. They didn't put an
2 intervention in there like a lap tray, a posey vest, what
3 we call a TLC cushion which is like a pillow that will
4 remind him to stay seated, a wedge, to make him sit on a
5 wedge which will make him sit back. There's plenty of
6 interventions.

7 So when they say, well, he slipped out of a
8 wheelchair. That's not really accurate. He was a high
9 fall risk and there would normally be interventions
10 despite the care plan, it caused him no brain injury, and
11 yes, my expert mentions the documentation in the
12 defendants' chart, but those are all issues for the jury,
13 Your Honor. We're not claiming that the defendants'
14 chart is accurate especially when they say he fell, they
15 called Thelma Rudd and Thelma said no, no, don't send him
16 to a hospital. I've been doing this 25 years. Nobody
17 has ever said that. They always want the family member
18 sent to the hospital. So we are hotly disputing that
19 fact. There was a phone call but there was no
20 indication. In fact, Mrs. Rudd will say that she did
21 tell them to go. So I just don't want you to think that
22 all those facts that he said are in agreement. Let's
23 just say that.

24 THE COURT: Very good. All right.

25 MR. MULLMAN: But going back to Wilson, he says but

1 when the substance of the claim arises from general
2 obligations imposed by state law which would be
3 negligence, including statutes, which once again would be
4 the Adult Protection Act because every resident in a
5 nursing home is considered a vulnerable adult under the
6 Adult Protection Act, it would include the South Carolina
7 regulations found at 61-17 which apply to all long term
8 care - all nurse - all skilled nursing facilities, excuse
9 me, in South Carolina and, of course, the Federal
10 regulations that are many. Some people think the nursing
11 home industry is more regulated than the nuclear industry
12 there's so many regulations. And those can be found, the
13 Federal regulations at 42CFR483.10 at (C) one of which
14 talks about arbitration and I'm not sure if the Judge is
15 familiar with the long history of arbitration with CMS,
16 but under President Obama he outlawed arbitrations in
17 admission cases and that was right around this time
18 period, that got challenged and there was an injunction,
19 Trump came in, revoked that, put another one in that just
20 recently in Arkansas was found to be legitimate under the
21 CMS, and CMS does have the duty or the right to regulate
22 and the Trump regulations say all arbitration agreements
23 now have to have a 30 day revocation period which we
24 don't have in this case. So that supports our position
25 on unconscionability as well.

1 But the point being is when the substance of the
2 claim arises from general obligations imposed by state
3 law including statutes, torts and other common law duties
4 or Federal law, direct benefits estoppel is not
5 implicated even if the claim refers to or relates to the
6 contract or would not have arisen but for the contract's
7 existence. So that's in Wilson. Once again, our
8 complaint does not mention anything about a contract.
9 It's all tort.

10 The equitable estoppel elements which defense
11 counsel just kind of breezed over and didn't get into
12 include that the party asserting estoppel have to prove
13 that there was a lack of knowledge and of the means of
14 knowledge of the truth as to the facts in question. They
15 easily could have asked Mrs. Rudd, are you power of
16 attorney. They could have asked her to become a
17 conservator or a guardian ad litem to gain some authority
18 on Mr. Rudd. Number 2, they have to prove his reliance
19 upon the conduct of the party estopped. They didn't rely
20 on any of Mr. Rudd's conduct and they would have allowed
21 him to be admitted. They are not allowed to make this a
22 condition of admission, period. That's in Medicare
23 regulations and I can get you those regulations if you'd
24 like. I think we quoted them in our memo, but they're
25 not allowed to ask for additional consideration if

1 they're a Medicaid/Medicare provider facility which 98
2 percent of the facilities are. There's a couple who
3 don't take Medicaid.

4 To go back to that, too, in Hodge they talk about
5 the very thing I started this conversation off with is
6 the role of the signatory at the time and in Hodge they
7 say quote "respondent", in this case would be the
8 defendant, "is attempting to use equitable estoppel
9 against the patient's estate based on actions that
10 patient's companion took in her individual capacity. The
11 fact that patient's companion is now the personal
12 representative for the patient's estate is of no moment.
13 We will not hold this circumstance against the patient's
14 estate."

15 So you have to look at what authority did she have
16 at what time especially for her actual authority,
17 equitable estoppel and for apparent authority. Equitable
18 estoppel just doesn't apply in this case. Equity first
19 of all would be to go against compelling a non signatory
20 to arbitration. The issue with the benefits, I
21 understand that Brandon and I might not like the fact
22 that the court in Hodge said because the facility
23 allegedly caused Marble's injuries that later led to her
24 death, we find it difficult to find she benefited given
25 from being admitted. I might not agree with that,

1 Brandon might not agree with that, Judge, you might not
2 agree with that, but that's the law of the land right now
3 in South Carolina and they say that because he got
4 injured, he didn't get a benefit from that arbitration
5 agreement or admission. Nevertheless, he didn't get a
6 benefit from the actual agreement. He got the benefit
7 because we have a good social safety net and we have
8 Medicare and Medicaid programs that allow for people to
9 have access to health care.

10 Related to that, the wrongful death statutory
11 beneficiary did not sign an arbitration agreement. They
12 are also non signatories. They should not be bound by it
13 and there's case laws to support that and I will agree
14 with Brandon, in South Carolina it's an open question.
15 There are cases right in front of the Supreme Court right
16 now on this issue about wrongful death. It's slick
17 nationwide and it really comes down to state law and is
18 the wrongful death derivative or is it separate. Because
19 of the way our tort reform is with claimants and based on
20 offers of judgment, I think they're separate. I do agree
21 with Brandon that we probably have to wait for the
22 Supreme Court to decide on that. I have won and lost
23 that issue numerous times and I look forward to the
24 Supreme Court finally resolving it one way or the other.

25 Related to the unconscionability, it's all in our

1 memo. Judge Goodstein having good order in the Rowl case
2 just explained why some of these arbitration agreements
3 in nursing homes are procedurally unconscionable, how
4 they're take it or leave it. They're adhesion contracts.
5 They had no input in the formation of it. There's no
6 bargaining power. Those kind of things. The affidavit
7 that Brandon expects me to provide in support of this
8 motion is unnecessary because I'm asking for an
9 evidentiary hearing and a jury trial. If you read
10 section IV of the FAA, it basically, it's not basically,
11 it says the following and this is really, I think this is
12 1923 legal jargon stuff, but basically if the Court is
13 satisfied that there was an arbitration clause and
14 there's no dispute as to that, then you're allowed to
15 order the arbitration. But it says here if the making of
16 the arbitration agreement or the failure, neglect, or
17 refusal to perform the same be in issue, which it is,
18 hence the filing of the complaint, the motion to compel,
19 it says the court shall proceed summarily to the trial
20 thereof. So there's supposed to be a trial, an
21 evidentiary hearing. Then it says, if no trial, if no
22 jury trial be demanded by the party alleged to be in
23 default, which is us, or if the matter in dispute is
24 within admiralty, which it isn't, so if I don't ask for a
25 jury trial, the court shall hear and determine such

1 issue, okay?

2 But the next sentence says where such an issue is
3 raised, the party alleged to be in default may, except in
4 cases of admiralty, on or before the return day of the
5 notice of application demand a jury trial of such issue
6 and upon such demand the Court shall make an order
7 referring the issue or issues to a jury in the manner
8 provided by the Federal Rules of Civil Procedure or may
9 specially call a jury for that purpose.

10 So I want you to look at section IV because
11 defendants' memo quotes section IV but they kind of stop
12 before that part and that part is the part where I'm
13 talking about a demand for a jury trial on the formation
14 of the agency relationship. I think equitable estoppel
15 is up to the Court to determine because that's an
16 equitable issue. But if an agency, especially apparent
17 agency, actual agency is not an issue under Coleman.
18 There's no actual authority here, that she's not power of
19 attorney and no court appointed her to be his agent.
20 Just because she's a wife that doesn't make an agent.

21 So the real issue for the jury would be on actual
22 agency. What representations did the principal make, if
23 any. If there's no, we don't need a jury trial. There's
24 nothing there. But if they do represent later on that
25 somehow the principal made some representations, we would

1 challenge that because then it goes to the reasonableness
2 of those representations. The reasonable reliance of
3 them, the prejudice, those kind of things that the jury
4 would have to decide.

5 So I wanted to bring up those two last points about
6 wrongful death and section IV of the FAA, but the bottom
7 line here is that Coleman, Hodge, Malloy, Wilson, and
8 Thompson all basically are nursing home arbitration
9 cases. This has been in front of the Supreme Court
10 numerous times in the last 10 years and here you can't
11 conflate the arguments. You got to put them in separate
12 buckets and here there's no actual authority, no POA,
13 there's no apparent agency because the principal clearly
14 did not represent anything and there's no equitable
15 estoppel being as clearly Mr. Rudd did not falsify, make
16 false representations, exploit the situation, he didn't
17 do anything to basically punish him with arbitration at
18 this point. Thank you, Your Honor. Appreciate it.

19 THE COURT: Thank you. Thank you, Mr. Mullman. All
20 right. Any response?

21 MR. GOTTSCHALL: Your Honor, I do unfortunately have
22 some brief points I would like to go over.

23 THE COURT: All right.

24 MR. GOTTSCHALL: I'll try to proceed more or less in
25 the order that Mr. Mullman went. Your Honor, I

1 understand Mr. Mullman's arguments regarding Mrs. Rudd
2 and the period that she signed this agreement in two
3 different capacities that she signed, the initial
4 agreement as I suppose a health care representative. I
5 still understand that there's no challenge to the fact
6 that Mrs. Rudd had the authority under the Adult Health
7 Care Consent Act to make Mr. Rudd's health care
8 decisions. She signed in a representative capacity there
9 and she signed as a personal representative under estate
10 law and theory as to this lawsuit. My argument there is
11 simply that Mrs. Rudd signed one agreement and is now
12 trying to get out of what she signed in that agreement so
13 that she can benefit. Whether it's as the personal
14 representative or any other capacity there's still an
15 equitable argument there.

16 Your Honor, to jump ahead to a little bit of a
17 different argument, the plaintiff addressed the three
18 kind of, I guess they call them the three or four big
19 cases in South Carolina, Coleman, Hodge, Thompson, he
20 discussed Wilson although Wilson is in a different
21 context, but I think Coleman, Hodge and Thompson are very
22 important to look at. Your Honor, I will say that in our
23 brief we discussed these cases at length. I believe we
24 have separate paragraphs under section I as to most or
25 all of these cases, but I think most importantly Coleman

1 was decided before the case that we cited, the THI
2 Federal case and I have got that here for the Court.

3 The important thing about Thompson, Hodge and
4 Coleman, they all involved extensive discussion of the
5 separate nature of the arbitration contracts in those
6 cases and the separate admissions agreement. Those
7 representatives signed a admissions agreement that
8 contained an arbitration provision. They signed an
9 arbitration contract separately. Every one of those
10 cases discusses that at length. That distinction is
11 expressly discussed in THI of South Carolina and Magnolia
12 Manor versus Gilbert. That's Judge Hendricks' case.
13 It's 2015 WL1268185, and I've got it here. I'm going to
14 attempt my sharing again. Let's see. Is that showing up
15 on your end?

16 THE COURT: It is.

17 MR. GOTTSCHALL: Oh, this is Wiggins. I'm sorry. I
18 pulled up the wrong THI case.

19 THE COURT: Looking for Magnolia?

20 MR. GOTTSCHALL: Yeah. Here it is. All right.
21 This is Judge Hendricks. This is March 19th of 2015.
22 This is decided after Coleman, it's after the Supreme
23 Court's decision in Dean, and right here on the first
24 page Judge Hendricks comes right in with a discussion of
25 Coleman and of Dean and she says the court has spent

1 considerable time with the decisions out of a real
2 concern. She's concerned about whether a representative
3 can bind the estate. Proceeding to the second page of
4 this decision there's more discussion. There's
5 discussion on Judge Currie's decision in the Wiggins
6 case.

7 THE COURT: Okay.

8 MR. GOTTSCHALL: The court says the nursing home
9 resident and her estate were independently bound by the
10 terms of the arbitration provision at issue and she
11 actually analyzed this under a third party beneficiary
12 and equitable estoppel argument. Ours is even stronger
13 because Ms. Rudd was the health care decision maker for
14 Mr. Rudd. She had actual authority to bind him where the
15 arbitration agreement was part of and the same document
16 as the admissions agreement. That's discussed by Judge
17 Hendricks right here on the second page on the left side.
18 It's discussed in detail. That's how Hodge, Coleman,
19 Thompson are all easily distinguished in this case.
20 They're totally different decisions.

21 Your Honor, Federal law matters. This is an issue
22 that's governed under the Federal Arbitration Act. It's
23 governed by law by the Supreme Court so the Federal Court
24 decisions are important, but these Federal Court
25 decisions actually look at South Carolina law so they're

1 very important decisions to look at.

2 Your Honor, we did kind of gloss over the equitable
3 estoppel argument. I think that I would simply for the
4 sack of time refer the Court to our memo on that. We
5 have discussed it. We've cited Judge Hendricks and Judge
6 Currie's extensive decisions on that. There's ample
7 authority suggesting that a third party and equitable
8 estoppel argument apply in this case.

9 And, Your Honor, to address the plaintiff's
10 discussion of the Hodge case, the Court of Appeals did
11 say there that they found it hard to find that the
12 nursing home resident had benefited from the contract
13 where there were allegations of wrongful death. That may
14 be, but that's dicta. That's not a holding by the court.
15 They say we find it hard to find and never make a holding
16 on that. And I think that Judge Currie's and Judge
17 Hendricks' decisions go into that a little bit because
18 they talk about not just whether they received a benefit,
19 but whether the person was an intended beneficiary and
20 that can't be disputed here. I still think that the fact
21 that he received months and months of services which is
22 exactly what they bargained for is telling, but be that
23 as it may.

24 The issues about whether the arbitration agreement
25 was mandatory, I'll actually go to the Hodge case. This

1 is 422 South Carolina 544. This is where the court
2 discussed at length how do you determine whether an
3 arbitration agreement was a health care decision. They
4 examine the Dickerson decision and they look at whether
5 the arbitration agreement is a separate and stand alone
6 document from the admissions agreement. If it's
7 separate, not a health care decision. Where it isn't
8 separate, you have a different situation and that's where
9 THI and Wiggins come in. Hodge involved a separate
10 agreement.

11 Another thing that the court looked at was whether
12 the separate arbitration agreement explicitly stated that
13 it was not a pre-condition. Those arbitration agreements
14 said it's not a pre-condition for admission. Our
15 agreement says at the top of every single page this
16 agreement, this admissions agreement is subject to
17 arbitration. Discussion about the Federal law and how
18 it's evolved since President Obama and into the Trump
19 term, I'll give Mr. Mullman the - he has far more
20 knowledge of that history than I do, but I know that in
21 2016 when this issue occurred with the contract under the
22 law that was in place at the time, this arbitration
23 provision was correct and it was applicable, it was
24 proper under applicable law and that would be the first
25 challenge to this arbitration agreement if it wasn't the

1 case.

2 Your Honor, I've discussed equity. I don't see how
3 it's equitable for somebody to sign an agreement and then
4 purportedly change roles, put on a different hat and all
5 of a sudden try to get the benefit of both bargains, but
6 we've discussed that, too.

7 Finally, Your Honor, the unconscionability argument.
8 I'm gonna try to pull this up, too. Is that showing up
9 on your screen, the unconscionability part?

10 THE COURT: No.

11 MR. GOTTSCHALL: Let's see. Sorry. I'm a little
12 new to Zoom here. Is it showing now?

13 THE COURT: Yes.

14 MR. GOTTSCHALL: Okay. So I've pulled up page 13
15 where the plaintiff's memo talks about unconscionability.
16 I'm scrolling down to this page 14 where it's discussed
17 in more detail and, Your Honor, I would ask the Court to
18 look at this page. This page contains no evidence
19 whatsoever regarding this specific case. It cites all
20 sorts of case law from the different cases about party
21 sophistication, about standards generally, about lack of
22 choice, about a crisis. There is nothing here in this
23 case that Ms. Rudd, that indicates that Ms. Rudd was
24 under any of these situations. There was no crisis here.
25 There was no need to find placement quickly, at least

1 based on the evidence we've seen. There's no evidence
2 that there was a time pressure situation, and I'll scroll
3 down to Judge Goodstein's analysis which I think is
4 helpful, too, and this is on page 15. Judge Goodstein
5 found that the arbitration agreement in this case
6 involving West Ashley Rehab was inconspicuous. Ours is
7 on the top of every page. It was set forth on it's own
8 page. She also found the resident didn't have sufficient
9 time to allow any meaningful explanation of the terms.
10 There's no evidence of that here. We simply don't have
11 the case of unconscionability and moreover we have an
12 actual authority on Ms. Rudd's part to enter the
13 agreement so I don't even think we get to this part.

14 Your Honor, finally, just briefly about section IX,
15 USC section IV, this is the section that plaintiff cites
16 for a jury trial. The entire course of IX USC section IV
17 every provision though cited by the plaintiff that we've
18 highlighted in our brief, they all flow from the
19 principal or from a starting place of the person, the
20 individual, the entity who has the right to enforce
21 arbitration agreement filing and requesting enforcement
22 of that arbitration agreement and it's in the district
23 court. It's not in state court. That's a district court
24 request and that's very explicit. I've attempted to pull
25 that up. I don't know that I've succeeded in my screen

1 share.

2 Let me try one more thing here. That's the wrong
3 section. This is the South Carolina section under the
4 health care act that just indicates that the spouse is
5 the person to consent for health care decisions. Again,
6 I don't think that's actually in dispute here. I'll make
7 one more try.

8 THE COURT: All right.

9 MR. GOTTSCHALL: I'll give up if this doesn't work.
10 This is USC section IV. Are you able to see that?

11 THE COURT: Yes.

12 MR. GOTTSCHALL: The very first section, a party
13 aggrieved by the alleged failure, neglect or refusal of
14 another to arbitrate may petition any United States
15 District Court. So that's the starting place. The
16 hearing and proceedings under that agreement are in the
17 district, in the district court and in the district where
18 the petition is, or arbitration is filed so again we're
19 still in district court. The portion cited earlier by
20 Mr. Mullman addressed the jury trial and he's correct.
21 If an arbitration challenge has been started with the
22 district court, the plaintiff may ask for a jury trial.
23 That's what the statute says. So that right arises after
24 the party trying to enforce the arbitration agreement has
25 filed with the district court a petition to enforce the

1 arbitration agreement. So that provision simply doesn't
2 apply here and it's not the right venue for that. It's a
3 Federal District Court decision in the first place. So
4 that's kind of our final thing, Your Honor. I just
5 wanted to point that out and with that, Your Honor,
6 unless you have any questions, I appreciate your time
7 today.

8 THE COURT: I'm going to take some time and read
9 through the memos that were provided by both of you all
10 and some of that case law and I will contact you both
11 with a decision.

12 MR. GOTTSCHALL: Thank you so much, Your Honor.

13 MR. MULLMAN: Thank you, Your Honor.

14 THE COURT: Thank both of you. Okay. I think that
15 will conclude your hearing.

16 MR. MULLMAN: I think one of us will probably want
17 the transcript, Steve, whatever the decision is just so
18 you know. I'll write a letter to you about that.

19 THE COURT: You all have a good afternoon.

20 WHEREUPON, THE HEARING WAS CONCLUDED.

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 5th day of May, 2020.

11 I FURTHER CERTIFY that the forgoing 45 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 5th day of December, 2020.

17

18

19

By:s/Steven E. LeBlanc

20

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

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THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION
PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL
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ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
(1976), AS AMENDED.

ADMISSION AGREEMENT
PEPPER HILL NURSING & REHAB CENTER

Resident's Name: Charles S. Rudd

Responsible Party: P. Thelma C. Rudd 7-27-16

Legal Designation: _____

Date of Admission: 7/27/16 Room: 401 A

The above named Resident, individually or by and through their Responsible Party or Legal Representative, has considered appropriate care settings and is desirous of receiving care at Pepper Hill Nursing & Rehab Center.

Resident/Representative has reviewed this ADMISSION AGREEMENT, has had opportunity to ask questions of Pepper Hill Nursing & Rehab Center personnel about the Agreement and understands that admission to Pepper Hill Nursing & Rehab Center constitutes agreement to be bound by said ADMISSION AGREEMENT.

Resident/Representative acknowledges full and complete understanding that Pepper Hill Nursing & Rehab Center is a licensed nursing facility and will provide the services set forth below in accordance with licensure laws, certification requirements and standards of the industry, none of which cause Pepper Hill Nursing & Rehab Center to become an insurer or guarantor of the health and safety of this Resident, or for that matter, the insurer or guarantor of this Resident's personal property.

Resident/Representative acknowledges that Pepper Hill Nursing & Rehab Center participates in the Medicare and Medicaid Programs as a service to Resident on a voluntary and limited basis, and that Pepper Hill Nursing & Rehab Center may further limit or terminate its participation in either program at its discretion, and may not have a participating bed available at the time the Resident may be eligible for transfer to such a bed.

Pepper Hill Nursing & Rehab Center complies with all Federal and State civil rights and non-discrimination laws, rules and regulations. Residents are admitted without regard to sex, age, race, religion or physical handicap. Employees are hired for positions if available, compatible with their physical handicap, if any, and without regard to sex, age, race or religion.

NOW, THEREFORE, in consideration of the prompt payment by Resident/Representative (and the applicable state, federal, or private insurance program) of the charges made to Resident's account in accordance with the charge structure of Pepper Hill Nursing & Rehab Center and in further consideration of the mutual covenants and promises herein, the parties agree as follows:



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SERVICES:

A. Pepper Hill Nursing & Rehab Center agrees to offer care including but not limited to: room accommodations, food services, professional nursing services, social services, activities, restoration services, physical therapy, occupational therapy, speech therapy, beauty shop services, barber services, daily housekeeping, laundry services, and Patient trust fund services.

B. The Resident/Responsible Party is responsible for choosing and retaining an attending physician who presently is Dr. MDA. Resident understands that the attending physician must see the resident at regular intervals and document orders and progress in the medical chart. Should these requirements not be met, the Resident/Representative will be asked to change physicians.

C. Pepper Hill Nursing & Rehab Center retains the right to control the source of supply of any items and contract services used in this Facility. Resident/Representative acknowledges that Resident/Representative has exercised freedom of choice by applying for admission at Pepper Hill Nursing & Rehab Center and thereby agrees and contracts with Pepper Hill Nursing & Rehab Center to supply said supply items and contract services as requested.

D. Pepper Hill Nursing & Rehab Center makes room and bed assignments in accordance with the Resident's physical and mental condition. Resident/Representative acknowledges that bed assignments may be changed in order to provide a proper environment for all Residents. Resident family/legal representative will be notified, when applicable, of room or roommate changes.

E. Pepper Hill Nursing & Rehab Center cannot and does not guarantee that it will have an appropriately certified bed if and when the Resident's level of care needs change.

CHARGES:

A. The charges made to you by this Center are:

a. Daily Rate for Room and Board:

Semi private room \$175
 Private rooms \$195
 Private room difference \$20

b. Personal Laundry Services: \$20 per month – private pay

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B. Notification of Changes in Rates:

In the event it becomes necessary to change this charge structure Pepper Hill Nursing & Rehab Center agrees to give thirty (30) days notice. Advance notice of other charges will be made whenever possible as required by State law.

C. Daily Rate Includes:

The routine daily rate includes room and board, routine nursing services, routine social services, activities, routine restoration services, housekeeping and maintenance.

D. Additional Charges:

Treatments by licensed therapists, such as physical therapy, speech therapy, occupational therapy; personal laundry service; television service; over the counter drugs; beauty shop and barber services; medications ordered by physician; central supply items ordered and/or used by particular Resident; special equipment; Oxygen, IV fluids, braces and splints are each subject to additional charge by Pepper Hill Nursing & Rehab Center as directed by payment source.

E. Services Billed Separately:

Physician charges, any laboratory work ordered by the physician, any pharmacy charges, and any services furnished to the Resident as physician requested consultation, including but not limited to dental services, podiatry, optometry, audiology or mental health services are billed directly to Resident by provider of service as directed by payment source.

Sitters and private duty nurses are allowed at Pepper Hill Nursing & Rehab Center only if said sitter or private duty nurse complies with all applicable Rules and Regulations of the Facility. Any sitter or private duty nurse must be approved by Pepper Hill Nursing & Rehab Center and can be removed from the premises by Pepper Hill Nursing & Rehab Center without reason at any time. The financial arrangement with such persons is private (See packet insert).

Bedside telephones, personal televisions, are arranged by Resident/Representative with the Utility service involved.

Dry cleaning, personal shopping & clothing repair are the responsibility of the Resident/Representative.

Transportation services, whether emergency or routine, are billed to the Resident by the service provider.

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F. Bed Reservations:

At the request of the Resident and/or the family, rooms may be reserved for residents absent from Pepper Hill Nursing & Rehab Center provided the usual room and board rate is paid to hold the room.

In the event the Resident/Family chooses not to reserve a bed by paying the usual rate and if the Resident wishes to return to Pepper Hill Nursing & Rehab Center, and there is no legally justifiable nor medical reason for denying re-admission, the Resident will be offered the next available bed appropriately certified.

Resident/Representative will be contacted in the event of a hospital discharge to decide whether to pay for bed hold. Resident understands the risk of delayed access to a bed not reserved. Resident agrees to personally contact Pepper Hill Nursing & Rehab Center social worker or bookkeeper to cancel this bed reservation.

G. Failure to Pay:

Failure to pay an account at Pepper Hill Nursing & Rehab Center when due is a breach of this agreement and will allow Pepper Hill Nursing & Rehab Center to discharge the Resident upon giving thirty (30) days notice, during which thirty (30) day period the breach may be cured by payment of the account in full.

There is a service charge for late payment equal to the highest rate permitted by law, not to exceed 1.5% per month for all accounts over thirty (30) days.

H. Payment in Advance:

It is the policy of Pepper Hill Nursing & Rehab Center to collect payment for room and board thirty (30) days in advance.

Resident hereby makes payment in advance of _____.

Resident expecting Medicare or Medicaid coverage as determined by Pepper Hill Nursing & Rehab Center's professional staff or other private insurance for which benefits are to be paid to Pepper Hill Nursing & Rehab Center will pay in advance that portion of expected charges specifically not covered by plan.

Resident expecting Medicare coverage specifically understands that Medicare co-insurance is the responsibility of the Resident. Payment of co-insurance is required when due. Payment is not expected until services are rendered.

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I. Refunds:

Pepper Hill Nursing & Rehab Center will refund to the Resident or legal representative any payment collected in advance and not needed to cover charges.

The refund will be made as soon as practicable, not to exceed number of days required by state and never before the settling of account. Note: Medicare, Medicaid and private insurance accounts sometimes take several months to resolve. Refunds contingent upon insurance payments will be made when Pepper Hill Nursing & Rehab receives resolution of claim.

Monies held for a Resident in trust will be paid to Resident's estate within 30 days of death.

J. FINANCIAL RESPONSIBILITY:

Resident/Representative guarantees that financial information provided Pepper Hill Nursing & Rehab Center is correct, and that Resident assumes full responsibility for taking all steps necessary to establish Medicaid eligibility when/if funds are depleted.

When Pepper Hill Nursing & Rehab Center has determined that the Resident is eligible for insurance benefits, including but not limited to Medicare or Medicaid, it will submit a claim for payment. Pre-certification of insurance, if required, will be the responsibility of Pepper Hill Nursing & Rehab unless otherwise requested by insurance.

The fact that Pepper Hill Nursing & Rehab Center submits a claim for payment does not relieve the Resident from liability for the cost of care for any days determined by the Insurance Companies to be non covered, or for the Resident's portion of the liability as determined by the appropriate individual insurance company.

Resident's personal liability will be billed as follows:

1. Medicare co-insurance days will be billed to the resident on the first day of the month following the utilized days. Co-insurance for this resident will begin on:

2. Private insurance days will require resident's payment in advance. Refunds for unused days will be made to resident as applicable.

3. Medicare/Medicaid co-insurance liability will be calculated based on the amount of the resident's social security income and the amount of co-insurance days to be paid each month.

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MEDICARE COVERAGE

Medicare Part A pays for the following services except when another payment source is primary:

- Room and Board (excluding parenteral feeding)
- Specialized rehabilitation services: Physical, Speech and Occupational Therapies
- Medications ordered by physicians
- Ancillary Central Supply items including certain special equipment such as air fluidized beds
- Oxygen, IV Fluids, Braces
- Over the counter drugs
- Television

Medicare Part B pays 80% of the cost of certain services as provided with consent of the Resident:

- Specialized Rehabilitation Services when Part A unavailable
- Physician ordered consultations
- Prosthetic items: Examples: urological supplies and enteral feeding supplies

Medicare Part A does not pay for the following services which are subject to change if requested by Resident:

- Beauty and Barber shop services
- Telephone
- Private duty nurses and sitters
- Payment to hold bed when Resident hospitalized
- Services determined not to meet Medicare coverage criteria, and the Resident has been so notified in writing by Pepper Hill Nursing & Rehab Center
- Transportation, emergency and routine

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COMPLETE THIS SECTION IF RESIDENT HAS A MEDICARE CARD OR NUMBER

Mark (a) if Resident placed in Medicare certified bed; mark (a) and (b) if Resident placed in bed certified for Medicare and Medicaid

a. ☒ If the Resident has a Medicare card or number, then the Resident acknowledges that an explanation as to the Resident's eligibility for Medicare benefits on this admission have been fully made and understood by Resident. It is the professional judgment of Pepper Hill that Resident's care ☒ will ☐ will not be covered by Medicare. (If Resident will not be covered and is placed in a Medicare certified bed, a letter explaining denial of benefits on admission will be attached.)

b. ☐ Resident placed in bed certified for both Medicare and Medicaid acknowledges that a change to a lower level of care renders Resident subject to assignment to any nursing facility certified bed at Pepper Hill Nursing & Rehab Center

Non-qualifying services furnished the Resident in a non-certified bed are not payable by Medicare.

However, Resident understands that Resident or someone acting on Resident's behalf may request Pepper Hill Nursing & Rehab Center to file a claim for Medicare benefits. Based upon this claim, Medicare will make a formal determination and advise whether any benefits are payable.

RESIDENT CERTIFICATION AND AUTHORIZATION TO RELEASE INFORMATION AND PAYMENT REQUEST:

I certify that the information given by me in applying for payment under Title XVIII of the Social Security Act or my private insurance is correct. I authorize the holder of medical or other information about me to release to the Social Security Administration or its intermediaries or carriers or my private insurance carriers any information needed for this or a related Medicare health claim. I request that payment or authorized benefits be made on my behalf.

Resident/Representative: Thelma C. Rudd 7-27-76

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MEDICARE REVIEW:

Pepper Hill Nursing & Rehab Center continues to monitor the Resident's progress, reporting to the Resident's physician and to the physicians belonging to Pepper Hill Nursing & Rehab Center's Utilization Review Committee. This committee will determine the necessity for and the effectiveness of the treatment the Resident receives, determining ongoing Medicare coverage.

You will be notified in writing of the Utilization Review Committee's non coverage decision at the same time that your physician is notified of the opportunity to present his/her view.

MEDICAID PROGRAM

Resident ____ has ☒ has not applied for Medicaid eligibility. Resident ____ does ____ does not intend to request medical approval Medicaid eligibility within 30 days of admission.

Resident eligible for Medicaid acknowledges that his/her monthly income will be applied toward the cost of care in accordance with Federal and State regulations.

Request Change of Payee: YES ____ NO ☒

____ Resident has established eligibility for Medicaid and will have a Resident liability amount of \$ ____.

____ Resident plans to apply for Medicaid and understands that the State will determine the amount of the Resident's income to be paid to Pepper Hill Nursing & Rehab Center. Resident acknowledges that failure to meet Medicaid eligibility requirements in a timely fashion will render Resident liable for payment in full.

If Resident is located in a bed not certified for Medicaid participation, Resident understands that Pepper Hill Nursing & Rehab Center cannot and does not guarantee or promise that a Medicaid certified bed will be available at such time as the Resident may be eligible for same.

The State Medicaid plan pays for the following services:

- Room and Board
- Specialized Rehabilitation Services
- Prescription Medications up to State limits
- Over the counter drugs (as outlined in State plan)
- Personal Laundry Services
- Payment to hold bed up to 10 days when Resident is discharged to hospital.

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Services not paid for under the state plan include:

- Private room accommodations
- Beauty and Barber shop services
- Dry cleaning
- Telephone and Television
- Private duty nurses and sitters
- Services for patients not meeting the medical criteria of the state program

MEDICAL RECORDS:

Resident understands and agrees that the medical records concerning Resident are and will continue to be the property of Pepper Hill Nursing & Rehab Center, provided that Pepper Hill Nursing & Rehab Center will not disclose same to any person or party other than the Resident and agencies authorized by law without either the consent of Resident or a legal order.

PATIENT RESPONSIBILITIES:

1. Providing such personal clothing and effects as needed or desired by Resident. Everyday street clothing that is comfortable and easy to move in, is preferred unless the resident is bed-bound.
2. Paying hospital and any ambulance service charges, also to be responsible for physician's fees, medications, x-rays. Laboratory charges and any other treatment ordered by Resident's physicians, which are not covered by the resident's insurance(s).
3. Providing all non-medically necessary transportation.
4. Paying all costs, expenses and reasonable attorney's fees incurred by Pepper Hill Nursing & Rehab Center in the collection of any and all sums due and owing by the Resident, including a service charge equal to the highest rate permitted by law, not to exceed 1.5% per month for all accounts over thirty (30) days.
6. It is the responsibility of the Resident to give advance notice when Resident is terminating this agreement, except when prevented by Resident's medical condition.

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TRANSFER AND DISCHARGE:

1. Resident agrees and understands that this contract is applicable and in full force and effect until the discharge of Resident, regardless of payment source changes. Resident further understands and agrees that Pepper Hill Nursing & Rehab Center has not promised or guaranteed to remain in either the Medicare or Medicaid programs and that if Resident is covered by either and Pepper Hill Nursing & Rehab Center terminates its participation therein, the Resident must either vacate Pepper Hill Nursing & Rehab Center or remain as a private paying Resident. Additionally, Pepper Hill Nursing & Rehab Center cannot and does not guarantee that it will have a certified bed if Resident's level of care needs change.
2. Pepper Hill Nursing & Rehab Center will assist the Resident so that relocation is accomplished as smoothly as possible. Pepper Hill Nursing & Rehab Center will only initiate the transfer or discharge of a Resident when:
 - a. the welfare of the Resident cannot be met at Pepper Hill Nursing & Rehab Center;
 - b. within 30 days of admission to the extent that care in a licensed nursing facility is not medically approved for insurance coverage;
 - c. non-payment by the Resident or the appropriate third party payer has occurred;
 - d. Pepper Hill Nursing & Rehab Center ceases to operate or discontinues a particular program on which patient relies for funding;
 - e. safety of the individual is endangered; or
 - f. health or safety of individuals at Pepper Hill Nursing & Rehab Center is threatened or endangered.
3. Pepper Hill Nursing & Rehab Center will give the Resident 30 days written notice before discharge or transfer when and if any of the above criteria are met except when the health or safety of individuals is endangered or when the transfer or discharge is required by the Resident's urgent medical need, or when the Resident has not resided in the Facility for at least 30 days.
4. Individuals not eligible for admission or retention are:
 - a. Anyone who is destructive of property, self-destructive, suicidal, disturbing or abusive to other residents as determined by a physician or other legally authorized healthcare provider, unless the facility had and uses sufficient resources to appropriately manage and care for the person.

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GRIEVANCE RESOLUTION:

The Parties agree to follow the Grievance Procedure described in this Admissions Agreement packet for any claims or disputes arising out of or in connection with the care rendered to Resident by Pepper Hill Nursing & Rehab Center and/or its employees.

LIMITATIONS OF LIABILITY:

Resident and Representative agree to the following Limitations of Liability:

- A. Resident and representative hereby release Pepper Hill Nursing & Rehab Center from and acknowledge that Pepper Hill Nursing & Rehab Center shall not be liable for personal injuries death or other conditions of any kind suffered by resident while under the care of Pepper Hill Nursing & Rehab Center unless caused by gross negligence or willful criminal act on the part of its employees.
- B. Pepper Hill Nursing & Rehab Center shall not be liable for any harm or loss for failure of resident or representative to provide private duty nursing services or other services or care as may be required by resident's condition.
- C. Except for resident trust funds administered in accordance with state and federal regulations, Pepper Hill Nursing & Rehab Center shall not be responsible for loss, theft or destruction of money, papers or personal property of resident or any other person.
- D. Pepper Hill Nursing & Rehab Center shall not be liable for and resident hereby releases Pepper Hill Nursing & Rehab Center and holds Pepper Hill Nursing & Rehab Center harmless for any and all harm, injury or loss suffered by resident outside the physical confines of Pepper Hill Nursing & Rehab Center and not in the custodial care of Pepper Hill Nursing & Rehab Center.
- E. Resident's failure to accept any nursing care, medical or other treatment or other item of service that is deemed necessary and proper by Pepper Hill Nursing & Rehab Center from any and all liability which may result from resident's failure to accept said care, treatment, item or service.

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OBLIGATIONS OF REPRESENTATIVE:

The representative is anyone authorized by the Resident to act on the Resident's behalf. The Representative, by signing this contract, acknowledges acceptance of the duties and responsibilities of this role.

The Representative who is authorized to accept Resident finances will not incur personal financial liability except for breach of duty or contract in properly directing the Resident's resources to pay for the Resident's care.

TERMINATION OF AGREEMENT:

This Agreement can be terminated by Resident upon the giving of notice to Pepper Hill Nursing & Rehab Center, and this Agreement can be terminated by Pepper Hill Nursing & Rehab Center upon the giving of 30 days written notice to Resident in accordance with the licensure laws of this state and applicable Medicare/Medicaid regulations.

SEVERABILITY:

If any provision of this agreement shall be invalid or unenforceable to any extent, the remainder of this agreement shall not be affected by such provision and shall be enforced to the greatest extent permitted by law.

SUCCESSORS:

This agreement shall be binding upon Resident/Representative, Pepper Hill Nursing & Rehab Center, and each of their heirs, successors and assigns. This agreement may not be amended or modified except in writing signed by the parties hereto.

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 ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA
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ARBITRATION:

Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this agreement or resident's stay in this facility, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the Uniform Arbitration Act, Section 15-48-10, et. seq., Code of Laws of South Carolina), the rules of practice and procedure for the arbitration of disputes of J.A.M.S. Arbitration or any successor thereof ("J.A.M.S.") and the "special rules" set forth below. In the event of any inconsistency, the special rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any part to the Admissions Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

- (a) Special Rules. The arbitration shall be conducted in Aiken, South Carolina and administered by J.A.M.S. who will appoint an arbitrator. If J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All Arbitration hearings will be commenced within 120 days of the demand for arbitration; further, upon a showing of cause, the arbitrator shall only be permitted to extend the commencement of such hearing for an additional 60 days.
- (b) Reservation of Rights. Nothing in this agreement shall be deemed to limit the applicability of any otherwise applicable statutes of limitation or waivers contained in this agreement.
- (c) Waiver of Right to Trial by Jury. Resident and responsible party hereby expressly waive any right to trial by jury of any claim, demand, action or cause of action arising out of or relating to this agreement, including any claim based on or arising from any alleged tort.

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(1976), AS AMENDED.

Resident's Initials:
 Responsible Party's Initials:
 Pepper Hill Nursing & Rehab Center:

P. (TP) 7-27-16
ACA

I have read this Admissions Agreement and the information packet and have been given an opportunity to ask questions relevant to this admission. A copy of the signed agreement will be provided to the resident or legal representative.

RESIDENT:

 Date: _____

REPRESENTATIVE:

Thelma C. Rudd
 Date: 7-27-16

PEPPER HILL NURSING &
 REHAB CENTER, L.L.C.

By: ACA
 Title: SS

Notification and Consent

Pepper Hill Nursing and Rehab Center

RESIDENT'S NAME: Charles S. RuddREPRESENTATIVE'S NAME: Thelma C. Rudd 7-27-16DATE OF ADMISSION: 7/27/161. RESIDENT'S RIGHTS:

I have been informed both orally and in writing of resident's rights.

2. FACILITY RULES AND REGULATIONS:

I have been informed both orally and in writing of the rules and regulations of this facility. Any changes in these rules and regulations will be addressed and discussed at monthly resident council meetings. I understand that resident council meeting minutes reflecting changes in the facility rules and regulations will be available for my review.

3. VISITATION RIGHTS:

Residents have the right to receive visitors of their choice unless otherwise restricted. We request that for the security of our residents and staff, general visiting hours between 8:00 a.m. and 8:00 p.m. be observed for friends and volunteers. Family members may visit any time during visiting hours and may gain entry into the building through the front entrance. In semi-private rooms, please limit visitors to 2 people per Resident, or ask that the resident be brought out of the room to visit with larger groups.

4. MEDICARE AND MEDICAID:

I have received information regarding the services and benefits provided by both Medicare and Medicaid and have been advised as to how to receive these benefits if so needed.

5. PHYSICIAN SERVICES:

I have designated the physician identified below as my personal attending physician. If he/she fails to fulfill a given requirement, the facility will have the right, after consulting with me, to seek another physician to assure that I am appropriately and adequately cared for and treated.

Physician Name: _____ Phone: _____

Address: _____

RESIDENT'S NAME: Charles S. Rudd

6. DENTAL SERVICES:

Upon admission to this facility, I understand that an initial oral examination may be provided by designated medical personnel. If further examination or treatment is required by professional dental practitioners, I understand that the cost would be my responsibility and that it is my right to refuse any further treatment.

7. SELF-ADMINISTRATION OF DRUGS:

Residents in nursing facilities have the right to self-administer certain medications if this is requested and appropriate. I understand that the interdisciplinary team, with the Physicians discretion, will ultimately determine whether or not to grant this request only after thorough assessment of the resident's capabilities and needs and in compliance with facility policy.

****PLEASE DO NOT BRING IN ANY MEDICATIONS TO THE RESIDENT!**

8. MAIL:

All mail will be delivered timely and unopened unless otherwise indicated.

9. CARE PLAN MEETINGS:

Interdisciplinary care team meetings are held on a quarterly basis. You are welcome and encouraged to attend these meetings. You will receive an invitation by mail at least 1-2 weeks in advance to notify you of the care plan date and time. Please note that these dates are subject to change.

10. OMBUDSMAN EXAMINATION OF RECORDS:

I hereby authorize the facility to allow the ombudsman to examine my clinical record if needed.

Yes ☒ No ☐

11. PHOTOGRAPH AUTHORIZATION:

I give permission to take my photograph for identification and medical documentation within the facility to be maintained as a part of the medical record.

Yes ☒ No ☐

RESIDENT'S NAME: Charles S. Rudd

12. INFECTION CONTROL AUTHORIZATION:

I authorize staff of Pepper Hill Nursing & Rehab Center to complete Infection Control rounds in my room. I give them permission to rectify any matters of sanitation that could threaten my well-being or the overall infection control of this facility. I understand that I have the right to be present.

Yes ☒ No ☐

13. PERMIT FOR USING ELECTRICAL APPLIANCES:

I hereby understand that I use electrical appliances in my room while residing here at my own risk and hereby absolve the Pepper Hill Nursing & Rehab Center from all and any responsibility from burns, injuries or property damage which may result from or because of said appliance(s).

Yes ☒ No ☐

I am in agreement with items 1-13 as signified by my signature or noted otherwise:

Signature: Thelma C. Rudd Date 7-27-16

14. AUTHORIZATION FOR RELEASE OF INFORMATION:

I hereby authorize Pepper Hill Nursing & Rehab Center to furnish such professional information in accordance with the policy of this facility, as may be necessary for the completion of my health care claims, or from the medical records compiled during my stay at Pepper Hill and release Pepper Hill from all legal liability that may arise from the release of the information requested. I authorize the release of complete and accurate information from the resident's record in sufficient detail to provide for the continuity of care, from any facility or institution transferring the resident into Pepper Hill Nursing & Rehab Center or another health care provider to which resident is transferring.

Signature: Thelma C. Rudd

RESIDENT'S NAME:

Charles S. Rudd15. RELEASE FROM RESPONSIBILITY FOR VALUABLES:

I understand that Pepper Hill Nursing & Rehab Center will not be responsible for the loss or damage to any clothing, furs, money, checks, credit cards, documents, jewelry, glasses, dentures, hearing aides, or other articles of unusual value and small compass and shall not be liable for loss or damage to any other personal property of resident's visitors.

Signature:

Thelma C. Rudd7-27-1616. RELEASE OF RESPONSIBILITY FOR LEAVE OF ABSENCE:

I understand and accept complete responsibility for resident while off of the premises of Pepper Hill Nursing & Rehab Center and absolve the management of Pepper Hill Nursing & Rehab Center, its personnel and the attending physician of responsibility for any deterioration in condition, or accident that may happen while the resident is away. I agree to sign Resident in and out of the facility at the nurse's station and notify staff when LOA. **Residents receiving care under Medicare are requested not to leave the premises except for emergency leaves. All residents, regardless of pay source, must be certain not to miss any therapy sessions or medication passes. Medicare residents remaining on LOA after midnight must be discharged in accordance with Medicare guidelines.

Signature:

Thelma C. Rudd7-27-1617. CONSENT FOR TREATMENT:

This constitutes consent and authorization to all routine nursing home care as rendered by the staff of Pepper Hill Nursing & Rehab Center and ordered by the attending physician. The resident and/or legal representative is encouraged to participate in the resident's care planning process. Approval of the Resident Care Plan is the preferred manner in which consent for most treatment is obtained.

Signature:

Thelma C. Rudd7-27-1618. ELIGIBILITY CONSENT:

I hereby consent to having the agency processing any eligibility application I have made to release information regarding the status of my application, whether pending or approved, to the bookkeeper or social services department of Pepper Hill Nursing & Rehab Center.

Name of Agency:

Signature:

[Signature]

RESIDENT'S NAME:

Charles S. Rudd19. AUTHORIZATION FOR BARBER AND BEAUTICIAN SERVICES:

I understand that permanent waves, hair coloring, and/or other treatments are usually harmless to hair; however due to age, health and/or medication; this may not stand true in this resident's particular circumstance. With full knowledge of this, I hereby accept full responsibility for any damage that may result, directly or indirectly, to the named resident by using the above mentioned products.

 I wish to utilize the Beautician/Barber services provided by Pepper Hill Nursing & Rehab Center as desired by Resident/Representative. (See #22 Resident Trust Account)
✓ Family will make independent Beautician/Barber arrangements.

20. LAUNDRY CONSENT: FACILITY TO DO LAUNDRY
✓ FAMILY TO DO LAUNDRY

I choose to have the facility to do my personal laundry and understand there will be a \$20 charge which will be billed to me monthly when resident is paying privately. I understand that only 7-10 outfits of clothing should be brought in due to the closet space provided. I understand that all clothing items must be labeled by the facility, regardless of who is doing laundry. If at any time I should decide to have my laundry done by someone else, I understand that I should let the facility know. I understand and agree to provide a closed plastic container with a lid should the laundry be done by someone other than the facility. Pepper Hill Nursing & Rehab Center staff will clean and sanitize such container on a regular basis.

*Laundry is a covered service when Medicare/Medicaid is primary payee.

21. IN-ROOM CABLE AUTHORIZATION AND CONSENT:

✓ Yes, please hook up cable No, I do not wish to have cable

I choose to have the facility provide active cablevision in my room (TV not provided) and understand that there will be a \$25 charge which will be billed to me monthly if paying privately or Medicaid is primary payee.

*Television is a covered service when Medicare is primary and televisions are supplied in most short term rehabilitation designated rooms.

I am in agreement with items 19-21 as signified by my signature or otherwise noted:

Signature: Thelma C. Rudd 7-27-16

RESIDENT'S NAME:

Charles S. Rudd22. RESIDENT TRUST ACCOUNT AUTHORIZATION:

I hereby authorize and delegate the responsibility for handling my personal monies deposited in the resident's trust account to Pepper Hill Nursing & Rehab Center, to make authorized financial transactions involving my account on my behalf.

I understand that no person other than myself or those persons I have designated in writing shall at any time be authorized to withdraw funds from my account, and that all withdrawals of my funds be made with my prior knowledge and consent

If for any reason I become incapacitated, I authorize my representative, designated in writing on the admission agreement, to act in my behalf in authorizing the disbursement of funds from my account on my behalf.

I understand that I will have the balance and summary of the account activity communicated to me each quarter (every three months) or as reasonably requested, so that I may review the specifics of transactions and have any questions answered that I have at this or any other time.

I consent for any money in the resident's fund account to be applied toward any unpaid bills at this facility upon discharge or death of the above named resident.

If I wish to utilize the beauty/barber shop services, I understand that funds must be available in my trust account for Pepper Hill Nursing & Rehab Center to pay for the services that I choose.

Signature:

Thelma C. Rudd 7-27-1623. CONSENT REVOCATION:

I understand that I have the right to, at any time, revoke any of the previously mentioned consents, authorizations, and releases. I understand that this must be done in writing and added to my record as an addendum.

Signature:

Thelma C. Rudd 7-27-16

RESIDENT'S NAME: Charles S. Rudd

24. RECURRING INCOME DUE TO THE FACILITY

I understand that all income (i.e. Social Security check, VA Pension, Retirement etc.) is to be paid to Pepper Hill Nursing & Rehab Center if the resident has Medicaid as their secondary insurance during a Medicare Part A stay or if the resident is admitted with Medicaid as their primary insurance. All checks must be sent directly to the facility from their respective sources. Pepper Hill Nursing & Rehab Center will become the payee for services rendered during the residents' stay.

Direct Medicaid Admit from home – Payment is due on the first day of the following month.

Direct Medicaid Admit from another facility – Payment is due immediately. Amount will be prorated accordingly.

Medicare A Admit; Medicaid secondary or no secondary insurance – Payment is due on day 21.

If payment is not received as stated above, I understand that the resident will be discharged for nonpayment.

Signature: Thelma C. Rudd Date: 7-27-16
Pepper Hill Representative: [Signature]

Resident/Representative Notification
For
Restraint Free Facility

Resident: Charles S. Ruddy

It is the policy of Pepper Hill Nursing and Rehab Center, LLC that all residents are allowed to maintain his or her highest practicable well-being in an environment that prohibits the use of both physical and chemical restraints.

There are two types of restraints, physical and chemical. A physical restraint is any manual method, physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. A chemical restraint is defined as any drug that is used for discipline or convenience and not required to treat medical symptoms. Medical symptoms are defined as an indication or characteristic of a physical or psychological condition (ex: behaviors due to dementia).

Reasons for having a restraint free environment may include but are not limited to: decline in resident's physical functioning and muscle condition, contractures, increased incidence of infections, development of pressure ulcers, delirium, agitation and incontinence. Restraints have also been found in some cases to increase the risk of falls or head trauma, strangulation or entrapment, loss of autonomy, dignity and self respect. This may cause withdrawal, depression, or reduced social contact, functional capacity and quality of life.

Alternatives to restraint use will be considered and discussed with the resident and/or responsible party. These alternatives may include modifying the resident's environment and/or routine.

The legal representative cannot give permission to use restraints for the sake of discipline, staff convenience or to prevent injury.

I have read and/or had the negative outcomes associated with restraint use explained to me and I was given the opportunity to discuss and/or ask questions. I understand that residents are allowed to maintain their well-being at Pepper Hill Nursing and Rehab Center and that restraints will not be used.

Signature: P. Theobald C. Ruddy Relationship: Wife

Date: 7-27-16

Pepper Hill Representative: [Signature]

ACKNOWLEDGEMENT CERTIFICATE

I, Thelma C. Rudd, certify that

I have received a copy of the **Resident's Bill of Rights** issued by Pepper Hill Nursing Center. The contents of the document have been explained to me, and I understand my rights as set forth therein.

Thelma C. Rudd 7-27-16

Signature of Resident

[Signature]

Witness

Dated this 27 day of July, 2016

NOTICE OF PRIVACY PRACTICES

Record of Acknowledgements

Name of Resident:

Charles S. Rudd

Date:

7/27/16

We are committed to preserving the privacy and confidentiality of your health information whether created by us or maintained on our premises. We are required by certain state and federal regulations to implement policies and procedures to safeguard the privacy of your health information. We are required by state and federal regulations to abide by the privacy practices described in the notice provided to you including any future revisions that we may make to the notice as may become necessary or as authorized by law.

Effective Date of This Privacy Notice

The effective date of this *Privacy Notice* is April 14, 2003.

Changes or Revisions to our Privacy Notice

We reserve the right to change our facility's *Privacy Notice* at any time and to make the revised or changed notice effective for health information we already have about you as well as any information we receive in the future about you. Should we revise or change our *Privacy Notice*, we will post a copy of the new or revised notice in our main lobby. You may obtain a copy of the new/revised *Privacy Notice* from the business office or download a copy from our website (as applicable).

[] Our *Privacy Notice* was revised on _____ [] No changes since the effective date listed above.

Privacy Notices, Information Restrictions, Record Amendments/Corrections, Disclosures of Information, Revoking an Authorization, Inspection and Copying of Records, Confidential Communications, Filing Complaints, Etc.

Should you have any questions concerning our facility's privacy practices, obtaining copies of our privacy notice, requesting restrictions on the release of your information, revoking an authorization, amending or correcting your health information, obtaining a listing of the information we disclosed concerning your health information, requests to inspect or copy your medical information, requests that we communicate information about your health matters in a certain way, denial of access to your health information, filing complaints, or any other concerns you may have relative to our facility's privacy practices, please contact:

YOU MAY ALSO FILE COMPLAINTS WITH:

Wade H. Jones, III
3525 Augustus Road
Aiken, South Carolina 29801
Phone: 803-642-8376
Fax Number: 803-642-8356
Email Address: wadejones@pepperhill.org

U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
(202) 619-0257
Toll Free 1-877-696-6775

Acknowledgement

I certify that I received a copy of this facility's *Privacy Notice* and that I have had an opportunity to review this document and ask questions to assist me in understanding my rights relative to the protection of my health information. I am satisfied with the explanations provided to me and I am confident that the facility is committed to protecting my health information.

Date:

My Signature:

My Printed Name:

Signature of Witness:

Date:

I certify that I am the authorized representative of _____

and that I have received the *Privacy Notice* on behalf of this individual and that the facility provided me with an opportunity to review this document and ask questions to assist me in understanding his/her privacy rights. I am satisfied with the explanations provided to me and I am confident that the facility is committed to protecting health information.

Date:

Signature of Representative:

Printed Name:

Relationship to Individual:

Signature of Witness:

Date:

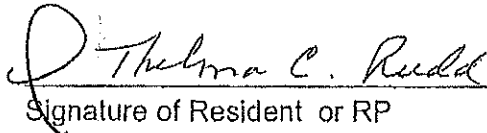
A copy of this document must be provided to the person to whom the *Privacy Notice* was provided and a copy must be filed in the medical record.

4. **EFFECT ON INDIVIDUAL OF NOT PROVIDING INFORMATION.** The information contained in the LTC MDS System of Records is generally necessary for the facility to provide appropriate and effective care to each resident.

If a resident fails to provide such information, e.g. thorough medical history, inappropriate and potentially harmful care may result. Moreover, payment for services by Medicare, Medicaid and third parties, may not be available unless the facility has sufficient information to identify the individual and support a claim for payment.

NOTE: Residents or their representative must be supplied with a copy of the notice. This notice may be included in the admission packet for all new nursing home admissions, or distributed in other ways to residents or their representative(s). Although signature of receipt is NOT required, providers may request to have the Resident or his or her Representative sign a copy of this notice as a means to document that notice was provided and merely acknowledges that they have been provided with this information.

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



Signature of Resident or RP

7-27-16

Date

MEDICARE SECONDARY PAYER QUESTIONNAIRE

Name of Beneficiary: Charles S. Rudd Claim #: _____

1. Is the beneficiary covered by Veterans Adm., Black Lung or Worker's Compensation?

2. Is this hospitalization caused by an accident that occurred at work? Yes ___ No ☒3. Was illness due to an automobile injury? Yes ___ No ☒

a. Date of accident: _____

b. What type of accident caused illness/injury? _____

c. Is the beneficiary filing or intending to file a liability suit? Yes ___ No ___

4. Are beneficiary or spouse employed (Medicare disabled beneficiaries under age 65 or Medicare beneficiaries over 65) covered by a company group health plan?

Yes ___ No ☒

5. Is the beneficiary entitled to benefits solely on the basis of end stage renal disease?

Yes ___ No ☒

a. Has the patient been undergoing kidney dialysis for more than 12 months?

Yes ___ No ___

6. Have you revoked standard Medicare in lieu of Hospice or HMO? Yes ___ No ☒

If you answered yes to any of the above questions, you will need to fill out the information on the reverse side.

Remember it is the provider's responsibility to bill primary insurers

Signature: Charles S. RuddDate: 7-27-16Remarks:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	THE SECOND JUDICIAL CIRCUIT
	)	
The Estate of Charles S. Rudd,	)	Civil Action No.: 2019CP0202840
deceased, through the duly appointed	)	
Personal Representative, Thelma	)	
Rudd, individually and on behalf of	)	
statutory beneficiaries	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Pepper Hill Nursing & Rehab Center,	)	MOTION TO STRIKE
LLC d/b/a Pepper Hill Nursing &	)	
Rehab Center n/k/a The Place at	)	
Pepper Hill, LLC; and Shiloh	)	
Management, Inc.	)	
	)	
Defendant.	)	

Defendants Pepper Hill Nursing & Rehab Center, LLC d/b/a/ Pepper Hill Nursing & Rehab Center n/k/a The Place at Pepper Hill, LLC (“Pepper Hill”) and Shiloh Management, Inc. (“Shiloh”) (collectively “Defendants”), respectfully move to strike pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure. Specifically, Defendants seek to strike specific paragraphs and allegations set forth in Plaintiffs’ Memorandum in Opposition to Defendant’s Motion to Compel Arbitration as they are immaterial, scandalous, and irrelevant to the underlying matter of arbitration.

FACTS BEARING ON THE MOTION

This matter arises out of allegations of negligence in regard to the care of Charles Rudd. Mr. Rudd was a resident at Pepper Hill beginning in July 2016. Upon admission to Pepper Hill, Mr. Rudd, through the signature of his representative, Thelma Rudd, entered into an Admission

Agreement, which is attached as Exhibit A to Defendants' Motion to Compel Arbitration. Within this Agreement, Plaintiffs agreed to mandatory arbitration should a grievance arise. *See* Agreement, p. 13. *See also* Agreement p. 1-14 (bolded and underlined language at the top of each page on Agreement). Despite this Agreement, Plaintiffs filed suit against Defendants in November 2019 based upon allegations that arise out of the Agreement.

On March 2, 2020, Defendants filed a Motion to Dismiss and Compel Arbitration. In responding to this Motion, Plaintiffs filed a Memorandum in Opposition. In their Memorandum, Plaintiffs set forth three paragraphs of statements unrelated to the merits of whether or not the claims are subject to arbitration.

STANDARD OF REVIEW

A motion to strike under Rule 12(f) should be granted to strike from "any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12, SCRPC. Under South Carolina law, the Court may strike an irrelevant matter when it has no substantial relationship to the controversy at hand. *See Lucas v. Garrett*, 208 S.C. 292, 295, 38 S.E.2d 18, 20 (1946).

Furthermore, pursuant to Rule 11, SCRPC, "an attorney may be sanctioned for filing a frivolous pleading, motion or other paper, or for making frivolous arguments. *Pee Dee Health Care, P.A. v. Estate of Thompson*, 418 S.C. 557, 565, 795 S.E.2d 40, 44-45 (Ct. App. 2016) (quoting *Burns v. Universal Health Servs., Inc.*, 340 S.C. 509, 513, 532 S.E.2d 6, 9 (Ct. App. 2000)). "The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). *See also Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995). "The sanction may include an order to pay the reasonable

costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith.” *Runyon*, at 19, 471 S.E.2d at 162. “If appropriate under the facts of the case, the court may order a party and/or the party’s attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith.” *Pee Dee*, at 566, 795 S.E.2d at 45.

LEGAL ARGUMENT

I. Plaintiffs’ Memorandum contains arguments and allegations irrelevant and immaterial to the matter of arbitration.

Plaintiffs’ Memorandum in Opposition opens with allegations and arguments far outside the scope of the matter of the suit’s subjection to arbitration. In their memorandum, Plaintiffs delve into matters regarding allegations of “siphoning funds away from the facilities,” “self-dealing and unnecessary diversion of funds,” and “piggy banking at the expense of the residents.” See Exhibit 1, p. 1-2, 12, and Plaintiff’s Exhibits 1-6. Plaintiffs’ unrelated arguments are merely a tactic to distract the Court from the underlying issue of arbitration and portray the Defendants in a negative light prior to the presentation of their actual arguments. Defendants expressly deny the allegations and even if true, allegations related to finances or misplacement of company funds are outside the scope of the merits of arbitration, are immaterial, and are completely irrelevant to the matter at hand. As such, these statements should be stricken from the record.

II. Plaintiffs were not acting in good faith when filing their Memorandum with frivolous, immaterial, and irrelevant arguments and are, thus, subject to sanctions pursuant to South Carolina Rule of Civil Procedure 11.

As set forth above, Plaintiffs unnecessarily attempted to set a scandalous tone of Defendants’ misconduct through scurrilous and unrelated allegations within their Memorandum’s

opening and closing paragraphs prior to setting forth their arguments against arbitration. Plaintiffs' statements regarding the misappropriation of funds on behalf of the Defendants were nothing more than a tactic used in attempt to inflict bias in the eyes of the Court. As such, Plaintiffs' use of the immaterial and irrelevant statements were made in bad faith, and, therefore, they are subject to Rule 11, SCRCP sanctions.

CONCLUSION

Based on the foregoing reasons stated herein, this court should grant Defendants' motion to strike the improper and irrelevant assertions in the Plaintiffs' Memorandum in Opposition to Defendant's Motion to Compel Arbitration.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Brandon R. Gottschall
Mark V. Gende
Brandon R. Gottschall
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

May 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd,	)	
deceased, through the duly appointed	)	
Personal Representative, Thelma Rudd,	)	
Individually and on behalf of statutory	)	PLAINTIFFS' MOTION TO AMEND
beneficiaries,	)	COMPLAINT TO ADD DEFENDANTS
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center,	)	
LLC d/b/a Pepper Hill Nursing &	)	
Rehab Center and Shiloh Management	)	
Company, Inc.	)	
Defendants.	)	

PLEASE TAKE NOTICE THAT the Plaintiffs, by and through their undersigned attorneys, hereby move before this Court pursuant to Rules 15 and 19 of the South Carolina Rules of Civil Procedure to amend the Complaint in this matter to add Wade Jones Jr, Wade Jones, III, the Estate of Janice Jones, and Scott Jones as necessary parties to this action. This motion is based upon information received in discovery, through research and prior deposition testimony. Pursuant to SCRCP 11 Plaintiffs' counsel certifies that consultation would serve no useful purpose with this motion. The pertinent section of Rule 15 of the South Carolina Rules of Civil Procedure states:

Amendments.

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; *and leave shall be freely given when justice so requires and does not prejudice any other party.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named, amended pleading, whichever period may be the longer, unless the court otherwise orders. Rule 15,

SCRCP (emphasis added).

Motions to amend the pleadings may be made upon motion of any party, at any time, even after judgment, and are addressed to the discretion of the trial judge. Ball v. Canadian Am. Express Co., 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994). South Carolina courts have consistently construed Rule 15(a) to require pretrial amendments to pleadings “to be freely granted unless a circumstance exists to justify refusal.” Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 369 S.E.2d 156 (Ct. App. 1988), *citing* Smith v. Traxler, 224 S.C. 290, 78 S.E.2d 630 (1953)(former section 15-13-920 which governed previous practice, liberally allowed pretrial amendment to pleadings). Federal courts have likewise consistently interpreted Rule 15(a) to strongly favor amendments, unless there exists apparent or declared bad faith on the part of the movant, undue delay, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment. Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227 (1962). *See also* Forrester, 295 S.C. 504, 506.

The party opposing the motion has the burden of establishing prejudice in order to succeed in opposing the motion. Tanner v. Florence County Treasurer, et.al, 336 S.C. 552, 521 S.E.2d 153 (1999)(recognizing the standard for consideration of a Rule 15 motion to amend or supplement the pleadings). “The prejudice Rule 15 envisions is a lack of notice . . . and a lack of opportunity to refute” the action. *Id.*, *citing* Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (1998). In Forrester, after the case was remanded following an appeal of the trial court’s rulings, Forrester made a motion to amend the pleadings to add defendants, and to allow him to seek monetary damages from the City of Mauldin, which had been a party to the previous lower court action. The trial court denied the motion, and Forrester appealed. Upon appeal, the City asserted that it would be prejudiced by

Forrester's motion to amend in that (1) the action had been pending for over two years and the amendment would unduly delay a trial of the case, (2) a new cause of action would require additional discovery, and (3) additional pleadings and motions would have to be filed by it, causing more delay. The South Carolina Court of Appeals determined that the grounds asserted by the City were inadequate to establish sufficient prejudice to justify denial of Forrester's motion to amend, and reversed the trial court. Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 369 S.E.2d 156 (Ct. App. 1988). In the present case, as in Forrester, no prejudice to the Defendants exists sufficient to justify denial of Plaintiffs' Motion to Amend the Complaint, and the interests of justice will be met by having all necessary parties adjudicated in the same action.

This case involves a tort action for nursing home abuse and neglect which occurred while Mr. Rudd was a resident of a skilled nursing facility owned and operated by the Jones Family through the above Defendants. Plaintiffs move to amend the Complaint to add individual Defendants for their own individual negligence and under the theory of alter ego by piercing the corporate veil under the applicable South Carolina case law.

Each individual had a duty of reasonable care. "While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken." Vaughan v. Town of Lyman, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006). "The question of whether such a duty arises in a given case may depend on the existence of particular facts. Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder." Wright v. PRG The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement (Second) of Torts (1965),² which provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking.

Although often used interchangeably, the terms "alter ego" and "piercing the corporate veil" are not one and the same. Whereas "alter ego" describes a theory of procedural relief, "piercing the corporate veil" refers to the relief itself. See 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Private Corporations* § 41.10 (per. ed., rev. vol. 2006). In other words, "[t]he alter ego doctrine is merely a means of piercing the corporate veil." 18 C.J.S. Corporations § 23 (2008). See **Exhibit 1-Drury Development v. Foundation Insurance**, 380 S.C. 97, 668 S.E.2d 798 (2008)(Accordingly, we hold that so long as the plaintiff has pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, the trial court should move forward to determination of both matters. The South Carolina Supreme Court explained:

"South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice, and it is well-settled that equity will not require the doing of a futile task. See *State ex rel. Daniel v. Strong*, 185 S.C. 27, 192 S.E. 671, 680 (1937) ("Equity owes its birth to the desire to look beneath the rigid rules of the law – to seek substantial justice."); see also *Elliot v. Dew*, 264 S.C. 40, 212 S.E.2d 421 (1975) ("Equity will not require the doing of a futile task"), *Earle v. Webb*, 182 S.C. 175, 188 S.E. 798, 802 (1936) ("a court of equity does not invite litigation.").

"If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." *Drury*, 380 S.C. at 101. The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied. *Id.*

In Sturkie, the court of appeals adopted a two prong test for piercing the corporate veil. The first prong analyzes the shareholder's relationship to the corporation by evaluating eight factors. The second prong requires the plaintiff to demonstrate that "fundamental unfairness" would result from recognition of the corporate entity. "The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell." Drury, supra, citing Dumas v. Infosafe Corp., 320 S.C. 188, 192-193, 463 S.E.2d 641, 644 (Ct. App. 1995).

The first prong of the test is an eight factor analysis of the shareholder's (or member's) relationship to the corporation. Dumas v. InfoSafe Corporation, 463 S.E.2d 641, 643 (Ct.App. 1995). It is "designed to analyze the corporation's adherence to corporate form." University Medial Associates of Medical University of S.C. v. UnumProvident Corp., 335 F.Supp.2d 702, 707 (D.S.C. 2004). It looks to observance of the corporate formalities by the shareholders. Sturkie v. Sifly, 313 S.E.2d 316 (Ct. App. 1984). The eight factors analyzed in the first prong of the test are as follows:

1. Whether the corporation was grossly undercapitalized;
2. Failure to observe corporate formalities;
3. Non-payment of dividends;
4. Insolvency of the debtor corporation at the time;
5. Siphoning of funds of the corporation by the dominant stockholder;
6. Non-functioning of other officers or other directors;
7. Absence of corporate records; and,
8. The fact that the corporation was merely a facade for the operations of the dominant shareholder.

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 463 S.E.2d 641, 644 (Ct.App. 1995). "Neither Sturkie nor any other case cited by the parties has set forth the weight that must be accorded to each of the eight factors, nor has any case required that each factor be accorded

equal weight with the others.” Hunting v. Elders, 597 S.E.2d 803 (Ct.App. 2004) (certiorari granted Aug. 12, 2005; motion to dismiss granted Oct. 5, 2005).

The second prong of the test “need not be reached until and unless the requirements of the first prong are met. Hunting at 807. The second prong requires “that there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the individuals” and is “perhaps more elusive.” Id. at 809. The corporate form may be disregarded where equity requires the action to assist a third party. Woodside v. Woodside, 350 S.E.2d 407, 410 (Ct.App. 1986). “[F]undamental unfairness can exist in the absence of fraud [and] may be proved by a lesser showing than the defendant’s reckless disregard for whether claims against the corporation exist.” Multimedia Publishing of S.C. Inc., at 572.

The essence of the fairness test is simply that an individual business man cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell.” Multimedia Publishing of S.C. Inc., at 573.

South Carolina provides by statute that an owner of a corporation or limited liability company is not personally liable for the acts or debts of the corporation or LLC. S.C. Code Ann. §33-6-220 and §33-44-303. South Carolina has also recognized the common law doctrine of “piercing the corporate veil” (a doctrine in which courts disregard the separate corporate entity in particular circumstances and impose liability as though the corporation and the individual are “one and the same”) for many years. Jennings v. Automobile Sales Co., 107 S.C. 514, 93 S.E. 188 (1971); Nettles v. Sottile, 184 S.C. 1, 191 S.E. 796 (1937); and Parker Peanut Company v. Felder, 200 S.C. 203, 20 S.E.2d 716 (1942). An action to pierce the corporate veil is one in equity. Mid-South Mgmt. Co. v. Sherwood Dev. Com., 374 S.C. 588, 596 (Ct. App. 2007).

The Jones Family members are liable as members of the governing body during the negligent acts. See **Exhibit 2-Canavan v. NHC**, 889 So.2d 825 (Fla. Ct. App. 2004). Budgetary issues and profit and loss statements are an integral element of Plaintiffs' case against Defendants who undercapitalized the facility for their own individual profits. Courts have allowed liability when corporate cutbacks in staffing, training, and supplies lead to neglect and injury. See Forsythe v. Clark USA, Inc., 864 N.E.2d 227 (Ill. 2007). Courts have held that the person or entity responsible for approving the budget of the nursing home can be held liable in cases such as this. See Canavan v. Nat'l Healthcare, 889 So.2d 825 (Fla.App. 2004).

In Canavan, the Estate of Patrick J. Canavan brought an action against Defendants Roger Friedbauer; 1620 Health Partners, L.C.; Southern Hospitality Developers, Inc.; and National Health Corporation for damages Canavan suffered while residing in a nursing home known as NHC Healthcare St. Petersburg. Id. at 825-826. The evidence showed that in January 1999, Friedbauer used a limited liability company, 1620 Health Partners, L.C., to purchase NHC Healthcare St. Petersburg. The manager of 1620 Health Partners was a corporation, Southern Hospitality Developers, Inc. The only principals or shareholders of 1620 Health Partners and Southern Hospitality were Friedbauer and his wife. Southern Hospitality had no full-time employees. In granting a direct verdict in favor of Friedbauer, the trial court accepted the argument that there was no basis upon which Friedbauer could be held personally liable as a managing member of 1620 Health Partners or as an officer of Southern Hospitality. The court suggested that liability could not be imposed on Friedbauer without piercing the corporate veil. Id.

The Florida Court of Appeals reversed the trial court. The trial court erred in granting the directed verdict because there was evidence that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. Id. at 826. It was not necessary for plaintiffs to pierce the corporate veil in order to establish individual liability

because Friedbauer's conduct was tortious.. Id at 827. The evidence in the present case is similar to Friedbauer. In that case the court rationalized:

“[t]hat Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation, 42 C.F.R. § 483.75(d) (2002), the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, the Estate argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.” Id at 826.

A member of an LLC can be held liable under a theory of Direct Participant Liability. After all, corporations are fictions the law treats as individuals – corporations are essentially persons under the law.¹ See Morrow v. Fundamental, 412 S.C. 534, 773 S.E.2d 144 (S.C., 2015) where the S.C. Supreme Court held as follows:

The Morrows correctly assert that the theory of vicarious liability is different than the theory of direct corporate liability. [cite omitted]. Vicarious liability attaches to a parent company or employer as the result of negligence on behalf of its employees, such as through the doctrine of respondeat superior. Id. at 439. **Conversely, direct corporate liability attaches due to a breach of a duty which runs directly between a parent company and a patient, arising from negligence in actions such as leaving a hospital underfunded, understaffed, or undertrained so as to provide substandard care.** Id. at 462.

¹ A tortfeasor may be liable for injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party. Barker v. Sauls, 345 S.E.2d 244, 244 (1986) (citing Terlinde v. J.F. Neely, Sr., 271 S.E.2d 768, 770 (1980)). The tortfeasor's liability exists independently of the contract and rests upon the tortfeasor's duty to exercise due care. Id. (citing Edward's of Byrnes Downs v. Charleston Heet Metal Co., 172 S.E.2d 120, 122 (1970)). This common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiffs. See Terlinde, 275 S.C. at 399, 271 S.E.2d at 770 (stating that the "key inquiry" in determining whether to impose liability is "foreseeability, not privity"). Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 605 S.E.2d 12 (S.C., 2004).

Accordingly, the two theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessarily preclude a finding of the other. *See Scampone v. Highland Park Care Ctr.*, 618 Pa. 363, 57 A.3d 582, 596–600 (2012) (holding that claims of vicarious liability and direct liability could be brought either concomitantly or alternately in case against nursing home); *see also Montgomery Health Care Facility, Inc. v. Ballard*, 565 So.2d 221, 225–26 (Ala.1990) (finding parent corporation of nursing home could be held liable for patient's death where corporation controlled day-to-day operations of home); cf. *Forsythe v. Clark USA, Inc.*, 224 Ill.2d 274, 309 Ill.Dec. 361, 864 N.E.2d 227, 237 (2007) (recognizing direct corporate liability as a valid theory of recovery in the context of workplace accidents).

The Jones Family had owned and operated the nursing home for decades deriving substantial individual benefits before selling the asset after the wrongful death of Mr. Rudd. See the Application for License which lists the role (Administrator, CFO, President, and Secretary) that each family member had in operating and managing the facility including as managing members of the governing body. **(Exhibit 3)**. Defendants were in direct control of the facility when the facility negligently responded to the residents' needs and subsequently caused his death. Defendants were in effect sitting beside the driver, ordering him to exceed the speed limit as evident by their budgetary and operational control of the facility.

On the Center for Medicare and Medicaid Services website Nursing Home Compare, the ownership and management indicate members of the Jones Family as owners and managers. **(Exhibit 4)**. The Medicaid Cost Reports also show their personal and direct involvement, and the substantial financial benefits they derived from siphoning funds away from the facility to themselves and related entities. **(Exhibits 5a-c)**. For example, the lease agreement between the facility and the landlord (also owned by the Jones Family) was signed by Wade Jones for both entities indicating self-dealing and unnecessary diversion of funds away from the facility into the pockets of the Jones Family. **(Exhibit 6)**. In fact, the Jones Family treated the taxpayer funds going into the facility as their own piggybank to be used for sports and entertainment for the Family.

(See **Exhibit 7a-d**). The 2018 Medicare Cost Report shows that Wade Jones diverted \$1,740,000 to related shell companies; his family, and himself. (**Exhibit 8**).

The Jones family used these companies as their personal piggy bank at the expense of residents. Defendants failed to develop and implement policies and procedures including properly training enough staff at the facility to monitor, supervise, and assist high fall risk residents like Mr. Rudd. This neglect caused Mr. Rudd to suffer a traumatic brain injury which hastened his wrongful death. (**Exhibit 9 – Expert Affidavit**). Since the wrongful death of Mr. Rudd, Defendants have sold the facility, and allegedly possess no assets or insurance coverage to pay any claims. Defendants claim there is no way to collect from any of the defunct corporate entities.

Charles Rudd was admitted to Defendants' facility on July 27, 2016. On May 10, 2018 Charles Rudd died from injuries sustained at Defendants' facility. In June of 2019, Plaintiffs filed the Notice of Intent alleging negligence and wrongful death arising from Defendants' failure to monitor and supervise Charles' safety and well-being while at the Facility. On March 2, 2020 the Facility filed a frivolous Motion to Dismiss and Compel Arbitration. Defense counsel knows or should know that no valid or enforceable arbitration agreement exists based on well-established case law in South Carolina including the Coleman, Hodge, and Thompson cases. The Court denied the Motion.

Defendants then filed a Motion to Reconsider based on the same exact arguments previously rejected by the Court. The Motion is meant to delay and obstruct the orderly progression of this litigation. Defendants have refused to fully respond to discovery or participate in this litigation. The Jones family, through these businesses were allowed to substantially enrich themselves. Now they seek to shield their assets and thwart justice by delaying the litigation and trial of this case. Defendants have sold the facility; have no insurance coverage; and plead poverty

while at the same time moving to compel an expensive arbitration proceeding. Plaintiffs move for an Order allowing plaintiffs to amend the complaint to add the following members of the Jones Family as individual Defendants: Wade Jones, Jr., Wade Jones III, Estate of Janice Jones, and Scott Jones. A facility's management is not infrequently named as a defendant under the theory that the resident suffered injury as a result of the management's failure to deploy adequate numbers of nurses and nurse aides. South Carolina has recognized the common law doctrine of piercing the corporate veil for many years.² This cause of action is one in equity.³ “The corporate form may be disregarded only where equity requires the action to assist a third party.”⁴ Courts in South Carolina have pierced the corporate veil when the business is not properly capitalized. For example, a good discussion of the factors to consider when piercing the corporate veil can be found in Eaddy v. Tindal, Order attached as **Exhibit 10**. The Court allowed piercing of the corporate veil when the Defendants were “...constantly enjoying distributions from the LLC for their own personal expenses and pay, despite knowledge of pending liabilities that go unpaid.” (See **Exhibit 1** at *7). The Court went on to find that the dominant shareholder controlled all aspects of the business, parallel to the Jones in this matter, siphoning off money and using the business as a mere façade for their benefit ultimately justifying piercing the corporate veil. (See **Exhibit 10** at *8). Our Supreme Court in Drury v. Foundation Insurance Co., 668 S.E. 2d 798 (2008) held:

In our view, a trial court need not dismiss an allegation alter ego defendant from a case on the grounds that the issue from a case on the grounds that the issue of corporate liability has not yet been resolved. [cite omitted]. **We therefore decline to adopt a rule**

² Jennings v. Automobile Sales Co., 107 S.C. 514, 93 S.E. 188 (1971).

³ Mid-South Mgmt. Co. v. Sherwood Dev. Corp., 374 S.C. 588, 596 (Ct. App. 2007).

⁴ Woodside v. Woodside, 290 S.C. 366, 370 (Ct. App. 1986).

which would require South Carolina's trial courts to resolve in two separate actions what they now ably determine in one.

Accordingly, we hold that so long as the plaintiff has pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, the trial court should move forward to determination of both matters.

A copy of the Second Amended Summons and Complaint is included with this filing as **Exhibit 11**.

Respectfully Submitted,

s/ E. John Waelde

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Page 1

Drury Development Corporation, Plaintiff,

v.

Foundation Insurance Company, Clarendon National Insurance Company, Tarheel Insurance Management Company, Tarheel Group, Steven M. Mariano, and Lucia Tompkins, Defendants.

Opinion No. 26559.

Supreme Court of South Carolina.

Heard September 16, 2008.

Filed November 3, 2008.

ON CERTIFICATION FROM U.S. District Judge Joseph F. Anderson, Jr. District of South Carolina

CERTIFIED QUESTIONS

CERTIFIED QUESTION ANSWERED

Allyson Torres Beckman, Gerald Michael Finkel, and Sean A. O'Connor, all of Finkel & Altman, of Charleston, for Plaintiff.

Geoffrey Ross Bonham, Jeffrey A. Jacobs, and Rachel Y. Harper, of Columbia, for Amicus Curiae South Carolina Department of Insurance.

Eileen R. Ridley and Michael A. Naranjo, both of Foley & Lardner, of San Francisco; John Edward Cuttino, Michelle P. Clayton, and Steven Wayne Ouzts, all of Turner Padgett Graham & Laney, of Columbia; and R. Scott Wallinger, Jr., of Clawson & Staubes, of Charleston, for Defendants.

CHIEF JUSTICE TOAL:

We accepted two certified questions from the United States District Court for the District of South Carolina. In this case, the plaintiff seeks to pierce the corporate veil in order to hold a liquidated corporation's parents and shareholders liable for the corporation's obligations. The first question asks whether a judgment against the corporation is a prerequisite to an alter ego claim. In the event we answer the first question "yes," the second question asks whether a plaintiff is precluded from bringing an alter ego claim against shareholders and officers of a corporation if it fails to either obtain a judgment against the

corporation prior to its liquidation or present its claim to the liquidator as a creditor of the corporation subject to liquidation pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. § 38-27-10, et seq. (2002) ("the Act"). We answer the first question "no," and therefore do not reach the second.

FACTUAL/PROCEDURAL BACKGROUND

Plaintiff Drury Development Corporation ("Plaintiff") entered into a risk-sharing agreement with Foundation Insurance Company ("Foundation"). The agreement conditioned the parties' obligation to pay on whether or not the loss was "favorable" to Plaintiff at the end of the agreement's term. Plaintiff alleges that Foundation owed it \$86,023.00 under the agreement when the agreement's term ended on April 20, 2005.

Soon after conclusion of the agreement's term, Foundation entered rehabilitation without having paid the alleged obligation. Rehabilitation was unsuccessful, and Foundation was declared insolvent and liquidated under the supervision of the South Carolina Department of Insurance ("DOI") in accordance with the terms of the Act. During liquidation, the liquidator for the DOI determined that Foundation's assets should be distributed in satisfaction of a single secured creditor's claims. The liquidator did not recognize any other general creditors, and Plaintiff did not present its creditor claim to the liquidator.

On April 28, 2006, Plaintiff filed this action in state court. The case was timely removed to federal court on the basis of diversity

jurisdiction. Plaintiff asserts claims against Foundation, its corporate parent Tarheel Group ("Tarheel"), Tarheel subsidiary Tarheel Insurance Management Company ("TIMCO"), and Tarheel shareholders Steven Mariano and Lucia Tomkins (together "Defendants") for breach of contract, fraudulent inducement of contract, negligence, conversion, and unjust enrichment. Plaintiff seeks to pierce the corporate veil in order to hold Tarheel, TIMCO, Mariano, and Tomkins liable for Foundation's alleged obligation.

Defendants filed a motion to dismiss pursuant to Rule 12 (b)(6), FRCP, based on the theory that Plaintiff may not allege an alter ego claim without first obtaining a judgment against Foundation. On November 21, 2007, the Honorable Joseph F. Anderson, Jr., United States District Judge for the District of South Carolina, determined that Defendants' motion to dismiss raised unresolved questions of South Carolina law and certified the following questions to this Court:

(1) Is a judgment against the corporation a prerequisite to an alter ego claim?

(2) If yes to (1), then is a plaintiff precluded from bringing an alter ego claim against shareholders and officers of a corporation if it fails to either obtain a judgment against the corporation prior to its liquidation, or present its claim to the liquidator as a creditor of the corporation subject to liquidation pursuant to the Act?

STANDARD OF REVIEW

In answering a certified question raising a novel question of law, this Court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right. *Peagler v. USAA Ins. Co.*, 368 S.C. 153, 157, 268 S.E.2d 475, 477 (2006).

LAW/ANALYSIS

The first certified question asks whether a judgment against a corporation is a prerequisite to an alter ego claim under South Carolina law.¹ We answer "no."

In general, equitable principles govern the veil-piercing remedy, and "[i]t is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection." *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984). "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." *Id.* The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied. *Id.*

In *Sturkie*, the court of appeals adopted a two prong test for piercing the corporate veil. The first prong analyzes the shareholder's relationship to the corporation by evaluating eight factors. The second prong requires the plaintiff to demonstrate that "fundamental unfairness" would result from recognition of the corporate entity. "The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell." *Dumas v. Infosafe Corp.*, 320 S.C. 188, 192-193, 463 S.E.2d 641, 644 (Ct. App. 1995).

Defendants contend that a veil-piercing action is dependent upon first obtaining a judgment against the corporation. We disagree. In applying South Carolina's veil-piercing doctrine, as all forms of equitable relief, "the equities of both sides are to be considered, and each case must be decided on its own particular facts." *Carroll v. Page*, 264 S.C. 345, 349, 215 S.E.2d 203, 205, (1975). South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice, and it is well-settled that equity will not require the doing of a futile task. See *State ex rel. Daniel v. Strong*, 185 S.C. 27, 192 S.E. 671, 680 (1937).

("Equity owes its birth to the desire to look beneath the rigid rules of the law — to seek substantial justice."); see also *Elliot v. Dew*, 264 S.C. 40, 212 S.E.2d 421 (1975) ("Equity will not require the doing of a futile task"), *Earle v. Webb*, 182 S.C. 175, 188 S.E. 798, 802 (1936) ("a court of equity does not invite litigation.").

Were we to adopt the rule urged by Defendants, creditors seeking to pierce the corporate veil of an insolvent or unresponsive corporate defendant would be required to file a pro forma action against the corporation before seeking to pierce the corporate veil in a subsequent action. While it is undoubtedly true that the corporate veil is often pierced post-judgment, it is also true that South Carolina courts frequently consider these issues in one bifurcated action. See, e.g., *Carolina Marine Handling v. Lasch et al.*, 363 S.C. 169, 176, 609 S.E.2d 548, 553 n.6 (recognizing that "an attempt to pierce the corporate veil often occurs post-judgment . . ."); see also *Mid-South Mgmt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 649 S.E.2d 135 (Ct. App. 2007) (in which the trial court allowed claims against a corporation and its parent companies to proceed to a bifurcated trial on issues of corporate liability and veil-piercing theories); *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004) (in which the trial court allowed claims against a corporation and its shareholder to proceed to a bifurcated trial on issues of corporate liability and veil-piercing). In our view, a trial court need not dismiss an alleged alter ego defendant from a case on the grounds that the issue of corporate liability has not yet been resolved. See *Chase Manhattan Bank v. 264 Water St. Assoc.*, 174 A.D.2d 504, 505 (N.Y. App. Div. 1991) (holding that it is not necessary "that an unsatisfied judgment first be obtained to pierce the corporate veil."). We therefore decline to adopt a rule which would require South Carolina's trial courts to resolve in two separate actions what they now ably determine in one.²

Much of the authority relied upon by Defendants suggests that Defendants have erroneously conflated the concept of a claim

with that of a judgment. See, e.g., *Hardy v. Brock*, 826 So.2d 71, 75-76 (Miss. 2002) (holding that "[a] claim against the corporation is a prerequisite for alter ego liability being placed on one shareholder."); *Radaszewski v. Telecom Corp.*, 981 F.2d 305 (8th Cir. 1992) (upholding dismissal of shareholder defendant because plaintiff failed to state a claim for shareholder liability); 1 William Meade Fletcher et al., *Fletcher Cyclopaedia of the Law of Private Corporations* § 41.10 (per. ed., rev. vol. 2006) (explaining that an attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of action). Indeed, South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory. See *Sturkie*, 280 S.C. at 459, 313 S.E.2d at 319 (adopting rule requiring plaintiffs to prove knowledge of a "claim" in order to prove fundamental unfairness and thereby pierce the corporate veil).

Accordingly, we hold that so long as the plaintiff has pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, the trial court should move forward to determination of both matters. In so holding, we observe that our disposition as to the first certified question should not be construed to undermine the legislature's determination that "no action at law or equity may be brought against the insurer or liquidator" once an order of liquidation has been issued. S.C. Code Ann. § 38-27-430(a). Rather, we set forth the general rule that a judgment against a corporation is not a prerequisite to an alter ego claim.

CONCLUSION

For the foregoing reasons, we answer "no" to the first certified question, and therefore do not reach the second certified question.

CERTIFIED QUESTION ANSWERED.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

Notes:

1. Although often used interchangeably, the terms "alter ego" and "piercing the corporate veil" are not one and the same. Whereas "alter ego" describes a theory of procedural relief, "piercing the corporate veil" refers to the relief itself. See 1 William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations § 41.10 (per. ed., rev. vol. 2006). In other words, "[t]he alter ego doctrine is merely a means of piercing the corporate veil." 18 C.J.S. Corporations § 23 (2008).

2. Although we adopt a more limited holding, we note that at least one other court has gone so far as to hold that a judgment against an unresponsive corporate defendant must be set aside in a subsequent action to pierce the corporate veil if the shareholder defendant was not a party to the determination of corporate liability. In Minton et al. v. Cavaney, 364 P.2d 473 (1961), the California Supreme Court held that a shareholder defendant had the opportunity to relitigate the legitimacy of the underlying corporate obligation. Writing for the majority, Justice Traynor wrote that because the defendant was not a party to the action against the corporation, the defendant "cannot be held liable for debts of [the corporation] without an opportunity to relitigate these issues." Id. at 476.

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889 So.2d 825

**The ESTATE OF Patrick J. CANAVAN, by and through Dorothy Canavan, Person
Representative, Appellant/Cross-Appellee,**

v.

**NATIONAL HEALTHCARE CORP. (Delaware); National Health Corp.; Southern Hospitality
Developers, Inc.; Roger Friedbauer, individually; and 1620 Health Partners, L.C. (as to NHC
Healthcare St. Petersburg), Appellees/Cross-Appellants.**

No. 2D02-2438.

District Court of Appeal of Florida, Second District.

July 23, 2004.

Rehearing Denied November 10, 2004.

Stuart C. Markman, Robert W. Ritsch, and
Katherine Earle Yanes of Kynes,

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Markman & Felman, P.A., Tampa, counsel for
Appellant/Cross-Appellee.

Scott A. Mager and Elaine J. LaFlamme of
Mager Shafer, Ft. Lauderdale, for
Appellees/Cross-Appellants.

FULMER, Judge.

The Estate of Patrick J. Canavan brought this action against Defendants Roger Friedbauer; 1620 Health Partners, L.C.; Southern Hospitality Developers, Inc.; National Healthcare Corporation; and National Health Corporation for damages Canavan suffered while residing in a nursing home known as NHC Healthcare St. Petersburg. During the jury trial, at the end of the Estate's case, the trial court granted a directed verdict in favor of Roger Friedbauer. The jury found the remaining Defendants liable for negligence and for depriving Canavan of his nursing home rights. The Estate was awarded actual damages of \$500,000 and punitive damages of \$250,000. On appeal, the Estate challenges the directed verdict in favor of Friedbauer and the trial court's exclusion of evidence during the punitive damages phase of the trial. We agree that both of these issues have merit, and therefore, we reverse and remand for a new trial against Friedbauer and for a redetermination of the amount of punitive damages to be awarded against two of the

Defendants. We reject the arguments made by the Defendants in the cross-appeal because the issues either were not properly preserved for review or have no merit.

The evidence showed that in January 1999, Friedbauer used a limited liability company, 1620 Health Partners, L.C., to purchase NHC Healthcare St. Petersburg. The manager of 1620 Health Partners was a corporation, Southern Hospitality Developers, Inc. The only principals or shareholders of 1620 Health Partners and Southern Hospitality were Friedbauer and his wife. Southern Hospitality had no full-time employees. In granting a direct verdict in favor of Friedbauer, the trial court accepted the argument that there was no basis upon which Friedbauer could be held personally liable as a managing member of 1620 Health Partners or as an officer of Southern Hospitality. The court suggested that liability could not be imposed on Friedbauer without piercing the corporate veil.

The Estate argues that the concept of piercing the corporate veil does not apply in the case of a tort, and that it presented sufficient evidence of Friedbauer's negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. It argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation, 42 C.F.R. § 483.75(d) (2002), the governing body is legally responsible for establishing and implementing

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policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, the Estate argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.

We review the granting of a directed verdict by viewing the evidence and all inferences of fact in the light most favorable

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to the nonmoving party, and we can affirm a directed verdict only where no proper view of the evidence could sustain a verdict in favor of the nonmoving party. *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315, 329 (Fla.2001). We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted tortious conduct, which is not shielded from individual liability. See *Fla. Specialty, Inc. v. H 2 Ology, Inc.*, 742 So.2d 523, 527 (Fla. 1st DCA 1999) (stating that officers of a corporation may be held liable for their own torts even if such acts are performed as corporate officers); *McElveen v. Peeler*, 544 So.2d 270 (Fla. 1st DCA 1989); *Orlovsky v. Solid Surf, Inc.*, 405 So.2d 1363, 1364 (Fla. 4th DCA 1981). We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.

The Estate next challenges the trial court's ruling that excluded evidence during the phase of the trial in which the jury was asked to determine the amount of punitive damages. The Estate proffered evidence of a prior verdict entered in March 1999 that awarded punitive damages to another nursing home patient, Marion Heide, who sued National Healthcare Corporation and National Health Corporation for damages suffered in a nearby nursing home that was operated and managed by these Defendants. In excluding evidence of the Heide verdict, the trial court stated that the probative value was outweighed by the danger of unfair prejudice or confusion in the jury's mind.

The trial court abused its discretion in making this ruling. In determining the amount of punitive damages, a jury is properly instructed to consider the existence of other civil awards against the defendants for the same conduct. *Owens-Corning Fiberglas Corp. v. Ballard*, 749 So.2d 483, 485, 487 (Fla.1999). There was no evidence proffered here to suggest that the Heide verdict was especially confusing such that exclusion was justified; therefore, the trial court's reasoning in excluding the evidence was flawed. We conclude that as to Defendants National Healthcare Corporation and National Health Corporation, the Estate is entitled to a new trial on the amount of punitive damages only.

Reversed and remanded for further proceedings consistent with this opinion.

SALCINES, J., and DANAHY, PAUL W.,
Senior Judge, Concur.



**APPLICATION FOR LICENSE TO OPERATE AN
INPATIENT CARE FACILITY
BUREAU OF HEALTH FACILITIES LICENSING**

In accordance with §44-7-260 and §44-71-10, of the South Carolina Code (as amended) and Regulations 61-13, 61-16, 61-17, 61-78, 61-93 and 61-103, licensees and prospective licensees must file an application under oath prior to operating a health care facility, and annually thereafter. Licenses are generally effective for a 12-month period following the date of issue unless otherwise determined by state statute or regulation.

1. REASON FOR APPLICATION:

- A. ☐ New Inpatient Care Facility (Initial License) Skip Lines 1.B and 1.C.
- B. ☒ Renewal of License Number: NCE-879 Expiring On: 11/30/2016
- C. ☐ Change to Licensing Information for License Number: _____

(1) ☐ Change of Owner (See instructions before completing). ☐ Ownership Change ☐ Name Change Only
Enter the current name on the first space and the new name on the second space.

From _____

To _____

(2) ☐ Change of Facility Name on Line 2.A. (See instructions before completing).

From _____

To _____

(3) ☐ Increase/Decrease in Number of Licensed Units From: ____ To: ____ Description of units (Patient or Resident Rooms): _____

(4) ☐ *Change or ☐ Correction of Address for Location of Facility listed on Line 2:

From _____

To _____

*[NOTE: Relocation of Facility requires prior approval from Department before occupying the new location]

(5) ☐ Addition/Change in Service or Modification (attached document describing the addition or change)

2. FACILITY INFORMATION (Location where facility provides care to patients or residents):

A. Pepper Hill Nursing & Rehab. Center
(Name of the facility. See instructions regarding the naming of a facility)

B. 3525 Augustus Rd. Aiken, SC 29801
(Physical Location Address to include City, State and Zip Code)

C. P.O. Box 3188 Aiken, SC 29802
(Mailing Address, if different)

D. Aiken
(County in which the facility is physically located)

E. Phone Number at Location: (803)642-8376 Emergency Contact Number: _____

F. *E-Mail Address: scottjones@pepperhill.com
*[NOTE: E-mail is our primary means of communicating with the Facility. Please ensure the e-mail address is accurate and monitored.]

3. **LICENSEE OR OWNER(S):** (1) is an organization or partnership as registered with the South Carolina Secretary of State; or (2) it is the individual names of partners in an agreement that has no organization title and is not required to be registered; or (3) it is an individual that is the sole-proprietor and is not a member/owner of an organization that has an interest in the facility.

A. Pepper Hill Nursing & Rehab. Center, LLC
(Name of Organization as Registered with the SC Secretary of State or, Name of Individual(s) if this is a Sole-proprietorship or Partner Agreement)

B. 3525 Augustus Rd. Aiken, SC 29801
(Location Address to include City, State and Zip Code)

C. P.O. Box 3188 Aiken, SC 29802
(Mailing Address, if different)

D. (803)642-8376
(Phone Number)

E. Managers- Wade H. Jones, Jr. and Janice G. Jones
(Name and title of presiding officer of the Registered Organization's Governing Body)

F. Entity named on Line 3.A is a (check one of following characteristics in each of the three categories that applies):

- (1) ☒ For Profit ☐ Non-Profit (Registered with the Internal Revenue Service as a 501.c organization)
- (2) ☐ Sole proprietorship ☐ Partnership ☐ Limited Partnership ☐ Corporation
☒ Limited Liability Company ☐ Other: _____
- (3) ☐ State Government ☐ County Government ☐ District Government
☐ Religious ☐ Commercial ☒ None of these categories apply

4. **LOCATION CONTACT (Administrator/Director):** Prefix: Mr. ☒ Mrs. ☐ Ms. ☐ Dr. ☐ Other: _____

First Name: Preston MI: S. Last Name: Jones

Generation: Sr. ☐ Jr. ☐ III ☐ Other: _____ Suffix: MD ☐ Ph.D. ☐ RN ☐ Other: _____

5. **TYPE OF FACILITY FOR WHICH APPLICATION IS MADE:** (Check only one category per application)

A. ☐ Hospice Facility (Regulation 61-78) Number of Beds: _____

B. ☒ Nursing Home (Regulation 61-17)

- (1) ☒ Nursing Home Number of Beds: 132
(2) ☐ Institutional Nursing Home Number of Beds: _____
Total Number of Beds: 132

Does the facility provide or offer to provide Alzheimer's special care services? ☒ Yes ☐ No
Total number of Alzheimer patients diagnosed as such by a physician: 75

Does the facility have a designated area or Alzheimer Special Care Unit? ☐ Yes ☒ No
If yes, how many licensed beds are located in the area or unit where the Alzheimer patients reside? _____
Name of Designated Area: _____

C. ☐ Intermediate Care Facilities for Persons with Intellectual Disability (Regulation 61-13)
Number of Beds: _____

D. ☐ **Residential Treatment Facility for Children & Adolescents (Regulation 61-103)**

Number of Beds: _____

Educational Program Provided By: ☐ School District ☐ Other: _____E. ☐ **Hospital or Institutional General Infirmary (Regulation 61-16)**(1) ☐ General Hospital(2) ☐ Institutional General Hospital(3) ☐ Institutional General Infirmary(4) ☐ Privately-owned Educational Institutional Infirmary(5) ☐ Specialized Hospital (Specialty): _____Certified to perform abortions? ☐ Yes; ☐ No (If you checked "Yes", request to Health Licensing must be on file.)

Number of beds to be licensed: General _____; Psychiatric _____; Rehabilitation _____;

Substance abuse _____; **Total Number of Beds:** _____Do you operate a swing bed unit? ☐ Yes; ☐ No. Number of Beds: _____Does your hospital provide perinatal (obstetrics and newborn) services? ☐ Yes; ☐ No.If yes, indicate the appropriate level: ☐ I; ☐ II; ☐ III; ☐ III Regional Center.

If licensed at Level II or III, how many NICU and Neonatal Special Care (Intermediate and Continuing Care) neonates are you capable of caring for? NICU _____ Neonatal Special Care _____

JCAHO accredited? ☐ Yes; ☐ No. Date of Last JCAHO Inspection: _____Trauma Center? ☐ Yes; ☐ No. If yes, what level is your designation? ☐ I; ☐ II; or ☐ IIIF. ☐ **Inpatient Treatment Facility for Psychoactive Substance Abuse or Dependence (Regulation 61-93)**

_____ Number of Medical Detoxification Beds (Requires CON Approval)

_____ Number of Social Detoxification Beds

_____ Number of Residential Treatment Program Beds

_____ Total Number of Beds to be Licensed

6. **BUILDINGS & PATIENT/RESIDENT ROOMS INFORMATION (Initial Licensure Only):**A. In how many buildings are patient/resident rooms located? 1Name of building: Pepper Hill Nursing & Rehab. Center No. of beds: 132

Name of building: _____ No. of beds: _____

Name of building: _____ No. of beds: _____

Name of building: _____ No. of beds: _____

☐ Check this block if you have additional buildings in which patient/resident rooms are located other than the four identified above and attach a sheet with similar information as requested above for each additional building.

B. If any facility services or functions are located in buildings other than those named above, attach a description of the functions and name of building(s) (and location if at an address other than that of the hospital).

C. Attach a brief description of any construction or renovations in progress; identify location, percent of completion, expected completion date, and the Certificate of Need (if applicable).

7. **REQUIRED ATTACHMENTS (Annual Renewal and Initial):**

- A. **Administrator's License** - attach a copy of the license (or "other proof") issued by the Board of Long Term Health Care Administrators, Department of Labor Licensing & Regulation for the person identified on Line 4 if:
- (1) 5.B has been marked or;
 - (2) 5.C has been marked and the person possesses an administrator's license. ☐ N/A ☒ Attached
- B. **Physician Supervisor** - If you marked Line 5.A, 5.E or 5.F and are required by regulation to have a Medical Director or Chief of Staff, attach a copy of the license issued by the South Carolina State Board of Medical Examiners or other proof that the physician is currently authorized to practice medicine in South Carolina. ☒ N/A ☐ Attached
- C. **Nursing Supervisor** - If you marked Line 5.A, 5.B, 5.E, or 5.F and are required by regulation to have a Director of Nursing or Nursing Services Supervisor, attach a copy of the registered nurse license issued by the South Carolina State Board of Nursing or other proof that the person is authorized to practice as a registered nurse in South Carolina. ☐ N/A ☒ Attached
- D. **Pharmacist** - If you marked Line 5.C or 5.F and are required by regulation to have a Pharmacist or you currently have a pharmacist that oversees a drug room, attach a copy of the pharmacist license issued by the South Carolina State Board of Pharmacy or other proof that the person is authorized to practice as a pharmacist in South Carolina. ☒ N/A ☐ Attached
- E. **Licensee or Owner Documents Required:**
- (1) If the licensee is a corporation or partnership, attach a list identifying all officers. ☒ N/A ☐ Attached
 - (2) If the licensee or owner is a corporation or partnership, attach a list with the name, address and percentage of all owners that possess 5% or more ownership of the company or partnership. ☐ N/A ☒ Attached
 - (3) If any person or other legal entity can claim liabilities of the licensee or of the facility or service for which this license is requested, attach a list identifying the name, address, percent, and type of claim. ☒ N/A ☐ Attached
- F. **Real Property Ownership** - If the land and/or building on/in which the facility or service is conducted are owned by individual or organization other than the licensee identified on Line 3.A:
- (1) Attach a copy of the current executed lease or rental agreement. ☒ N/A ☐ Attached
 - (2) Attach a list with the name, address and percentage of all owners that possess 5% or more ownership of the company or partnership that owns the land or building(s). ☐ N/A ☒ Attached
 - (3) Attach a list identifying all officers of the corporation or partnership that own the land or building(s). ☒ N/A ☐ Attached
 - (4) If any person or other legal entity (other than the licensee or owner of the land/building(s) can claim liabilities of the licensee or of the facility or service for which this license is requested, attach a list identifying the name, address, percent, and type of claim. ☒ N/A ☐ Attached
- G. **Management Agreement** - If the licensee has engaged an entity other than an employee of the licensee to manage or operate the facility, attach a list providing information similar to that required in Line 3 and a copy of the current executed management agreement. ☒ N/A ☐ Attached
- H. **Additional Ownership Information** - If applicable, attach a copy of any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested and/or provided in Line 7.E, 7.F, and 7.G. ☒ N/A ☐ Attached

8. VERIFICATION

[NOTE: For nursing homes, the owner(s) or person(s) authorized to sign the application must have a criminal background check result on file with our office. Licenses will not be issued if the result is not on file or there is a conviction that would preclude us from issuing the license.]

State of: South Carolina

County of: Aiken

I, Wade H. Jones, Jr. and Janice G. Jones
being duly sworn on my oath, depose and say that I have read the foregoing application (and attachments) and know the content thereof; that the statements contained are correct and true to the best of my knowledge and belief. Furthermore, I understand that I must comply with standards set forth in South Carolina Regulation 61-13, 61-16, 61-17, 61-78, 61-93, or 61-103 (as applicable to the license applied for herein) and that non compliance with these standards may result in the Department pursuing enforcement actions as provided in the applicable regulation 61-13, 61-16, 61-17, 61-78, 61-93, or 61-103.

Wade H. Jones, Jr. President
(Signature)* (Title)
Janice G. Jones Secretary
(Signature)* (Title)

An application must be signed by the owner if an individual; or in the case of a limited liability company, the head of the limited liability company; or two of the owners if a partnership; or, in the case of a corporation, by two of its officers; or, in the case of a governmental unit, by the head of the governmental department having jurisdiction over the facility.

Subscribed and sworn to before me this 3rd day of November, 2016.
(Month) (Year)

NOTARY PUBLIC Angelina G. Gamble

My commission expires 03/12/2024 NOTARY SEAL

9. Stacy L. Barker (803)642-8376 11/03/16
(Name and title of person preparing this application) (Telephone Number) (Date Prepared)
stacybarker@pepperhill.com
(E-mail address)

NOTICE: Your license must be renewed prior to the expiration date. The current licensee is responsible for renewal of the license prior to the expiration date regardless of any changes or pending approvals (i.e., ownership changes or bed increases/decreases) from the Department that are in progress at the time the license is due for renewal. To avoid a lapse in your license we recommend you submit an application to renew the current license and a second application to effect the changes. Please read the attached instructions regarding pending changes for Line 3

7. E. List of Officers

Wade H. Jones, Jr.	President
Janice G. Jones	Secretary
Scott Jones	Vice President
Wade H. Jones, III	CFO

SUPPLEMENTAL INFORMATION

9. F. List of Owners

Wade H. Jones, Jr. (50% Stock Ownership)
P. O. Box 3188
Aiken, South Carolina 29801

Janice G. Jones (50% Stock Ownership)
P. O. Box 3188
Aiken, South Carolina 29801

9. H. Corporate Officers

Wade H. Jones, Jr., President

Janice G. Jones, Secretary and Treasurer

11. Management

Name: Shiloh Management Company, Inc.
3525 Augustus Road
Aiken, South Carolina 29801

Owners: Wade H. Jones, Jr. (50% Stock Ownership)
P. O. Box 3188
Aiken, South Carolina 29801

Janice G. Jones (50% Stock Ownership)
P. O. Box 3188
Aiken, South Carolina 29801

Officers: Wade H. Jones, Jr., President
Janice G. Jones, Secretary and Treasurer

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The Official U.S. Government Site for Medicare

Ownership Information

PEPPER HILL NURSING & REHAB CENTER, LLC
3525 AUGUSTUS ROAD
AIKEN, SC 29802
(803) 642-8376

Ownership: For profit - Corporation
Legal Business Name: PEPPER HILL NURSING & REHAB CENTER LLC

Owners and Managers of PEPPER HILL NURSING & REHAB CENTER, LLC

5% OR GREATER DIRECT OWNERSHIP INTEREST

JONES, JANICE (NO PERCENTAGE PROVIDED), since 11/12/2009

OPERATIONAL/MANAGERIAL CONTROL

SHILOH MANAGEMENT INC, since 11/12/2009

GAMBLE, ANGIE, since 07/16/2010

JONES, WADE, since 12/10/2012

DIRECTOR

SAWYER, DONNA, since 06/02/2011

OFFICER

JONES, PRESTON, since 03/11/2002

MANAGING EMPLOYEE

GAMBLE, ANGIE, since 07/16/2010

JONES, PRESTON, since 10/28/2003

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SHILOH MANAGEMENT, INC.

GENERAL INFORMATION

October 01, 2012 thru September 30, 2013

7. OWNER(S) COMPENSATION (DETAIL BELOW)

<u>NAME</u>	<u>JOB TITLE</u>	<u>TOTAL HOURS WORKED</u>	<u>COMPENSATION PER BOOKS</u>	<u>COMPENSATION ADJUSTED</u>	<u>FACILITY ACCOUNT NUMBER</u>	<u>DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?</u>
WADE H. JONES, JR.	CEO	2,080	\$101,614.00	\$ 101,403.00	5005	Yes

8. RELATIVE'S COMPENSATION (DETAIL BELOW)

<u>NAME</u>	<u>JOB TITLE</u>	<u>TOTAL HOURS WORKED</u>	<u>COMPENSATION PER BOOKS</u>	<u>COMPENSATION ADJUSTED</u>	<u>FACILITY ACCOUNT NUMBER</u>	<u>DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?</u>
JANICE W. JONES	BUSINESS MANAGE	2,080	\$0.00	\$0.00	5005	Yes
WADE H. JONES, III	CFO	2,080	\$98,547.00	\$79,770.00	5005	No
SCOTT JONES	ASSISTANT CEO	2,080	\$116,248.00	\$66,879.00	5005	Yes
PAIGE BENNETT	BOOKKEEPER	2,080	\$30,113.00	\$32,359.00	5005	No

9. RELATED FACILITIES (DETAIL BELOW)

<u>NAME</u>	<u>CITY</u>	<u>STATE</u>	<u>CONTRACTOR(S) RELATIONSHIP</u>
PEPPER HILL NURSING & REHAB CENTER, LLC	AIKEN	SC	COMMON OWNERSHIP
SHADOW OAKS ASSISTED LIVING COMMUNITY, LLC	AIKEN	SC	COMMON OWNERSHIP

10. DOES THIS FACILITY PARTICIPATE IN TRANSACTIONS WITH RELATED ORGANIZATIONS?

<u>EXPENSE</u>	<u>RELATED ORGANIZATION NAME</u>	<u>ITEM DESCRIPTION</u>	<u>COST PER BOOKS</u>	<u>COST TO RELATED PARTY</u>	<u>DHHS ACCOUNT NUMBER</u>	<u>NON- RELATED VENDORS</u>
	SHILOH MANAGEMENT, INC	LEASED OFFICE SPACE (FROM PEPPER HILL, LLC)	\$12,473	\$15,634	3070299	No
	PEPPER HILL NRSNG & REHAB CTR, LLC	MANAGEMENT FEES	\$660,000	\$818,608	3070299	No
	SHADOW OAKS, LLC	MANAGEMENT FEES	\$221,000	\$181,730	3070299	No
	PEPPER HILL NRSNG CENTER, INC	MANAGEMENT FEES	\$12,000	\$0	3070299	No
	SHADOW OAKS, INC	MANAGEMENT FEES	\$6,000	\$0	3070299	No
	SHADOW OAKS, LLC	AUTO RENTAL	\$8,450	\$0	3070299	No

11. RENT OR LEASED FACILITIES DESCRIPTION

<u>RENT TYPE</u>	<u>MONTHS</u>	<u>EXPIRATION</u>	<u>PAYMENT</u>	<u>OPTION TO RENEW</u>	<u>OPTION TO BUY</u>

SHILOH MANAGEMENT, INC.

GENERAL INFORMATION

October 01, 2013 thru September 30, 2014

7. OWNER(S) COMPENSATION (DETAIL BELOW)

<u>NAME</u>	<u>JOB TITLE</u>	<u>TOTAL HOURS WORKED</u>	<u>COMPENSATION PER BOOKS</u>	<u>COMPENSATION ADJUSTED</u>	<u>FACILITY ACCOUNT NUMBER</u>	<u>DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?</u>
WADE H. JONES, JR.	CEO	2,080	\$80,698.00	\$ 76,055.00	5005	Yes

8. RELATIVE'S COMPENSATION (DETAIL BELOW)

<u>NAME</u>	<u>JOB TITLE</u>	<u>TOTAL HOURS WORKED</u>	<u>COMPENSATION PER BOOKS</u>	<u>COMPENSATION ADJUSTED</u>	<u>FACILITY ACCOUNT NUMBER</u>	<u>DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?</u>
JANICE W. JONES	BUSINESS MANAGE	2,080	\$69,017.00	\$0.00	5005	Yes
WADE H. JONES, III	CFO	2,080	\$96,197.00	\$79,770.00	5005	No
SCOTT JONES	ADMINISTRATOR	1,960	\$111,352.00	\$0.00	5005	Yes
PAIGE BENNETT	BOOKKEEPER	2,000	\$42,162.00	\$40,173.00	5005	No
SCOTT JONES	ASSISTANT CEO	120	\$6,798.00	\$4,590.00	5005	Yes

9. RELATED FACILITIES (DETAIL BELOW)

<u>NAME</u>	<u>CITY</u>	<u>STATE</u>	<u>CONTRACTOR(S) RELATIONSHIP</u>
PEPPER HILL NURSING & REHAB CENTER, LLC	AIKEN	SC	COMMON OWNERSHIP
SHADOW OAKS ASSISTED LIVING COMMUNITY, LLC	AIKEN	SC	COMMON OWNERSHIP

10. DOES THIS FACILITY PARTICIPATE IN TRANSACTIONS WITH RELATED ORGANIZATIONS?

<u>EXPENSE</u>	<u>RELATED ORGANIZATION NAME</u>	<u>ITEM DESCRIPTION</u>	<u>COST PER BOOKS</u>	<u>COST TO RELATED PARTY</u>	<u>DHHS ACCOUNT NUMBER</u>	<u>NON- RELATED VENDORS</u>
	SHILOH MANAGEMENT, INC	LEASED OFFICE SPACE (FROM PEPPER HILL, LLC)	\$0	\$14,939	3070299	No

<u>REVENUE</u>	<u>RELATED ORGANIZATION NAME</u>	<u>ITEM DESCRIPTION</u>	<u>COST PER BOOKS</u>	<u>COST TO RELATED PARTY</u>	<u>DHHS ACCOUNT NUMBER</u>	<u>NON- RELATED VENDORS</u>
	PEPPER HILL NNRSG & REHAB CTR, LL	MANAGEMENT FEES	\$560,000	\$674,528	3070299	No
	SHADOW OAKS, LLC	MANAGEMENT FEES	\$221,000	\$170,539	3070299	No
	PEPPER HILL, INC	MANAGEMENT FEES	\$12,000	\$0	3070299	No
	SHADOW OAKS, INC	MANAGEMENT FEES	\$6,000	\$0	3070299	No
	SHADOW OAKS, LLC	AUTO RENTAL	\$7,800	\$0	4070242	No

PEPPER HILL NURSING & REHAB CENTER, LLC

GENERAL INFORMATION

October 01, 2013 thru September 30, 2014

1. Facility Data

a. NAME PEPPER HILL NURSING & REHAB CENTER, LLC MMIS No. 0558NH
FACILITY LOCATION 3525 AUGUSTUS DRIVE
(STREET ADDRESS)
CITY Aiken STATE SC ZIP CODE 29801
PHONE (803) 642-8376 FAX # (803) 642-8356 E.I. No. 223880344
b. MEDICARE Yes MEDICARE PROVIDER 425308
CERTIFIED NUMBER
c. CONTROL TYPE Proprietary Partnership
d. FACILITY TYPE Free Standing
e. EMAIL ADDRESS NP1 No. 1447203716

2. Administrator Data

NAME P. SCOTT JONES LICENSE No. 484-D97
EMAIL ADDRESS SCOTTJONES@PEPPERHILL.COM

3. ACCOUNTING FIRM DATA

ACCOUNTING FIRM SCHMOYER AND COMPANY, LLC
ADDRESS 1330 LADY STREET
SUITE 507
CITY COLUMBIA STATE SC ZIP CODE 29201
PHONE (803) 254-2050
EMAIL ADDRESS

4. Report Preparer

NAME (FIRM) SCHMOYER AND COMPANY, LLC
ADDRESS 1330 LADY STREET
SUITE 507
CITY COLUMBIA STATE SC ZIP CODE 29201
PHONE (803) 254-2050
EMAIL ADDRESS

5. OPERATING ENTITY OWNER(S)

NAME WADE H. JONES, JR
ADDRESS P.O. BOX 3188
CITY AIKEN
STATE SC ZIP CODE 29801 PHONE (803) 642-8376
TITLE OWNER 50.00
RELATIONSHIP TO ABOVE LISTED OWNER

NAME JANICE JONES
ADDRESS P.O. BOX 3188
CITY AIKEN
STATE SC ZIP CODE 29801 PHONE (803) 642-8376
TITLE OWNER 50.00
RELATIONSHIP TO ABOVE LISTED OWNER

PEPPER HILL NURSING & REHAB CENTER, LLC

GENERAL INFORMATION

October 01, 2013 thru September 30, 2014

6. FACILITY OWNER(S) (LAND AND BUILDING)

NAME PEPPER HILL NURSING CENTER, INC
ADDRESS 3525 AUGUSTUS ROAD
CITY AIKEN
STATE SC ZIP CODE 29801 PHONE (803) 642-8376
TITLE OWNERSHIP 100.00

7. OWNER(S) COMPENSATION (DETAIL BELOW)

NAME	JOB TITLE	TOTAL HOURS WORKED	COMPENSATION PER BOOKS	COMPENSATION ADJUSTED	FACILITY ACCOUNT NUMBER	DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?
WADE H. JONES, JR	ADMINISTRATOR	120	\$4,643.00	\$ 4,643.00	8510	Yes

8. RELATIVE'S COMPENSATION (DETAIL BELOW)

NAME	JOB TITLE	TOTAL HOURS WORKED	COMPENSATION PER BOOKS	COMPENSATION ADJUSTED	FACILITY ACCOUNT NUMBER	DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?
SCOTT JONES	ADMINISTRATOR	1,960	\$111,353.00	\$100,240.00	8510	Yes

9. RELATED FACILITIES (DETAIL BELOW)

NAME	CITY	STATE	CONTRACTOR(S) RELATIONSHIP
SHADOW OAKS ASSISTED LIVING, LLC	AIKEN	SC	COMMON OWNERSHIP

10. DOES THIS FACILITY PARTICIPATE IN TRANSACTIONS WITH RELATED ORGANIZATIONS?

EXPENSE	RELATED ORGANIZATION NAME	ITEM DESCRIPTION	COST PER BOOKS	COST TO RELATED PARTY	DHHS ACCOUNT NUMBER	NON-RELATED VENDORS
	PEPPER HILL, INC	LEASED ASSETS	\$600,000	\$200,724	4252010	No
	SHILOH MANAGEMENT, INC	MANAGEMENT FEE	\$473,600	\$350,775	4252010	No
	SHILOH MANAGEMENT, INC	NURSING CLINICAL COORDINATOR	\$86,400	\$70,813	4252010	No
	SHILOH MANAGEMENT, INC	NURSING BENEFITS	\$0	\$16,205	4010740	No
	SHILOH MANAGEMENT, INC	ADMINISTRATOR	\$0	\$115,996	4070160	No
	SHILOH MANAGEMENT, INC	ADMINISTRATOR BENEFITS	\$0	\$26,545	4070210	No

11. RENT OR LEASED FACILITIES DESCRIPTION

RENT TYPE	MONTHS	EXPIRATION	PAYMENT	OPTION TO RENEW	OPTION TO BUY
BUILDING	12		\$50,000	Yes	No

PEPPER HILL NURSING & REHAB CENTER, LLC

GENERAL INFORMATION

October 01, 2013 thru September 30, 2014

12. CONSTRUCTION OR ACQUISITION COST

<u>ADDITIONS (DESCRIBE)</u>	<u>YEAR</u>	<u>SQUARE FEET</u>	<u>COST</u>	<u>LICENSED BEDS</u>	<u>Bed Group</u>
IMPROVEMENTS	1991	42,167	\$2,804,339	132	Shared
IMPROVEMENTS	VAR	0	\$482,689	0	Shared
IMPROVEMENTS	2013	0	\$102,386	0	Shared
IMPROVEMENTS	2014	0	\$11,980	0	Shared
<u>TOTAL BUILDING</u>		42,167	\$3,401,394	132	

13. RELATED LEASE

PEPPER HILL NURSING CENTER, INC
3525 AUGUSTUS ROAD
AIKEN SC 29801
(803) 642-8376

14. RELATED ASSETS

<u>DESCRIPTION</u>	<u>AS OF DATE</u>	<u>ACTUAL COST</u>	<u>ACCUMULATED DEPRECIATION</u>
Land	09/30/2014	\$192,003.00	\$0.00
Building	09/30/2014	\$3,401,394.00	\$2,628,268.00
Equipment	09/30/2014	\$750,086.00	\$648,000.00

15. RELATED DEBT

<u>DEBT DESCRIPTION</u>	<u>OTHER DESCRIPTION</u>	<u>BOOK VALUE</u>	<u>BEGINNING DATE</u>	<u>ENDING DATE</u>

16. RELATED EXPENSE

<u>EXPENSE DESCRIPTION</u>	<u>OTHER DESCRIPTION</u>	<u>BOOK VALUE</u>	<u>BEGINNING DATE</u>	<u>ENDING DATE</u>
Building Depreciation	PEPPER HILL NURSING CENTE	\$138,463.00	10/01/2013	09/30/2014
Building Depreciation	PEPPER HILL NURSING CENTE	\$29,968.00	10/01/2013	09/30/2014

Lease Agreement Between
PH, LLC And PH, Inc.



PH Lease Agreement_001

000305

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), is made to be effective as of the 1st day of October, 2003, by and between PEPPER HILL NURSING & REHAB CENTER, L.L.C., a South Carolina limited liability company, whose address is 3525 Augustus Road, Aiken, Aiken County, South Carolina, 29801 (the "Lessee") and PEPPER HILL NURSING CENTER, INC., a South Carolina corporation, whose address is 3525 Augustus Road, Aiken, Aiken County, South Carolina, 29802 (the "Lessor").

1. Premises.

The Lessor, for and in consideration of the rents, covenants, agreements and stipulations hereinafter contained, to be paid, kept and performed by Lessee, has leased and rented, and by these presents does lease and rent, unto Lessee, and Lessee hereby leases and takes upon the terms and conditions which hereinafter appear, the property described in Exhibit "A" attached hereto and by reference made a part hereof, together with all buildings, structures, and improvements thereon (hereinafter collectively referred to as "premises").

2. Term.

a. Original Term. Lessee shall have and hold premises for a one (1) year term beginning on the date hereof and ending at midnight one (1) year hereafter, unless sooner terminated or extended as hereinafter specifically provided in this Lease.

b. Renewal Term. Lessee shall have the option to renew this Lease Agreement for forty (40) additional one (1) one year terms upon the same terms and conditions as provided herein for the original term, except that the monthly rental shall be in an amount as hereinafter provided. Lessee shall be deemed to have elected to renew this Lease Agreement for each additional four-year term unless, at least sixty (60) days prior to the expiration of the immediately preceding term, Lessee has provided written notice to Lessor that Lessee will not renew this Lease Agreement for an additional four-year term. All renewals shall be upon the same terms and conditions as provided herein for the original term, except that the monthly rental shall be in an amount as hereinafter provided. The leasehold interest of the Lessee under this Lease Agreement is declared by the Lessor and Lessee to be an usufruct and not an estate for years.

3. Noncancellable Lease.

THIS LEASE CANNOT BE CANCELED BY LESSEE DURING THE TERM PROVIDED IN THIS LEASE WITHOUT THE EXPRESS WRITTEN CONSENT OF LESSOR.

4. Rental.

a. Basic Rental Payments. Lessee shall pay Lessor, at the address of Lessor set forth hereinabove in this Lease or of which Lessee shall from time to time otherwise be notified, promptly on the first day of each month in advance, during the original term of this Lease, a monthly rental of FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS (the

"Basic Rental Payments").

b. Additional Rental Payments. Lessor and Lessee acknowledge that the Basic Rental Payments have been calculated to provide those amounts which will be sufficient for Lessor to pay all mortgage payments and other obligations as they become due by Lessor under that certain Note, Mortgage and Security Agreement (the "Mortgage Documents") dated November 18, 2002 in the principal sum of \$4,500,000 from Lessor, as Mortgagor, to PFC Corporation, as Mortgagee, in connection with Pepper Hill Nursing Center Project, FHA Project No. 054-22021, Aiken, Aiken County, South Carolina, and all payments and other obligations under that certain Regulatory Agreement (the "Regulatory Agreement") dated November 18, 2002 between Lessor, as Mortgagor, and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, in connection with said Mortgage Documents. Said Basic Rental Payments shall be adjusted as soon as practicable after the first day of each month during the term of this Lease Agreement to reflect any increases in the amounts due under such Mortgage Documents and Regulatory Agreement, including but not limited to any increases in the amortization of the principal of said Note, interest on said Note, premium charges under any contract of insurance with the Secretary of Housing and Urban Development, taxes, fire and other property insurance premiums, water rates, special assessments, replacement reserve charges, and other amounts due under such Mortgage Documents and Regulatory Agreement. In no event, however, shall the Basic Rental Payments, as adjusted according to the provisions of this section, be less than the Basic Rental Payments for the original term of this Lease Agreement. The adjusted Basic Rental Payments, for all purposes of this Lease Agreement, including the default provisions hereof, shall be deemed as additional rent due from Lessee and shall entitle Lessor to all remedies provided herein and at law or equity on account of Lessee's failure to pay rent.

5. Utility Bills.

Lessee shall pay all water, sewer, sewer service charges, gas, electricity, fuel, light, heat and power bills for premises or used by Lessee in connection therewith, during all the terms of this Lease. If Lessee does not pay such bills or charges Lessor may pay the same, and such payment shall be added to the following month's rental of premises.

6. Taxes.

Lessor shall pay all taxes levied against the land, the building, and the improvements situated on the premises during the term of the Lease. Lessee agrees to pay all taxes levied upon personal property, including trade fixtures and inventory, kept on the leased premises, during all terms of the Lease, after presentation to Lessee by Lessor of statements from the taxing jurisdictions in which said property is located. Lessor agrees that Lessee will not be liable for any penalty or interest or the loss of any discount resulting from the failure of Lessor to forward such tax notices to Lessee. Lessor may, however, direct the taxing authorities to send the statements directly to Lessee. Lessor further agrees that Lessee, in the name of Lessor but at Lessee's sole expense, may protect or maintain any necessary legal action in reference to the assessment or for the recovery of any taxes paid thereon.

7. Insurance.

Lessor at its sole cost and expense, shall insure the premises, including the building, structures and improvements thereon, with a reputable insurance company, for the term of this Lease, against fire or casualty damage in an amount not less than the replacement value thereof (and in any event not less than \$5,155,000), with loss payable to Lessor or such mortgagees as Lessor may designate in writing.

8. Use of Premises.

(a) Lessee shall use and occupy the premises for the purpose of operating a nursing care facility and for no other purpose. Lessee's use of the premises shall not violate any ordinance, law or regulation of any governmental body. Lessee shall cause or permit no nuisance to occur on the premises and shall not do or suffer any act which would allow a lien to be placed on the premises or any fixtures of property thereon. Lessee agrees to conduct its business in the manner of and according to the generally accepted written or unwritten code of ethics or business principals of the business profession in which Lessee is engaged and in case of breach of this covenant, Lessee agrees that Lessor may terminate either this Lease or Lessee's right to possession hereunder.

(b) The Lessee shall comply with all present and future Environmental Laws affecting the premises or any part thereof. Environmental Laws shall mean and include all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any governmental authority applicable to the premises (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sections 9601, et seq.) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances. Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde, foam insulation and materials containing either petroleum or any of the substance referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by an Environmental Law, or, even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

9. Repairs and Alterations.

(a) Lessee accepts premises in its present condition and as suited for the uses intended by Lessee. Lessee shall, throughout all terms of this Lease, at Lessee's expense, maintain premises in good order and repair, except those repairs required in paragraph (b) below to be made by Lessor. Lessee shall return premises to Lessor at the expiration, or prior to termination, of the term of this Lease in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted.

(b) Lessor shall keep in good repair the roof, foundations, underground utility and sewer pipes outside the exterior walls of the building, and exterior walls of premises (exclusive of all glass and exclusive of all exterior doors), as shall be necessary for the safety of the premises, and the heating, air conditioning, and ventilation systems, except repairs rendered

necessary by the negligence of Lessee, Lessee's agents, employees and invitees. Lessor hereby gives Lessee exclusive control of premises and shall be under no obligation to inspect premises. Lessee shall promptly report in writing to Lessor any defective condition known to Lessee which Lessor is required to repair, and failure to so report such defects shall make Lessee responsible to Lessor for any liability incurred by Lessor by reason of such defects.

(c) Lessee shall not, without Lessor's prior written consent, make any alterations, additions, or improvements in or about the premises and shall not do anything to or on the premises which will increase the rate of fire, hazard, liability or other insurance on the premises, or subject such insurance to being void or suspended. All alterations, additions or improvements made or installed by Lessee in or on premises shall become part of the premises and shall be the property of Lessor at the expiration or termination of this Lease unless otherwise agreed to in writing by Lessor. Lessor reserves the right to require Lessee to remove any improvements or additions by Lessee prior to the expiration of the term of this Lease.

(d) Lessor shall pay all association dues in connection with said property. The association shall care for and clean the grounds around the building, including the mowing of grass, cleaning of the paved areas, care of shrubs, watering of the grass, shrubs and other vegetation on the premises and general landscaping. Lessee agrees, however, to be responsible for operating the sprinkler system as shall be reasonably necessary or as shall be reasonably requested by the Lessor to provide water to the grass, shrubs and other vegetation on the premises.

10. Destruction or Damage to Premises. If the premises are totally destroyed (or so substantially damaged as to be untenable) by storm, fire, earthquake, or other casualty, the Lease shall at the sole option of Lessor, terminate as of the date of such destruction or damage, and if terminated, rental shall be accounted for as between Lessor and Lessee as of that date. If the premises are damaged but are not rendered wholly untenable by any such casualty, or if rendered untenable and Lessor does not elect to terminate this Lease, then rental shall abate in proportion to the area of the premises which cannot be occupied by Lessee as a result of such casualty, and Lessor shall restore the premises within 180 days of the date of such casualty unless prevented from doing so for reasons beyond Lessor's control, in which event such restoration period shall be so extended, provided, however, that Lessor shall not be required to expend any money for such restoration in excess of insurance proceeds available therefor. In no event shall rent abate, or shall Lessor be obligated to restore if damage or destruction to the premises is the result of the negligence or willful acts of Lessee, or its agents, employees, licensees, invitees, or contractors. Furthermore, there shall be no abatement of rent in respect of any period of time that the restoration of the premises shall be delayed as a result of Lessee's failure to maintain casualty insurance as required by this Lease. In no event shall Lessor be liable to Lessee for damages resulting from any casualty described in this Paragraph 10.

11. Indemnity. Lessee agrees to, and hereby does, indemnify and save Lessor harmless against all claims for damages to persons or property by reason of Lessee's use or occupancy of premises, and all expenses incurred by Lessor because thereof, including attorneys' fees and court costs.

12. Liability Insurance. Lessee agrees at Lessee's expense to maintain in force throughout the term of this Lease and any extensions thereof, comprehensive, general public liability insurance insuring the Lessor and the Lessee, its officers, partners, employees, agents and representatives against loss or damage arising from injury and death to persons or property

occurring within the premises, with limits of at least \$1,000,000 for death or injury per occurrence and \$300,000 for property damage. Lessor, at its option, shall have the right to review such insurance coverage and to require Lessee to increase the dollar limits of such coverage to such amounts as be satisfactory to Lessor. Such insurance coverage shall protect the Lessor and the Lessee as named insureds and shall contain a provision that it shall not be canceled or terminated without at least ten (10) days written notice to the Lessor. Lessee shall furnish Lessor with copies of any and all policies of insurance providing such insurance coverage together with a certificate evidencing that such insurance is in force from time to time during the term of this Lease.

13. Condemnation. If the whole of premises, or such portion thereof as will make premises unusable for the purposes herein leased, be condemned by any legally constituted authority for any public use or purpose, then in either of said events this Lease shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Lessor and Lessee as of that date. Such termination, however, shall be without prejudice to the rights of either Lessor or Lessee to recover compensation and damage caused by condemnation from the condemnor. It is further understood and agreed that neither Lessee nor Lessor shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of this Lease as herein provided.

14. Assignment and Subletting. Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, assign this Lease or any interest therein, or sublet the premises or any part thereof, or permit the use of the premises by any party other than Lessee. Consent to one assignment or one sublease shall not constitute a waiver of this provision with respect to subsequent transactions. Each Assignee or Sublessee shall be liable to Lessor for all obligations of Lessee hereunder, but Lessee shall not be thereby relieved of such obligations.

15. Removal of Fixtures and Property. Lessee may (if not in default hereunder) prior to the expiration of this Lease, or any extension thereof, remove all personal property, fixtures and equipment which Lessee has placed in premises, provided Lessee simultaneously repairs all damage to premises caused by such removal. If Lessee is at the time of any termination of this Lease in default under any term or condition hereof, Lessee shall not be entitled to remove any of such personal property, fixtures or equipment, and Lessor shall have all rights therein as are then available to Lessor by law.

16. Cancellation of Lease by Lessor. It is mutually agreed that, in the event Lessee shall default in the payment of rent herein reserved, then due, and fails to cure said default within five (5) days after the giving of written notice thereof by Lessor; or if Lessee shall be in default in performing any of the terms or provisions of this Lease other than the provisions requiring the payment of rent, and fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Lessor; or if Lessee is adjudicated bankrupt; or if a permanent receiver is appointed for Lessee's property and such receiver is not removed within sixty (60) days after written notice from Lessor to Lessee to obtain such removal; or if, whether voluntarily or involuntarily, Lessee takes advantage of any debtor relief proceedings under any present or future law, whereby the rent or any part there is, or is proposed to be, reduced or payment thereof deferred; or if Lessee makes an assignment for benefit of creditors; or if Lessee's effects should be levied upon or attached under process against Lessee, not satisfied or dissolved within thirty

(30) days after written notice from Lessor to Lessee to obtain satisfaction thereof; then, and in any of said events, Lessor at its option may at once, or within six (6) months thereafter (but only during continuance of such default or condition), terminate this Lease by written notice to Lessee; whereupon this Lease shall end. After an authorized assignment or subletting of the entire premises covered by this lease, the occurring of any of the foregoing defaults or events shall affect this Lease only if caused by, or happening to, such assignee or Sublessee. Any notice provided in this Paragraph 16 may be given by Lessor, or its attorney, or Agent herein named. Upon such termination by Lessor, Lessee will at once surrender possession of premises to Lessor and remove all of Lessee's effects in which Lessor claims no interest under Paragraph 15 of this Lease therefrom; and Lessor shall have the right forthwith to re-enter premises and repossess itself thereof, and remove all persons and effects therefrom, using such force as may be necessary without being guilty of trespass, forcible entry or detainer or other tort.

17. Reletting by Lessor. Lessor shall have the right at Lessor's option without terminating this Lease, upon Lessee's breaching this contract, and following Lessee's failure to cure any default within the time provided in paragraph 16 above, to enter upon and, as Lessee's agent, rent premises at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Lessor deems proper. Lessee shall be liable to Lessor for the deficiency, if any, between Lessee's rent hereunder and the price obtained by Lessor on reletting.

18. Exterior Signs. Lessee shall place no signs upon the outside walls or roof of premises except with the written consent of Lessor, which consent shall not be unreasonably withheld. Any and all signs placed on the within leased premises by Lessee shall be maintained in compliance with all governmental ordinances, rules and regulations governing such signs, and Lessee shall be responsible to Lessor for any damage caused by installation, use or maintenance of said signs or violation of ordinance, rule or regulation with regard thereto. Upon any removal of said signs Lessee shall simultaneously repair all damage incident to such removal.

19. Entry for Inspection or Carding. Lessor shall have the right to enter premises at reasonable hours to show the premises to mortgagees, prospective purchasers or tenants, to inspect the premise for whatever reason, and to make repairs required of Lessor under the terms hereof or to make repairs to Lessor's adjoining property, if any. Lessor shall retain or be furnished by Lessee duplicate keys to all doors of the premises. If Lessor from time to time furnishes Lessee with any keys to the premises, other than the keys initially furnished at the commencement of the initial term of this lease, then Lessee shall pay Lessor the Lessor's then current charges for same, or Lessor's actual cost in obtaining such additional key(s), whichever is greater. Lessor may card premises "For Rent" or "For Sale" thirty (30) days before the termination of this Lease.

20. Effect of Termination of Lease. No Termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Lessor's right to collect rent for the period prior to termination thereof.

21. Mortgagee's Rights. Lessee's rights shall be subject to any bona fide mortgage or deed to secure debt which is now, or may hereafter be, placed upon the property of which premises constitute a part.

22. No Estate in Land. This Lease shall create the relationship of Lessor and Lessee between the parties hereto; no estate shall pass out of Lessor. Lessee has only a usufruct, not subject to levy and sale, and not assignable by Lessee except by Lessor's consent. Neither Lessor nor Lessee shall cause this Lease to be recorded without prior written consent of the other party to such recording.

23. Holding Over. If Lessee remains in possession of premises after expiration of the term hereof, with Lessor's acquiescence and without any express agreement of parties, Lessee shall be a Lessee at will at rental rate in effect at end of Lease; and there shall be no renewal of this Lease by operation of law.

24. Attorney's Fees and Homestead. If any rent owing under this Lease is collected by or through an attorney at law, Lessee agrees to pay the full amount of such attorney's fees as Lessor incurs in such collection. Lessee waives all homestead rights and exemptions which Lessee may have under any law as against any obligation owing under this Lease. Lessee hereby assigns to Lessor Lessee's homestead and exemption.

25. Notices.

(a) Any notice by either party to the other shall be valid only if in writing and shall be deemed to be duly given only if delivered personally or sent by registered or certified mail addressed (a) if to Lessee, at the Premises and (b) if to Lessor, at Lessor's address set forth above, or at such other address for either party as that party may designate by written notice to the other. Notices shall be deemed given if delivered personally, upon delivery thereof, and if mailed, upon the mailing thereof.

(b) Lessee hereby appoints as its agent to receive service of all notices and all dispossessory or distraint proceedings the person occupying the Premises; and if there is no person occupying same, then such service may be made by attachment thereof on the main entrance to the Premises.

(c) Lessor, its agent, manager or attorney shall have authority to send all notices required herein.

26. Quiet Enjoyment. If and so long as Lessee shall pay the rent required by this lease and shall perform and observe all of the agreements, terms, covenants and conditions of this lease, Lessee shall peaceably and quietly have, hold and enjoy the premises for the term hereof granted as against Lessor and persons claiming by, through, or under the Lessor. Lessor represents that it is the owner of the underlying fee simple title to the premises, that it has the right to enter into this lease.

27. Miscellaneous.

(a) All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

(b) No failure of Lessor to exercise any power given Lessor hereunder, or to insist upon strict compliance by Lessee with his obligation hereunder, and no custom or practice

of the parties at variance with the terms hereof shall constitute a waiver of Lessor's right to demand exact compliance with the terms hereof.

(c) "Lessor" as used in this Lease shall include Lessor, his or its heirs, executors, administrators, legal representatives, assigns and successors in title to premises.

(d) "Lessee" shall include Lessee, his or its heirs, executors, administrators, legal representatives, and, if this Lease shall be validly assigned or sublet, shall also include Lessee's assignees or sublessees, as to premises covered by such assignment or sublease.

(e) "Lessor," and "Lessee" shall include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

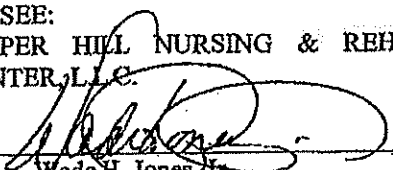
(f) Time is of the essence of this Lease.

28. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, shall be of any force or effect.

29. Special Stipulations. The Special Stipulations attached hereto as Exhibit "B" and by reference made a part hereof, if any, shall control if in conflict with any of the foregoing provisions of this Lease.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals or caused this instrument to be executed through authorized officials in their name, in triplicate, the day and year first above written.

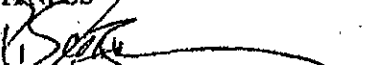
LESSEE:
PEPPER HILL NURSING & REHAB
CENTER, L.L.C.

By: 

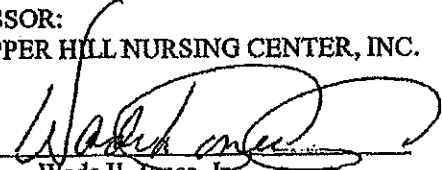
Wade H. Jones, Jr.
Manager

SIGNED, SEALED AND DELIVERED
as to Lessee, in the presence of:


WITNESS


WITNESS

LESSOR:
PEPPER HILL NURSING CENTER, INC.

By: 

Wade H. Jones, Jr.
President

SIGNED, SEALED AND DELIVERED
as to Lessor, in the presence of:


WITNESS


WITNESS

EXHIBIT "A"

Premises

ALL that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being located in the City of Aiken in Aiken County, South Carolina, being shown and designated as Tract A, containing 4.99 acres, more or less, upon a survey thereof made for Pepper Hill Nursing Center, Inc., by Ayer, Graham and Associates, Inc., Surveyors and Engineers, under date of March 9, 1990, and recorded on March 16, 1990 at 1630 Hours in Plat Book 23, Page 55, records of Aiken County, South Carolina. Reference is hereby made to aforesaid plat for a complete description as to metes, bounds and location of subject property.

Wade Jones, Jr.
Disbursements

Note: This report includes only the selection criteria listed below.

Vendor: WADE H. JONES, JR

Date Entered From 1/1/2013 Thru 12/31/2015

Cash Disbursements Journal
1012 FIRST CITIZENS BANK-REGULAR ACCT.
 Pepper Hill Nursing & Rehab Center LLC (PH)

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 ApJournal

Sort Order: Check Number

Vendor	Date Entered	Check Date	Vold Date	GL Month	Check Number	Check Amount	----- Distribution ----- Account	Amount	Invoice ID
WADE H. JONES, JR. (566)									
reimburse for sears credit card return	2/27/13	2/27/13		2/13	17588	\$470.98	2010	\$470.98	020950264765
PURCHASED LAMP & BULBS	1/8/14	1/8/14		1/14	18947 M	\$77.43	8320	\$77.43	
	8/11/14	8/4/14		8/14	19724 M	\$1,000.00	1270	\$1,000.00	
	8/14/14	8/14/14		8/14	19760 M	\$23,960.05	1270	\$23,960.05	
REPAYMENT ON LOAN	12/30/15	12/30/15			21544 M	\$5,000.00	2040	\$5,000.00	
						<u>\$30,508.46</u>		<u>\$30,508.46</u>	

Total Manual Checks **\$30,037.48**
Total Voided Checks **\$0.00**
Total Computer Checks **\$470.98**

ELECTRONICALLY FILED 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

000317

Note: This report includes only the selection criteria listed below.

Vendor: WADE H. JONES, JR

Date Entered From 1/1/2013 Thru 12/31/2015

Cash Disbursements Journal
1010 OPERATING BANK ACCOUNT
SHILOH MANAGEMENT (SM)

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Sort Order: Check Number

Vendor	Date Entered	Check Date	Void Date	GL Month	Check Number	Check Amount	----- Distribution ----- Account	Amount	Invoice ID
WADE H. JONES, JR. (26)	1/7/13	1/7/13		1/13	3647 M	\$1,000.00	1179	\$1,000.00	
	2/5/13	2/5/13		2/13	3674 M	\$1,000.00	1179	\$1,000.00	
	3/4/13	3/4/13		3/13	3695 M	\$1,000.00	1179	\$1,000.00	
	4/2/13	4/2/13		4/13	3731 M	\$1,000.00	1179	\$1,000.00	
	5/2/13	5/2/13		5/13	3754 M	\$1,000.00	1179	\$1,000.00	
22 YEARS	5/15/13	5/15/13		5/13	3768 M	\$200.00	5570	\$200.00	
	6/5/13	6/5/13		6/13	3788 M	\$1,000.00	1179	\$1,000.00	
	6/21/13	6/21/13		6/13	3801 M	\$14,000.00	1179	\$14,000.00	
	7/1/13	7/1/13		7/13	3814 M	\$1,000.00	1179	\$1,000.00	
	8/1/13	8/1/13		8/13	3835 M	\$1,000.00	1179	\$1,000.00	
	9/3/13	9/3/13		9/13	3858 M	\$1,000.00	1179	\$1,000.00	
	10/3/13	10/3/13		10/13	3870 M	\$1,000.00	1179	\$1,000.00	
	11/4/13	11/4/13		11/13	3918 M	\$1,000.00	1179	\$1,000.00	
	12/3/13	12/3/13		12/13	3940 M	\$1,000.00	1179	\$1,000.00	
	1/2/14	1/2/14		1/14	3970 M	\$1,000.00	1179	\$1,000.00	
	2/4/14	2/4/14		2/14	3991 M	\$1,000.00	1179	\$1,000.00	
part B premium	2/21/14	2/21/14		2/14	4003	\$381.60	2020	\$381.60	01/31/14-Wade J
	3/3/14	3/3/14		3/14	4004 M	\$1,000.00	1179	\$1,000.00	
	3/19/14	3/19/14		3/14	4021	\$381.60	2020	\$381.60	03/01/14
	4/2/14	4/2/14		4/14	4033 M	\$1,000.00	1179	\$1,000.00	
	4/15/14	4/15/14		4/14	4040	\$381.60	2020	\$381.60	04/01/14
	5/3/14	5/3/14		5/14	4046 M	\$1,000.00	1179	\$1,000.00	
	6/4/14	6/4/14		6/14	4047 M	\$1,000.00	1179	\$1,000.00	
	5/20/14	5/20/14		5/14	4066	\$381.60	2020	\$381.60	05/01/14-WADE
	6/18/14	6/18/14		6/14	4088	\$381.60	2020	\$381.60	06/01/14
	7/2/14	7/2/14		7/14	4090 M	\$1,000.00	1179	\$1,000.00	
	7/8/14	7/8/14		7/14	4101	\$381.60	2020	\$381.60	07/01/14
	8/7/14	8/7/14		8/14	4121	\$381.60	2020	\$381.60	08/01/14
	9/3/14	9/3/14		9/14	4136 M	\$1,000.00	1179	\$1,000.00	
	9/30/14	9/30/14		9/14	4148	\$381.60	2020	\$381.60	09/01/14
	10/2/14	10/2/14		10/14	4149 M	\$1,000.00	1179	\$1,000.00	
	10/29/14	10/29/14		10/14	4175	\$381.60	2020	\$381.60	10/15/14-WADE
	11/4/14	11/4/14		11/14	4177 M	\$1,000.00	1179	\$1,000.00	
	12/1/14	12/1/14		12/14	4191 M	\$1,000.00	1179	\$1,000.00	
	1/5/15	1/5/15		1/15	4214 M	\$1,000.00	1179	\$1,000.00	
	1/5/15	1/5/15		1/15	4225	\$763.20	2020	\$381.60	11/30/14-WADE
							2020	\$381.60	12/30/14-WADE
	2/2/15	2/2/15		2/15	4236 M	\$1,000.00	1179	\$1,000.00	
jan 2015	2/2/15	2/2/15		2/15	4246	\$381.60	2020	\$381.60	01/01/15
FEB 2015	2/18/15	2/18/15		2/15	4262	\$381.60	2020	\$381.60	02/01/15
	3/4/15	3/4/15		3/15	4271 M	\$1,000.00	1179	\$1,000.00	
MARCH 2015	3/12/15	3/12/15		3/15	4279	\$381.60	2020	\$381.60	03/01/15
	3/31/15	3/31/15		3/15	4294	\$381.60	2020	\$381.60	03/15/15
	4/1/15	4/1/15		4/15	4295 M	\$1,000.00	1179	\$1,000.00	
	4/18/15	4/18/15		4/15	4304	\$381.60	2020	\$381.60	04/01/15
	5/5/15	5/5/15		5/15	4318 M	\$1,000.00	1179	\$1,000.00	
MAY 2015	5/22/15	5/22/15		5/15	4327	\$381.60	2020	\$381.60	05/01/15-MAY
	6/2/15	6/2/15		6/15	4328 M	\$1,000.00	1179	\$1,000.00	
	7/1/15	7/1/15		7/15	4348 M	\$1,000.00	1179	\$1,000.00	
	8/3/15	8/3/15		8/15	4359 M	\$1,000.00	1179	\$1,000.00	
JUNE2015	8/14/15	8/14/15		8/15	4366	\$763.20	2020	\$381.60	06/01/15
JULY 2015							2020	\$381.60	07/01/15
	9/1/15	9/1/15		9/15	4377 M	\$1,000.00	1179	\$1,000.00	

000318

ELECTRONICALLY FILED 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

Cash Disbursements Journal
1010 OPERATING BANK ACCOUNT
 SHILOH MANAGEMENT (SM)

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 ApJournalC

Sort Order: Check Number

Vendor	Date Entered	Check Date	Vold Date	GL Month	Check Number	Check Amount	----- Distribution ----- Account	Amount	Invoice #
AUG. 2015	9/3/15	9/3/15		9/15	4387	\$381.60	2020	\$381.60	08/01/15
	10/1/15	10/1/15		10/15	4394 M	\$1,000.00	1179	\$1,000.00	
	11/2/15	11/2/15		11/15	4413 M	\$1,000.00	1179	\$1,000.00	
OCTOBER 2015	11/20/15	11/20/15		11/15	4425	\$381.60	2020	\$381.60	10/01/15
	12/1/15	12/1/15			4429 M	\$1,000.00	1179	\$1,000.00	
NOVEMBER 2015	12/30/15	12/30/15			4449	\$763.20	2020	\$381.60	11/01/15
DEC							2020	\$381.60	12/30/15-DEC
	8/11/14	8/4/14	8/11/14	8/14	19724 V	(\$1,000.00)	1179	(\$1,000.00)	
	8/4/14	8/4/14		8/14	19724 M	\$1,000.00	1179	\$1,000.00	
						<u>\$57,976.80</u>		<u>\$57,976.80</u>	

Total Manual Checks **\$50,200.00**
Total Volded Checks **(\$1,000.00)**
Total Computer Checks **\$8,776.80**

FILED - 2020 SEP 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

Note: This report includes only the selection criteria listed below.
Employee Choice : Specific Employee
Check Dates : 01/01/2013 thru 12/31/2015

Check Inquiry

SHILOH MANAGEMENT (SM)

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PR0509

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	1/02/13	10059D	REGULAR	80.00	2961.54				124.38	SST	2238.92
									42.94	MCR	
									364.04	FED	
									191.26	SC	
JONES, WADE H JR (1000)	1/16/13	10066D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	1/30/13	10073D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	2/13/13	10080D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	2/27/13	10087D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	3/13/13	10094D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	3/27/13	10101D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	
JONES, WADE H JR (1000)	4/10/13	10108D	REGULAR	80.00	2961.54				183.62	SST	2181.70
									42.94	MCR	
									362.02	FED	
									191.26	SC	

000320

D-Direct Deposit
M-Manual Check
V-Void Check

7a-d

Check Inquiry

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PR0509

SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	4/24/13	10115D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	5/08/13	10122D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	5/22/13	10129D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	6/05/13	10136D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	6/19/13	10143D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	7/03/13	10150D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	7/17/13	10157D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	7/31/13	10164D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70

00032

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry

SHILOH MANAGEMENT (SM)

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PR0509

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	8/14/13	10171D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	8/28/13	10178D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	9/11/13	10185D	REGULAR BIRTHDAY	80.00 8.00	2961.54 296.16				201.98 MCR 47.24 FED 421.44 SC 211.99		2375.05
JONES, WADE H JR (1000)	9/25/13	10192D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	10/09/13	10199D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	10/23/13	10206D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	11/06/13	10213D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	11/20/13	10220D	REGULAR	80.00	2961.54				183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70

000322

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	12/04/13	10227D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	12/18/13	10234D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	12/31/13	10241D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2181.70
JONES, WADE H JR (1000)	1/15/14	10248D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2183.14
JONES, WADE H JR (1000)	1/29/14	10255D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2183.14
JONES, WADE H JR (1000)	2/12/14	10262D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2183.14
JONES, WADE H JR (1000)	2/26/14	10269D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2183.14
JONES, WADE H JR (1000)	3/12/14	10276D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 362.02 SC 191.26		2183.14

000323

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	3/26/14	10283D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	4/09/14	10290D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	4/23/14	10297D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	5/07/14	10304D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	5/21/14	10311D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	6/04/14	10318D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	6/18/14	10325D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	7/02/14	10332D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14

000324

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	7/16/14	10339D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	7/30/14	10346D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	8/13/14	10353D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	8/27/14	10360D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	9/10/14	10367D	REGULAR BIRTHDAY	80.00 8.00	2961.54 296.16				SST 201.98 MCR 47.24 FED 414.43 SC 211.99		2382.06
JONES, WADE H JR (1000)	9/24/14	10374D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	10/08/14	10381D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	10/22/14	10388D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14

000325

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	11/05/14	10395D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	11/19/14	10402D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	12/03/14	10409D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	12/17/14	10416D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	12/31/14	10423D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2183.14
JONES, WADE H JR (1000)	1/14/15	10429D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2184.59
JONES, WADE H JR (1000)	1/28/15	10435D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2184.59
JONES, WADE H JR (1000)	2/11/15	10441D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 360.58 SC 191.26		2184.59

000326

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	2/25/15	10447D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	3/11/15	10453D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	3/25/15	10459D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	4/08/15	10465D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	4/22/15	10471D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	5/06/15	10477D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	5/20/15	10483D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	6/03/15	10489D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59

000327

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M/A	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	6/17/15	10495D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	7/01/15	10501D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	7/15/15	10507D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	7/29/15	10513D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	8/12/15	10519D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	8/26/15	10525D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	9/09/15	10531D	REGULAR BIRTHDAY	80.00 8.00	2961.54 296.16				SST 201.98 MCR 47.24 FED 408.18 SC 211.99		2388.31
JONES, WADE H JR (1000)	9/23/15	10537D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59

000328

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	10/07/15	10543D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	10/21/15	10549D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	11/04/15	10555D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	11/18/15	10561D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	12/02/15	10567D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	12/16/15	10573D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	12/30/15	10579D	REGULAR	80.00	2961.54				SST 183.62 MCR 42.94 FED 359.13 SC 191.26		2184.59
JONES, WADE H JR (1000)	12/18/13	51773M						PER AU 2901.69			
JONES, WADE H JR (1000)	12/31/14	51800M						PER AU 2810.64			
										PAY ADVANCE 2679.72	
										PAY ADVANCE 2595.63	

000329

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry

SHILOH MANAGEMENT (SM)

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PR0509

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H JR (1000)	2/02/15	51803M						OTHER C	598.95	SST 37.13 MCR 8.68 FED 26.82 SC 26.20	500.12
JONES, WADE H JR (1000)	2/02/15	51803MV						OTHER C	(598.95)	SST (37.13) MCR (8.68) FED (26.82) SC (26.20)	(500.12)
JONES, WADE H JR (1000)	3/20/15	51809M						OTHER C	541.40	SST 33.57 MCR 7.85	499.98
JONES, WADE H JR (1000)	3/20/15	51809MV						OTHER C	(541.40)	SST (33.57) MCR (7.85)	(499.98)
JONES, WADE H JR (1000)	12/30/15	51831M						PER. AU	2734.84	SST 169.56 MCR 39.66	2525.62
Facility Totals											
	REGULAR	6320.00		233961.66				PER. AU	8447.17	SST 15025.54 MCR 3527.64 FED 28651.34 SC 15171.73	7800.97
	BIRTHDAY	24.00		888.48						PAY ADVANCE	173120.09

000336

-Direct Deposit
1-Manual Check
-Void Check

ELECTRONICALLY FILED - 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CPCP0202840

Wade Jones III
Disbursements

Note: This report includes only the selection criteria listed below.

Vendor: WADE H. JONES, III

Date Entered From 1/1/2013 Thru 12/31/2015

Cash Disbursements Journal
1010 OPERATING BANK ACCOUNT
 SHILOH MANAGEMENT (SM)

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 ApJournalC

Sort Order: Check Number

Vendor	Date Entered	Check Date	Vold Date	GL Month	Check Number	Check Amount	----- Distribution ----- Account	Amount	Invoice ID
WADE H. JONES, III (43)									
GAMECOCK CLUB	2/4/13	2/4/13		2/13	3673 M	\$3,300.00	5098	\$3,300.00	
allowance for convention	4/23/13	4/23/13		4/13	3742 M	\$1,000.00	5085	\$1,000.00	
baseball tickets	5/3/13	5/3/13		5/13	3757 M	\$515.00	5098	\$515.00	
SEASON FOOTBALL TICKETS	5/14/13	5/14/13		5/13	3765 M	\$5,830.00	5098	\$5,830.00	
10 YEARS	5/15/13	5/15/13		5/13	3770 M	\$100.00	5570	\$100.00	
yearly bonus	12/20/13	12/20/13		12/13	3954 M	\$2,000.00	5570	\$2,000.00	
ALLOWANCE FOR CONFERENCE	4/22/14	4/22/14		4/14	4043 M	\$1,000.00	5085	\$1,000.00	
GAMECOCK CLUB TICKETS	7/25/14	7/25/14		7/14	4111 M	\$830.00	5073	\$830.00	
TRAVEL MONEY FOR CONF.	10/14/14	10/14/14		10/14	4163 M	\$1,250.00	5085	\$1,250.00	
BASEBALL TICKETS	11/3/14	11/3/14		11/14	4176 M	\$1,085.00	5098	\$1,085.00	
YEARLY BONUS	12/19/14	12/19/14		12/14	4203 M	\$2,000.00	5570	\$2,000.00	
allowance for conference	6/8/15	6/8/15		6/15	4342 M	\$1,250.00	5085	\$1,250.00	
allowance for conference	10/20/15	10/20/15		10/15	4409 M	\$1,250.00	5085	\$1,250.00	
						<u>\$21,410.00</u>		<u>\$21,410.00</u>	

Total Manual Checks **\$21,410.00**
Total Volded Checks **\$0.00**
Total Computer Checks **\$0.00**

ELECTRONICALLY FILED 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

000332

Note: This report includes only the selection criteria listed below.
Employee Choice : Specific Employee
Check Dates : 01/01/2013 thru 12/31/2015

Check Inquiry SHILOH MANAGEMENT (SM)

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PR0509

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	9/23/14	5177M					OTHER C	541.40	33.57	SST	499.98
									7.85	MCR	
JONES, WADE H III (1005)	1/02/13	10060D	REGULAR	80.00	3038.46		GAS AL	150.00	133.92	401K EMP D	50.00
									46.23	MCR	
									277.50	FED	
									179.95	SC	
JONES, WADE H III (1005)	1/16/13	10067D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	401K EMP D	50.00
									46.23	MCR	61.00
									275.48	FED	
									179.95	SC	
JONES, WADE H III (1005)	1/30/13	10074D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	401K EMP D	50.00
									46.23	MCR	
									275.48	FED	
									179.95	SC	
JONES, WADE H III (1005)	2/13/13	10081D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	PAY ADVANCE	400.00
									46.23	401K EMP D	50.00
									275.48	FED	
									179.95	SC	
JONES, WADE H III (1005)	2/27/13	10088D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	PAY ADVANCE	400.00
									46.23	401K EMP D	50.00
									275.48	FAMILY Y DUES	63.00
									179.95	SC	
JONES, WADE H III (1005)	3/13/13	10095D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	PAY ADVANCE	400.00
									46.23	401K EMP D	50.00
									275.48	FED	
									179.95	SC	
JONES, WADE H III (1005)	3/27/13	10102D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68	PAY ADVANCE	400.00
									46.23	401K EMP D	50.00
									275.48	FAMILY Y DUES	63.00
									179.95	SC	

000333

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	4/10/13	10109D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00	2039.12
JONES, WADE H III (1005)	4/24/13	10116D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00	2039.12
JONES, WADE H III (1005)	5/08/13	10123D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00 FAMILY Y DUES 63.00	1976.12
JONES, WADE H III (1005)	5/22/13	10130D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00 FAMILY Y DUES 63.00	1976.12
JONES, WADE H III (1005)	6/05/13	10137D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00	2039.12
JONES, WADE H III (1005)	6/19/13	10144D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00 FAMILY Y DUES 63.00	1976.12
JONES, WADE H III (1005)	7/03/13	10151D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00	2039.12
JONES, WADE H III (1005)	7/17/13	10158D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 275.48 SC 179.95	PAY ADVANCE 400.00 401K EMP D 50.00 FAMILY Y DUES 63.00	1976.12

000334

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M/A	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	7/31/13	10165D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 275.48 SC 179.95	400.00 2039.12 50.00
JONES, WADE H III (1005)	8/14/13	10172D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 2078.12
JONES, WADE H III (1005)	8/28/13	10179D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 2015.12 63.00
JONES, WADE H III (1005)	9/11/13	10186D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 2078.12
JONES, WADE H III (1005)	9/25/13	10193D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 1908.13 106.99 63.00
JONES, WADE H III (1005)	10/09/13	10200D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 2078.12
JONES, WADE H III (1005)	10/23/13	10207D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 2015.12 63.00
JONES, WADE H III (1005)	11/06/13	10214D	REGULAR	80.00	3038.46			GAS AL	150.00	197.68 MCR 46.23 FED 282.98 SC 183.45	400.00 1993.63 84.49

000335

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	11/20/13	10221D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 282.98 183.45	PAY ADVANCE MCR FED SC	400.00 2078.12
JONES, WADE H III (1005)	12/04/13	10228D	REGULAR BIRTHDAY	80.00 8.00	3038.40 303.84		GAS AL	150.00	216.52 50.64 328.55 204.72	PAY ADVANCE MISC FAMILY Y DUES SC	400.00 44.70 63.00 2184.11
JONES, WADE H III (1005)	12/18/13	10235D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 282.98 183.45	PAY ADVANCE MCR FED SC	400.00 63.00 2015.12
JONES, WADE H III (1005)	12/31/13	10242D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 282.98 183.45	PAY ADVANCE MISC FED SC	400.00 44.71 2033.41
JONES, WADE H III (1005)	1/15/14	10249D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 281.54 183.45	PAY ADVANCE MCR FED SC	500.00 1979.56
JONES, WADE H III (1005)	1/29/14	10256D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 281.54 183.45	PAY ADVANCE MCR FED SC	500.00 63.00 1916.56
JONES, WADE H III (1005)	2/12/14	10263D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 281.54 183.45	PAY ADVANCE MISC FED SC	300.00 44.76 2134.80
JONES, WADE H III (1005)	2/26/14	10270D	REGULAR	80.00	3038.46		GAS AL	150.00	197.68 46.23 274.04 179.95	PAY ADVANCE 401K EMP D FAMILY Y DUES SC	300.00 50.00 63.00 2077.56

000336

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	3/12/14	10277D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 MISC 44.74 401K EMP D 50.00	2095.82
JONES, WADE H III (1005)	3/26/14	10284D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 401K EMP D 50.00 FAMILY Y DUES 63.00	2077.56
JONES, WADE H III (1005)	4/09/14	10291D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 MISC 44.74 401K EMP D 50.00	2095.82
JONES, WADE H III (1005)	4/23/14	10298D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 401K EMP D 50.00 FAMILY Y DUES 63.00	2077.56
JONES, WADE H III (1005)	5/07/14	10305D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 MISC 44.74 401K EMP D 50.00	2095.82
JONES, WADE H III (1005)	5/21/14	10312D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 401K EMP D 50.00	2140.56
JONES, WADE H III (1005)	6/04/14	10319D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 MISC 45.00 401K EMP D 50.00 FAMILY Y DUES 63.00	2032.56
JONES, WADE H III (1005)	6/18/14	10326D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 401K EMP D 50.00	2140.56

000337

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	7/02/14	10333D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 401K EMP D 50.00 FAMILY Y DUES 63.00	2077.56
JONES, WADE H III (1005)	7/16/14	10340D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 274.04 SC 179.95	PAY ADVANCE 300.00 MISC 89.48 401K EMP D 50.00	2051.08
JONES, WADE H III (1005)	7/30/14	10347D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 MISC 44.73 401K EMP D 150.00 FAMILY Y DUES 63.00	1954.83
JONES, WADE H III (1005)	8/13/14	10354D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 401K EMP D 150.00	2062.56
JONES, WADE H III (1005)	8/27/14	10361D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	1999.56
JONES, WADE H III (1005)	9/10/14	10368D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 401K EMP D 150.00	2062.56
JONES, WADE H III (1005)	9/24/14	10375D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	1999.56
JONES, WADE H III (1005)	10/08/14	10382D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95	PAY ADVANCE 300.00 401K EMP D 150.00	2062.56

000338

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	10/22/14	10389D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	1999.56
JONES, WADE H III (1005)	11/05/14	10396D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00	2062.56
JONES, WADE H III (1005)	11/19/14	10403D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	1999.56
JONES, WADE H III (1005)	12/03/14	10410D	REGULAR BIRTHDAY	80.00 8.00	3038.40 303.84			GAS AL	150.00	SST 216.52 MCR 50.64 FED 304.61 SC 194.22 PAY ADVANCE 500.00 401K EMP D 150.00	2076.25
JONES, WADE H III (1005)	12/17/14	10417D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00	2062.56
JONES, WADE H III (1005)	12/31/14	10424D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 259.04 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00	2062.56
JONES, WADE H III (1005)	1/14/15	10430D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	2001.00
JONES, WADE H III (1005)	1/28/15	10436D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95 PAY ADVANCE 300.00 401K EMP D 150.00 FAMILY Y DUES 63.00	2001.00

000339

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	2/11/15	10442D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	2084.00
JONES, WADE H III (1005)	2/25/15	10448D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1956.21
JONES, WADE H III (1005)	3/11/15	10454D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	2019.21
JONES, WADE H III (1005)	3/25/15	10460D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1654.68
JONES, WADE H III (1005)	4/08/15	10466D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1672.89
JONES, WADE H III (1005)	4/22/15	10472D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1654.68
JONES, WADE H III (1005)	5/06/15	10478D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1672.86
JONES, WADE H III (1005)	5/20/15	10484D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 257.60 SC 172.95	1654.68

000340

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	6/03/15	10490D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 575.72 SC 201.15	PAY ADVANCE 300.00 MISC 44.82 401K EMP D 150.00	1672.86
JONES, WADE H III (1005)	6/17/15	10496D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 FAMILY Y DUES 63.00	1756.68
JONES, WADE H III (1005)	7/01/15	10502D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00	1819.68
JONES, WADE H III (1005)	7/15/15	10508D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00	1819.68
JONES, WADE H III (1005)	7/29/15	10514D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 MISC 89.64 FAMILY Y DUES 63.00	1667.04
JONES, WADE H III (1005)	8/12/15	10520D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00	1819.68
JONES, WADE H III (1005)	8/26/15	10526D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 FAMILY Y DUES 63.00	1756.68
JONES, WADE H III (1005)	9/09/15	10532D	REGULAR	80.00	3038.46		GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 MISC 92.23	1727.45

000341

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay	
JONES, WADE H III (1005)	9/23/15	10538D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 FAMILY Y DUES 63.00	1756.68
JONES, WADE H III (1005)	10/07/15	10544D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 MISC 44.85	1774.83
JONES, WADE H III (1005)	10/21/15	10550D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 FAMILY Y DUES 63.00	1756.68
JONES, WADE H III (1005)	11/04/15	10556D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00	1819.68
JONES, WADE H III (1005)	11/18/15	10562D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 FAMILY Y DUES 63.00	1756.68
JONES, WADE H III (1005)	12/02/15	10568D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 MISC 89.65	1730.03
JONES, WADE H III (1005)	12/16/15	10574D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00	1819.68
JONES, WADE H III (1005)	12/30/15	10580D	REGULAR	80.00	3038.46			GAS AL	150.00	SST 197.68 MCR 46.23 FED 613.22 SC 211.65	PAY ADVANCE 300.00 MISC 45.14 FAMILY Y DUES 63.00	1711.54

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D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry

SHILOH MANAGEMENT (SM)

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Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	3/05/13	51762M	VACATION	80.00	3038.46				SST 188.38 MCR 44.06 FED 260.48 SC 172.95	PAY ADVANCE 600.00	1772.59
JONES, WADE H III (1005)	12/18/13	51774M					PER. AU	1998.81	SST 123.93 MCR 28.98	PAY ADVANCE 1845.90	
JONES, WADE H III (1005)	1/10/14	51776M					OTHER C	1082.84	SST 67.14 MCR 15.70		1000.00
JONES, WADE H III (1005)	1/24/14	51778M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	3/03/14	51780M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	3/24/14	51781M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	5/21/14	51784M					OTHER C	1082.84	SST 67.14 MCR 15.70		1000.00
JONES, WADE H III (1005)	6/23/14	51785M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	7/23/14	51786M	VACATION	80.00	3038.46				SST 188.38 MCR 44.06 FED 259.04 SC 172.96		2374.03
JONES, WADE H III (1005)	8/27/14	51790M					OTHER C	1082.84	SST 67.14 MCR 15.70		1000.00
JONES, WADE H III (1005)	10/28/14	51794M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	11/25/14	51795M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	12/17/14	51797M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	12/31/14	51801M					PER. AU	1796.43	SST 111.38 MCR 26.05	PAY ADVANCE 1659.00	
JONES, WADE H III (1005)	2/02/15	51804M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	3/11/15	51807M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	3/20/15	51810M					OTHER C	541.40	SST 33.57 MCR 7.85		499.98
JONES, WADE H III (1005)	4/21/15	51811M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	5/20/15	51812M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	7/01/15	51814M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	7/15/15	51815M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	8/14/15	51818M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	9/23/15	51822M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	10/21/15	51824M					OTHER C	650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99

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D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, WADE H III (1005)	12/07/15	51826M	BIRTHDAY	8.00	303.85				SST 18.84 MCR 4.41 FED 21.54 SC 10.58		248.48
JONES, WADE H III (1005)	12/23/15	51828M						OTHER C 650.25	SST 40.32 MCR 9.43 FED 66.53 SC 33.98		499.99
JONES, WADE H III (1005)	12/30/15	51832M						PER. AU 1455.33	SST 90.23 MCR 21.10	PAY ADVANCE 1344.00	
Facility Totals											
			REGULAR	6320.00	240038.22			GAS AL 11850.00	SST 17205.03	401K EMP D 4800.00	172735.40
			VACATION	150.00	6076.92			PER. AU 5250.57	MCR 4038.54	FAMILY Y DUES 2266.00	
			BIRTHDAY	24.00	911.53			OTHER C 14405.92	FED 29595.08	PAY ADVANCE 31248.90	
									SC 15419.61	MISC 1224.60	

000345

D-Direct Deposit
M-Manual Check
V-Void Check

SCOTT Jones
Disbursements

Note: This report includes only the selection criteria listed below.
 Vendor: SCOTT JONES
 Date Entered From 1/1/2013 Thru 12/31/2015

Cash Disbursements Journal
1012 FIRST CITIZENS BANK-REGULAR ACCT.
 Pepper Hill Nursing & Rehab Center LLC (PH)

Page 1 of 1
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 ApJournalC

Sort Order: Check Number

Vendor	Date Entered	Check Date	Void Date	GL Month	Check Number	Check Amount	Distribution		Invoice ID
							Account	Amount	
SCOTT JONES (1468)	4/4/14	4/4/14		4/14	19288 M	\$172.62	8020	\$156.58	
							8660	\$16.04	
YEARLY BONUS	12/19/14	12/19/14		12/14	20260 M	\$2,500.00	9375	\$2,500.00	
food for UR meeting	6/19/15	6/19/15		6/15	20857 M	\$219.09	8060	\$219.09	
						<u>\$2,891.71</u>		<u>\$2,891.71</u>	

Total Manual Checks \$2,891.71
Total Voided Checks \$0.00
Total Computer Checks \$0.00

ELECTRONICALLY FILED - 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

Note: This report includes only the selection criteria listed below.

Vendor: SCOTT JONES

Date Entered From 1/1/2013 Thru 12/31/2015

Cash Disbursements Journal
1010 OPERATING BANK ACCOUNT
SHILOH MANAGEMENT (SM)

Page 1 of 1
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ApJournalC

Sort Order: Check Number

Vendor	Date Entered	Check Date	Void Date	GL Month	Check Number	Check Amount	----- Distribution ----- Account	Amount	Invoice ID
SCOTT JONES (45)									
	3/13/13	3/13/13		3/13	3698 M	\$45,421.13	1175	\$45,421.13	
allowance for convention	4/23/13	4/23/13		4/13	3741 M	\$1,500.00	5085	\$1,500.00	
20 YEARS	5/15/13	5/15/13		5/13	3769 M	\$200.00	5570	\$200.00	
	6/21/13	6/21/13		6/13	3802 M	\$1,000.00	5570	\$1,000.00	
	10/17/13	10/17/13		10/13	3878 M	\$1,500.00	5570	\$1,500.00	
TRAVEL MONEY FOR	11/5/13	11/5/13		11/13	3919 M	\$1,500.00	5085	\$1,500.00	
CONFEREN									
ALLOWANCE FOR	4/22/14	4/22/14		4/14	4042 M	\$1,500.00	5085	\$1,500.00	
CONFERENCE									
TRAVEL MONEY FOR	10/14/14	10/14/14		10/14	4162 M	\$1,500.00	5085	\$1,500.00	
CONF.									
allowance for conference	6/8/15	6/8/15		6/15	4340 M	\$1,500.00	5085	\$1,500.00	
allowance for conference	10/20/15	10/20/15		10/15	4411 M	\$1,500.00	5085	\$1,500.00	
						<u>\$57,121.13</u>		<u>\$57,121.13</u>	

Total Manual Checks \$57,121.13
Total Voided Checks \$0.00
Total Computer Checks \$0.00

ELECTRONICALLY FILED - 2020 Sep 02 2:29 PM - AIKEN - COMMON PLEAS - CASE#2019CP0202840

000348

Note: This report includes only the selection criteria listed below.
Employee Choice : Specific Employee
Check Dates : 01/01/2013 thru 12/31/2015

Check Inquiry SHILOH MANAGEMENT (SM)

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Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	1/02/13	10056D	REGULAR	80.00	3961.54				SST 166.38 MCR 57.44 FED 516.64 SC 251.34	401K EMP D 79.23	2890.51
JONES, PRESTON S (1003)	1/16/13	10063D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 61.00	2759.99
JONES, PRESTON S (1003)	1/30/13	10070D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	2/13/13	10077D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	2/27/13	10084D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	3/13/13	10091D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	3/27/13	10098D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	4/10/13	10105D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99

000349
D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	4/24/13	10112D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	5/08/13	10119D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	5/22/13	10126D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	6/05/13	10133D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	6/19/13	10140D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	7/03/13	10147D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	7/17/13	10154D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	7/31/13	10161D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99

000350

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	8/14/13	10168D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	8/28/13	10175D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	9/11/13	10182D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	9/25/13	10189D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	10/09/13	10196D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	MISC 100.00 401K EMP D 79.23	2720.99
JONES, PRESTON S (1003)	10/23/13	10203D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	11/06/13	10210D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	11/20/13	10217D	REGULAR	80.00	3961.54			SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99

000351

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	12/04/13	10224D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	12/18/13	10231D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2757.99
JONES, PRESTON S (1003)	12/31/13	10238D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 506.92 SC 251.34	401K EMP D 79.23	2820.99
JONES, PRESTON S (1003)	1/15/14	10245D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 499.90 SC 251.34	401K EMP D 79.23	2828.01
JONES, PRESTON S (1003)	1/29/14	10252D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 499.90 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2765.01
JONES, PRESTON S (1003)	2/12/14	10259D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 499.90 SC 251.34	401K EMP D 79.23	2828.01
JONES, PRESTON S (1003)	2/26/14	10266D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 499.90 SC 251.34	401K EMP D 79.23 FAMILY Y DUES 63.00	2765.01
JONES, PRESTON S (1003)	3/12/14	10273D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 499.90 SC 251.34	401K EMP D 79.23	2828.01

000352

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	3/26/14	10280D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2818.89
JONES, PRESTON S (1003)	4/09/14	10287D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	4/23/14	10294D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2818.89
JONES, PRESTON S (1003)	5/07/14	10301D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	5/21/14	10308D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	6/04/14	10315D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2818.89
JONES, PRESTON S (1003)	6/18/14	10322D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	7/02/14	10329D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2818.89

000353

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	7/16/14	10336D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	7/30/14	10343D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2818.89
JONES, PRESTON S (1003)	8/13/14	10350D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 500.00	2381.89
JONES, PRESTON S (1003)	8/27/14	10357D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 500.00 FAMILY Y DUES 63.00	2318.89
JONES, PRESTON S (1003)	9/10/14	10364D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 150.00	2731.89
JONES, PRESTON S (1003)	9/24/14	10371D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 150.00 FAMILY Y DUES 63.00	2668.89
JONES, PRESTON S (1003)	10/08/14	10378D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 150.00 MISC 281.52	2450.37
JONES, PRESTON S (1003)	10/22/14	10385D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 150.00 FAMILY Y DUES 63.00	2668.89

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D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	11/05/14	10392D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 125.00	2756.89
JONES, PRESTON S (1003)	11/19/14	10399D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	PAY ADVANCE 125.00 FAMILY Y DUES 63.00	2693.89
JONES, PRESTON S (1003)	12/03/14	10406D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	12/17/14	10413D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	12/31/14	10420D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	1/14/15	10426D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	1/28/15	10432D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	2/11/15	10438D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2888.14

000355

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	2/25/15	10444D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	3/11/15	10450D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	3/25/15	10456D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	4/08/15	10462D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	4/22/15	10468D	REGULAR BIRTHDAY	80.00 8.00	3961.54 396.16				SST 270.18 MCR 63.19 FED 612.50 SC 284.62	FAMILY Y DUES 63.00	3064.21
JONES, PRESTON S (1003)	5/06/15	10474D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	5/20/15	10480D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	6/03/15	10486D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14

000356

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	6/17/15	10492D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	7/01/15	10498D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	7/15/15	10504D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	7/29/15	10510D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	8/12/15	10516D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	8/26/15	10522D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	9/09/15	10528D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	9/23/15	10534D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14

000357

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	10/07/15	10540D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	10/21/15	10546D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	11/04/15	10552D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	11/18/15	10558D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	12/02/15	10564D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	MISC 419.53	2468.61
JONES, PRESTON S (1003)	12/16/15	10570D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88		2888.14
JONES, PRESTON S (1003)	12/30/15	10576D	REGULAR	80.00	3961.54				SST 245.62 MCR 57.44 FED 513.46 SC 256.88	FAMILY Y DUES 63.00	2825.14
JONES, PRESTON S (1003)	5/16/13	51763M	VACATION	40.00	1980.77				SST 122.81 MCR 28.72 FED 172.50 SC 118.23		1538.51

000358

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	8/12/13	51765M	VACATION	40.00	1980.77				SST 122.81 MCR 28.72 FED 172.50 SC 118.23		1538.51
JONES, PRESTON S (1003)	11/13/13	51768M						OTHER C 1794.17	SST 111.24 MCR 26.02		1656.91
JONES, PRESTON S (1003)	12/18/13	51772M						PER. AU 2667.68	MCR 38.68	PAY ADVANCE 2629.00	
JONES, PRESTON S (1003)	1/24/14	51777M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00
JONES, PRESTON S (1003)	2/12/14	51779M	VACATION	80.00	3961.54				SST 245.62 MCR 57.44 FED 519.71 SC 256.88		2881.89
JONES, PRESTON S (1003)	4/23/14	51782M	BIRTHDAY	8.00	396.15				SST 24.56 MCR 5.74 SC 8.85		357.00
JONES, PRESTON S (1003)	4/22/14	51783M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00
JONES, PRESTON S (1003)	8/27/14	51789M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00
JONES, PRESTON S (1003)	9/10/14	51791M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00
JONES, PRESTON S (1003)	10/13/14	51793M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00
JONES, PRESTON S (1003)	11/26/14	51796M	VACATION	40.00	1980.77				SST 122.81 MCR 28.72 FED 171.06 SC 118.23	PAY ADVANCE 1000.00	539.95
JONES, PRESTON S (1003)	12/31/14	51799M						PER. AU 2634.76	SST 163.36 MCR 38.20	PAY ADVANCE 2433.20	
JONES, PRESTON S (1003)	3/18/15	51808M						OTHER C 1082.84	SST 67.14 MCR 15.70		1000.00

000359

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	U/M/A	Shift	Other Pay	Taxes	Deductions	Net Pay
JONES, PRESTON S (1003)	5/27/15	51813M	VACATION	40.00	1980.77				SST 122.81 MCR 28.72 FED 169.62 SC 118.23		1541.39
JONES, PRESTON S (1003)	7/15/15	51816M						OTHER C 1800.00	SST 111.60 MCR 26.10		1662.30
JONES, PRESTON S (1003)	8/12/15	51817M						OTHER C 3594.60	SST 222.87 MCR 52.12 FED 421.73 SC 231.20		2666.68
JONES, PRESTON S (1003)	9/09/15	51821M						OTHER C 2158.85	SST 133.85 MCR 31.30 FED 196.33 SC 130.70		1666.67
JONES, PRESTON S (1003)	10/21/15	51823M						OTHER C 2158.85	SST 133.85 MCR 31.30 FED 196.33 SC 130.70		1666.67
JONES, PRESTON S (1003)	12/02/15	51825M	VACATION	40.00	1980.77				SST 122.81 MCR 28.72 FED 169.62 SC 118.23		1541.39
JONES, PRESTON S (1003)	12/22/15	51827M						OTHER C 1218.62	SST 75.55 MCR 17.67 FED 60.52 SC 64.88		1000.00
JONES, PRESTON S (1003)	12/30/15	51830M						PER. AU 1266.94	18.37	PAY ADVANCE 1248.57	
JONES, PRESTON S (1003)	12/30/15	51830MV						PER. AU (1266.94)	(18.37)	PAY ADVANCE (1248.57)	
JONES, PRESTON S (1003)	12/30/15	51833M						PER. AU 1266.94	78.55	PAY ADVANCE 1170.02	
									18.37		

000360

D-Direct Deposit
M-Manual Check
V-Void Check

Check Inquiry
SHILOH MANAGEMENT (SM)

Employee Name	Check Date	Check Number	Hour Type	Hours	Amount	UMA	Shift	Other Pay	Taxes	Deductions	Net Pay			
Facility Totals														
			REGULAR	6320.00	312961.66			OTHER C	19222.13	SST	21667.24	401K EMP D	2535.36	247567.52
			VACATION	280.00	13865.39			PER. AU	6569.38	MCR	5124.25	FAMILY Y DUES	2266.00	
			BIRTHDAY	16.00	792.31					FED	42808.89	MISC	801.05	
										SC	21558.34	PAY ADVANCE	9082.22	

000361

D-Direct Deposit
M-Manual Check
V-Void Check

STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME
OFFICE COSTS

Provider No.: 425308

Period:
From 10/01/2017
To 09/30/2018Worksheet A-8-1
Parts I-II
Date/Time Prepared:
3/9/2019 9:34 am

		Line No.	Cost Center	Expense Items	
		1.00	2.00	3.00	
PART I. COSTS INCURRED AND ADJUSTMENTS REQUIRED AS A RESULT OF TRANSACTIONS WITH RELATED ORGANIZATIONS OR CLAIMED					
HOME OFFICE COSTS:					
1.00		1.00	CAP REL COSTS - BLDGS & FIXTURES	DEPR./INTEREST/AMORT	00
2.00		2.00	CAP REL COSTS - MOVABLE EQUIPMENT	DEPR./INTEREST/AMORT	00
3.00		4.00	ADMINISTRATIVE & GENERAL	ADMINISTRATION	00
4.00		8.00	DIETARY	REBATE INCOME	00
5.00		4.00	ADMINISTRATIVE & GENERAL	MANAGEMENT FEES	00
6.00		0.00			00
7.00		0.00			00
8.00		0.00			00
9.00		0.00			00
10.00	TOTALS (sum of lines 1-9). Transfer column 6, line 100 to worksheet A-8, column 3, line 12.				100
		Amount Allowable In Cost	Amount Included in Wkst. A, col. 5	Adjustments (col. 4 minus col. 5)	
		4.00	5.00	6.00	
PART I. COSTS INCURRED AND ADJUSTMENTS REQUIRED AS A RESULT OF TRANSACTIONS WITH RELATED ORGANIZATIONS OR CLAIMED					
HOME OFFICE COSTS:					
1.00		318,346	960,000	-641,654	00
2.00		45,301	0	45,301	00
3.00		272,682	0	272,682	00
4.00		-988	0	-988	00
5.00		0	781,800	-781,800	00
6.00		0	0	0	00
7.00		0	0	0	00
8.00		0	0	0	00
9.00		0	0	0	00
10.00	TOTALS (sum of lines 1-9). Transfer column 6, line 100 to worksheet A-8, column 3, line 12.	635,341	1,741,800	-1,106,459	100

ELECTRONICALLY FILED
 2019 SEP 02 2:29 PM - AIKEN
 CO. OF ARKANSAS
 LEAS - CASE#2019CP0202840

STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME
OFFICE COSTS

Provider No.: 425308

Period:
From 10/01/2017
To 09/30/2018Worksheet A-8-1
Parts I-II
Date/Time Prepared:
3/9/2019 9:34 am

Symbol (1)	Name	Percentage of Ownership
1.00	2.00	3.00

PART II. INTERRELATIONSHIP TO RELATED ORGANIZATION(S) AND/OR HOME OFFICE:

The Secretary, by virtue of the authority granted under section 1814(b)(1) of the Social Security Act, requires that you furnish the information requested under Part B of this worksheet.

This information is used by the Centers for Medicare and Medicaid Services and its intermediaries/contractors in determining that the costs applicable to services, facilities, and supplies furnished by organizations related to you by common ownership or control represent reasonable costs as determined under section 1861 of the Social Security Act. If you do not provide all or any part of the request information, the cost report is considered incomplete and not acceptable for purposes of claiming reimbursement under title XVIII.

1.00	A	WADE H. JONES	51.00
2.00	A	WADE H. JONES	51.00
3.00	A	WADE H. JONES	51.00
4.00	A	WADE H. JONES	51.00
5.00	A	WADE H. JONES	51.00
6.00			0.00
7.00			0.00
8.00			0.00
9.00			0.00
10.00			0.00
100.00	G. Other (financial or non-financial)		0.00
	specify:		

(1) Use the following symbols to indicate interrelationship to related organizations:

- A. Individual has financial interest (stockholder, partner, etc.) in both related organization and in provider.
- B. Corporation, partnership, or other organization has financial interest in provider.
- C. Provider has financial interest in corporation, partnership, or other organization.
- D. Director, officer, administrator, or key person of provider or relative of such person has financial interest in related organization.
- E. Individual is director, officer, administrator, or key person of provider and related organization.
- F. Director, officer, administrator, or key person of related organization or relative of such person has financial interest in provider.

Related Organization(s) and/or Home Office		
Name	Percentage of Ownership	Type of Business
4.00	5.00	6.00

PART II. INTERRELATIONSHIP TO RELATED ORGANIZATION(S) AND/OR HOME OFFICE:

The Secretary, by virtue of the authority granted under section 1814(b)(1) of the Social Security Act, requires that you furnish the information requested under Part B of this worksheet.

This information is used by the Centers for Medicare and Medicaid Services and its intermediaries/contractors in determining that the costs applicable to services, facilities, and supplies furnished by organizations related to you by common ownership or control represent reasonable costs as determined under section 1861 of the Social Security Act. If you do not provide all or any part of the request information, the cost report is considered incomplete and not acceptable for purposes of claiming reimbursement under title XVIII.

1.00	PEPPER HILL, INC	51.00	ASSET HOLDING CO.
2.00	PEPPER HILL, INC	51.00	ASSET HOLDING CO.
3.00	PEPPER HILL, INC	51.00	ASSET HOLDING CO.
4.00	PEPPER HILL, INC	51.00	ASSET HOLDING CO.
5.00	SHILOH MANAGEMENT	100.00	MANAGEMENT CO.
6.00		0.00	
7.00		0.00	
8.00		0.00	
9.00		0.00	
10.00		0.00	
100.00	G. Other (financial or non-financial)	0.00	
	specify:		

(1) Use the following symbols to indicate interrelationship to related organizations:

- A. Individual has financial interest (stockholder, partner, etc.) in both related organization and in provider.
- B. Corporation, partnership, or other organization has financial interest in provider.
- C. Provider has financial interest in corporation, partnership, or other organization.
- D. Director, officer, administrator, or key person of provider or relative of such person has financial interest in related organization.
- E. Individual is director, officer, administrator, or key person of provider and related organization.
- F. Director, officer, administrator, or key person of related organization or relative of such person has financial interest in provider.

ELECTRONICALLY FILED - 2020 SEP 02 22:28 PM Aiken - COMMON PLEAS - CASE#2019CP0202840

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG) AFFIDAVIT OF PAIGE SWATMAN, RN, LNC

RE: Charles Rudd

DOB: **/**/****

1. My name is Paige Swatman. I am a Registered Nurse with 25 years' experience in the long-term care field. My experience includes Director of Nursing Service, Regional Clinical consultant, Vice President of Clinical services, and Long-term care surveyor for the South Carolina Department of Health and Environmental Control.
2. I have reviewed the medical records of Charles Rudd for the time period of July 27, 2016 through December 13, 2016. These records include Pepper Hill Nursing & Rehab Center, Aiken Regional Hospital, Augusta University Medical Center, and The Veteran's Administration Hospital.
3. Based on the medical records review, it is my expert nursing opinion that during the time period of approximately 9:30 AM on November 27, 2016 and 8:13 AM on November 28, 2016 Pepper Hill Nursing & Rehab Center deviated from reasonable best practices and standards of practice customary in the industry for prevention of falls with injury, and appropriate notification of change in condition resulting in an unsafe delay in treatment.

My findings are based on review of the medical records as follows:

1. Charles Rudd was admitted to Pepper Hill Nursing & Rehab Center on July 27, 2016. He was high risk for falls based on his functional limitations. The facility knew he was a high risk, and accepted him into the facility as a high fall risk. The standard practice is to assess, develop a care plan with reasonable and appropriate interventions to maintain the resident's safety, health, and well-being.
2. Mr. Rudd was evaluated by Occupational Therapy on August 19, 2016. The Occupational Therapist wrote, "The patient tolerates upright sitting in chair/wheelchair maintaining proper alignment and positioning for 0 hours."
 Balance: static sitting – Unable.
 Balance: dynamic sitting-Unable.
 Balance: fall risk- High risk due to muscle weakness and decreased balance.

The facility knew or should have known that it was unsafe to place Mr. Rudd in an upright position without a safety intervention.

3. A nurse's note written on November 27, 2016 at 11:59 AM states, "Resident was found on floor from wheelchair. Resident was found lying on floor with bedside table at his feet. Resident stated he fell out of chair while trying to eat his breakfast. Resident stated he hit his head on the wheelchair when he slid out of chair. Resident stated his head hurt.

No signs of bruising or hematomas on his head or body. Tramadol was given. Vital signs were taken before he was removed from the floor as follows: t 98.1 P 121 R 18 B/P 169/91 pain at a scale of 7. Resident two person assisted to upright position then placed back in wheelchair. Bed and chair alarm placed as well as call light within reach. Neuro checks started. Wife Thelma Rudd was called as well as a note placed on the DR communication book. Will continue to monitor." Jewell Jones, LPN

4. A Nurse's note written on November 28, 2016 at 10:52 AM states, "Charles Rudd fell at approximately 9:30AM November 27, 2016. Neuro checks were started and vitals remained stable. As of N at 7:45 AM patient was still complaining of pain. Wife Thelma Rudd stated she did not want him sent out last night and she wanted to wait until the morning to see how he was doing. Wife was called this morning to let her know that he was still in pain and that he wanted to be sent to the hospital. Wife wanted him sent to the VA hospital, but no ambulance was able to take him. Mrs. Rudd was told that he would be going to Aiken Regional due to this fact by Riverside ambulance. Ambulance picked up Mr. Rudd at 8:13AM. Report given to Dana in the Aiken Regional ER. Dana called back to state that patient has a slight hemorrhage and would be transferred. Dana stated she would call back to let us know where." Jewell Jones, LPN
5. A nurse's note written on November 28, 2016 at 11:47 AM states, "Reported to DON at 10:17 AM that resident was sent to the hospital and has a hemorrhage. Was told to chart on patient and note in the 24-hour report as well as doctor communication book. Was also told for future reference to notify the nurse practitioner before sending a resident out during the week so that she can evaluate them."
6. The medical record reflects that Mr. Rudd was finally sent to Augusta Health University Hospital for a CT of his head on November 28, 2016 at 2:33 PM.
 - The reason for the exam was written as, "CT 68 Y/O MALE TRANSFER FROM AIKEN FOR BRAIN BLEED FELL OUT OF WHEELCHAIR"
 - The results were, 1. "Parenchymal hemorrhage involving the right medial thalamus with intraventricular decompression layering within the right atria and occipital horn without midline shift or significant mass effect." 2. Subtle asymmetric hypodensity along the right frontal horn that may represent ischemic insult of acute/subacute nature."
 - Mr. Rudd was admitted to the neuro intensive floor and later transferred to the Veteran's Hospital per his wife's request.
7. Mr. Rudd was transferred to CM Tucker Nursing long term care facility on December 13, 2016.

Concerns:

1. The care plan to prevent falls was inadequate, and not followed by caregivers. The caregivers should have provided safety devices, supervision, and assistance to keep Mr. Rudd safe from falls.
2. The nurse assigned to Mr. Rudd's care did not notify the attending Physician or Nurse Practitioner of the fall on November in a timely manner. The wife was notified but the caregivers did not know what should be done.
3. Mr. Rudd had severe head pain after the fall, and due to the lack of Physician notification, was not sent to the hospital for assessment for 23 hours and 17 minutes after his fall resulting in a traumatic head injury.
4. The nurse assigned to Mr. Rudd's care administered Tramadol for the headache that resulted from the fall without regard to possible side effects after a head trauma.

Resources:

www.drugs.com/disease-interactions/tramadol states, "Tramadol may induce pupillary changes (miosis) that may obscure the existence, extent, or course of intracranial pathology. Therapy with Tramadol should be administered cautiously with patients with increased intracranial pressure or head injury."

CMS State Operations Manual/ Appendix PP (2016) Guidance to Surveyors states:

483.10

F 157: A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is - An accident involving the resident which results in injury and has the potential for requiring Physician intervention.

483.25: (d)

F 323: A Facility must ensure that a resident receives adequate services and assistance devices to prevent accidents.

Conclusion:

It is my professional opinion that the staff at Pepper Hill Nursing & Rehab Center contributed in a direct and proximate way to the fall with traumatic brain injury, delay in treatment, and decline in condition of Charles Rudd.

Sworn to and subscribed before me,
This 30 day of May, 2019.

Paige Swatman RNLNC
Paige Swatman, RN LNC

Olivia G. Weeks
Notary Public

OLIVIA G. WEEKS
Notary Public, State of South Carolina
My Commission Expires Aug. 3, 2028

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Monique L. Eaddy, Individually,
and as Guardian of Tre-von
Marquis Bennett, a Minor,

Plaintiffs,

vs.

Steven Tindal and Theresa Tindal
d/b/a Blackcat Bail Bonds, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-1376

ORDER

FILED
2019 AUG -6 PM 3:51
CONNIE REEL-SHELDON
CCCP & CS
FLORENCE COUNTY, SC

SPECIAL REFEREE: Jeffrey L. Payne

ATTORNEY FOR PLAINTIFF: Patrick J. McLaughlin

ATTORNEY FOR DEFENDANT: B. Scott Suggs

History of the Case

This matter comes before the Court on the Plaintiffs' Petition for a Rule to Show Cause against the Defendants which was filed on June 6, 2014. An Order and Rule to Show Cause was issued by the Court ordering the Defendants to appear before the Florence County Court of Common Pleas on August 4, 2014. As a result of the August 4, 2014 hearing, this Court issued an Order on August 6, 2014 requiring the Defendants to produce documents/evidence as requested by the Plaintiffs in their Petition no later than twenty (20) day from the date of the Order and that Steven and Theresa Tindal make themselves available for depositions.

In response to the Plaintiffs' Petition, the Defendants filed a Motion for Clarification and/or for Reconsideration as well as a Return to the Plaintiffs' Petition on August 14, 2014. The Plaintiffs subsequently filed a response to Defendants' motion and a reply to the Defendants' return and counterclaims.

Subsequent to the August 6 Order's discovery described taking place, the Plaintiffs filed a Memorandum of Law in Support of Plaintiff's Petition and Supporting Piercing the Corporate Veil of Blackcat Bail Bonds, LLC dated October 29, 2014.

By order dated December 29, 2014, the Honorable Williams H. Seals, Jr., referred this matter to Special Referee Michael S. Hopewell. A conflict later arose and by order dated February 11, 2015, Judge Seals referred this matter to Special Referee Jeffrey L. Payne.

Via correspondence dated February 23, 2015, Attorney McLaughlin provided this Court with a copy of the Order of Reference as well as copies of the pleadings filed by both parties in this matter. That correspondence was courtesy copied to Attorney Suggs. Subsequent to receiving that correspondence, the Court attempted to schedule a hearing with the parties. Those attempts were unsuccessful as Attorney Suggs' calendar was unable to accommodate a hearing given various physical ailments he was experiencing at the time. Via correspondence to the parties dated May 7, 2015, the Court informed the parties that given the difficulty in scheduling a hearing, the Court would decide the matter based upon the briefs and the evidence in the record. Both parties were asked to forward the Court their briefs by May 28, 2015.

Via correspondence dated May 19, 2015, Attorney McLaughlin responded to the Court's request for a brief, informing the Court and Attorney Suggs that the Plaintiffs were relying on their previous filings in the matter, specifically their Memorandum of Law in Support of Plaintiff's Petition and Supporting Piercing the Corporate Veil. In addition, the Plaintiffs supplied the Court with the October 9, 2014 transcript of Theresa Tindal and with an affidavit of attorney's fees and costs. That affidavit also calculated the interest on the original judgment at 7.25% for 469 days and included the calculation sheet and the Orders from the South Carolina Supreme Court documenting the legal rates of interest for 2014 and 2015.

The Defendants supplied a brief to the Court in response to its request.

Statement of the Law

South Carolina provides by statute that an owner of a corporation or limited liability company is not personally liable for the acts or debts of the corporation or LLC. S.C. Code Ann. §33-6-220 and §33-44-303. South Carolina has recognized the common law doctrine of “piercing the corporate veil” (a doctrine in which courts disregard the separate corporate entity in particular circumstances and impose liability as though the corporation and the individual are “one and the same”) for many years. Jennings v. Automobile Sales Co., 107 S.C. 514, 93 S.E. 188 (1971); Nettles v. Sottile, 184 S.C. 1, 191 S.E. 796 (1937); and Parker Peanut Company v. Felder, 200 S.C. 203, 20 S.E.2d 716 (1942). An action to pierce the corporate veil is one in equity. Mid-South Mgmt. Co. v. Sherwood Dev. Corp., 374 S.C. 588, 596 (Ct. App. 2007).

State and Federal courts use a two-prong test for “piercing the corporate veil,” Dewitt Truck Brokers v. W. Ray Flemming Fruit Co., 540 F.2d 681, 683 (4th Cir. 1976). The South Carolina Court of Appeals and South Carolina Supreme Court both subsequently approved the the Dewitt test after the Federal courts in South Carolina had adopted it. Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984); Multimedia Publ’g of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993).

“The first prong is an eight factor analysis of the shareholder’s relationship to the corporation.” Multimedia Publ’g at 553. It is “designed to analyze the corporation’s adherence to the corporate form.” Univ. Med. Assocs. of Med. Univ. of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004). It “looks to observance of the corporate formalities by the dominant shareholders.” Sturkie at 457. The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corp., 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct. App. 1995), emphasis added.

The second prong of the test need not be reached until and unless the requirements of the first prong are met. Then, the second prong requires “that there be an element of injustice or fundamental unfairness” if the corporate veil is not pierced. Hunting v. Elders, 359 S.C. 217, 225 (2004). “The corporate form may be disregarded only where equity requires the action to assist a third party.” Woodside v. Woodside, 290 S.C. 366, 370 (Ct. App. 1986). Both prongs are discussed in detail below:

Findings

Having reviewed the record, the pleadings and memorandum filed by the parties and upon careful consideration of the law, I make the following findings.

I FIND that the Plaintiffs have satisfied the first prong under Dewitt and its progeny. While all eight (8) factors were considered in the first prong, I find the following factors to support that the first prong under Dewitt and its progeny has been satisfied:

I FIND that the corporation was grossly undercapitalized for the purposes of the corporate undertaking.

In Hunting, the court held that the defendant corporation’s initial funding of \$2000 had been “minimal at best” and that they had failed to remain properly capitalized as an ongoing business. Hunting at 227. While the amount of capital deemed sufficient will vary from business to business, the failure to properly protect the business and others should be considered when determining whether the corporation is properly capitalized. Hunting at 227-228. “An obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability.” Hunting at 227, quoting Anderson v. Abbott, 321 U.S. 349, 362 (1944). The Hunting court found that a corporation established for the purpose of serving alcohol had more inherent risks and should be adequately protected from liability with those risks.

In the present case, the Defendants operate a bail bonds business. At trial, Steven Tindal admitted during testimony to “arresting” the wrong individuals at least three (3) to four (4) times prior to the incident with the Plaintiff. Under examination by his own counsel, he agreed that such incidents “goes with the territory” of being in the bail bonds business and claimed that it happens to other bail bond companies “a lot.” That is certainly an inherent risk not associated with other businesses and it is incumbent on those operating a business involving such inherent risks to take steps to protect the business and others.

Theresa Tindal admitted during her deposition that in the bond business, sometimes you arrest the wrong people and that sometimes those people would wind up suing you. Transcript of T. Tindal, October 9, 2014, p.79-80.

The Defendants in this matter were ordered to produce documentation proving not just the initial capitalization of the corporate entity, but documents also memorializing the capitalization of the corporate entity for every year following the first year of corporate life until the present.

According to the S.C. Department of Insurance, Blackcat Bonding Agency has been registered with them since August 20, 2002. However, according to the S.C. Secretary of State’s website, the company was not incorporated until November 7, 2011. See Return, ¶18. The Plaintiffs subpoenaed the Florence County Clerk of Court’s office requesting: “a list of all financials/securities deposited and/or filed, as well as any paperwork documenting such with the Florence County Clerk of Court by Blackcat Bail Bonds, LLC, Steven Tindal, and/or Teresa Tindal since 2002.”

The Defendants failed to produce any such records. In fact, in their Return, Defendants argued that documents obtained by the Plaintiffs from the Florence County Clerk of Court representing Certificates of Deposit (CDs) for a total of \$10,100 on file with the Florence County

Clerk of Court had nothing to do with Defendant Blackcat LLC because all the CDs pre-date the existence of the LLC. See ¶20-21 Return. Despite that argument in the Return, Theresa Tindal testified that she believed those CDs are available to pay the judgment in this case. T. Tindal, p.82, l.8-24. However, the Tindals have made no effort to redeem those CDs and pay the judgment.

At her deposition, Theresa Tindal agreed with Steven Tindal's trial testimony about the liabilities of a company engaged in the bail bonds business, as well as the formation and capitalization of Blackcat, LLC:

Q: Okay. And it's something that you know about when you go into the bail bonds company that sometimes we may get the wrong people and we got to accept that?

A: Correct.

Q: Okay. And you know that sometimes when you get the wrong people that they wind up suing you for it?

A: Correct.

Q: Okay. And we talked in your deposition and you were pretty candid about that fact that yeah, if you arrest somebody it's, it's not pleasant and it's going to upset them and all those types of things, right?

A: Yes, sir.

Q: Okay. What was the purpose of creating the LLC in 2011?

A: My, my, my general agent at that time just told me that my -- at that time, my company needed to be an LLC, that I know.

Q: Was that to protect you from liability?

A: Yes, sir.

Q: Okay. At the time you created it in 2011, did you guys do anything when you created it new to fund the LLC?

A: No, we didn't do anything. We just -- the only thing I did was make it an LLC.

T. Tindal, p.79, l.23 - p. 80, l.22

Based on Theresa Tindal's sworn testimony, it is clear that the Tindals were acutely aware of the liabilities that came with operating a bail bonds business. It is also clear that the Tindals specifically created Blackcat LLC in an attempt to shield themselves from such liability and that they did absolutely nothing to capitalize the LLC so that it could take care of such inevitable liabilities. This was done despite the fact that whenever they advertised their bail bond business, they always advertised it as "Blackcat." T. Tindal, p.18.

I FIND that the Defendant limited liability corporation is insolvent.

In Hunting, the court noted that even though the corporation was able to pay its debts and thereby escape the classical definition of insolvency, the evidence indicated that individual who was the alleged alter ego of corporation had "left in the till only so much as was necessary to pay basic expenses." The Hunting court found this credible evidence that the corporation was used as a "mere façade" for the benefit of the dominant shareholder, justifying the ultimate conclusion reached by the trial court, which was to pierce the corporate veil. Hunting at 228.

S.C. Code §33-44-406 provides that no distribution may be made to members of an LLC if: 1) the Limited Liability company would be unable to pay its debts as they become due in the ordinary course of business; or 2) the company's total assets would be less than the sum of its total liabilities. S.C. Code §33-44-406 (a)(1) & (2). The Tindals are constantly enjoying distributions from the LLC for their own personal expenses and pay, despite knowledge of pending liabilities that go unpaid.

The Defendants in this matter were ordered to produce documentation memorializing the capitalization of the corporate entity for every year following the first year of corporate life until the present, as well as listing all payments received, accounts receivable and payable, documentation showing income generated by the corporate entity, profit/loss information, itemization of assets and debts, etc.

During her deposition, Theresa Tindal testified that the lone account for Blackcat, a checking account, had "about 3,000 dollars." She testified that this was "about the average." T. Tindal, p.26, l.1-6. This is despite the fact that the Tindals know their business carries pending judgments, a regular chance of additional liability from arresting the wrong person and despite the fact that account is used to pay all of their personal expenses as well as expenses for Mrs. Tindal's other business, Tindall Insurance. As such, Blackcat, LLC is unable to pay its debts, thus insolvent.

I FIND that the Defendants have siphoned funds of the corporation for their personal benefit.

Theresa Tindal admitted during her deposition she paid numerous personal, non-business expenses from the funds that were contained in the Blackcat LLC checking account. Tindal, p. 57, l. 3-23; p. 62, l. 5- p. 71, l. 2.

I FIND that Blackcat LLC was merely a façade for the operations of the Tindals.

In Hunting, the court found that the dominant shareholder "controlled all aspects of the business" and that money that could not be accounted for must have been siphoned off by the dominant shareholder. This was additional evidence that the corporation was a mere façade for his benefit, justifying piercing the corporate veil. Hunting at 228. Additionally, the evidence showed that the dominant shareholder knew of the plaintiff's claim against the corporation but "nevertheless acted in a self-serving and unfair manner by siphoning off substantial sums of money..." Hunting at 229.

The record and evidence in this case shows that the Tindals controlled all aspects of Blackcat LLC and cannot properly account for money paid into the LLC because that money has been siphoned off for their personal and non-LLC-business use. The record makes clear that this

conduct continued well after the Tindals were not only aware of the Plaintiff's claim, but also of the jury award against the LLC.

I FIND that the second prong of Dewitt and its progeny is satisfied as it would be fundamentally unfair and unjust to allow the Tindals to enjoy the corporate veil of their LLC while at the same time using LLC funds for non-LLC purposes. At a time when the Tindals were aware of the Plaintiff's claim and ultimately the Plaintiff's judgment against their LLC, they continued to live out of the LLC account, paying personal bills and expenses, as well as the expenses of their other business. The Tindals did this without any of the proper corporate financial records, particularly any proper accounting of the sources and use of such funds.

I FIND that at this time, the Plaintiffs request for attorney's fees and costs is denied.

I FIND that the Plaintiffs are entitled to pierce the corporate veil of the LLC and that Steven and Theresa Tindal are personally liable for the judgment plus interest at the legal interest rate of 7.25% with said rate beginning on February 5, 2014 the date of the Plaintiff's judgment.

I FIND that should the judgment plus interest not be satisfied within ten (10) days of this order, that the Plaintiff shall be allowed to collect the amount due on the Judgment, including post judgment interest of 7.25% from February 5, 2014, from Steven and Theresa Tindal or Blackcat Bail Bonds, LLC, in any manner allowed by South Carolina law. .

AND IT IS SO ORDERED!

Jeffrey L. Payne
Special Referee
Twelfth Judicial Circuit

Florence, South Carolina

August 5, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	SECOND AMENDED SUMMONS
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center;	)	
and Shiloh Management Company, Inc.	)	
Wade Jones Jr.; Wade Jones, III; The		
Estate of Janice Jones, deceased,		
through the duly appointed Personal		
Representative, Wade Jones Jr.; and		
Scott Jones		
Defendants.		

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Raymond P. Mullman, Jr.
 GARY W. POLIAKOFF S.C. Bar # 4488
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 RAYMOND P. MULLMAN, JR. S.C. Bar #8662
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 Poliakoff & Associates, P.A.
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 Spartanburg, SC 29304

(864) 582-5472

Attorneys for the Plaintiffs

Date: September 2, 2020
Spartanburg, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	C. A No. 2019-CP-02-02840
The Estate of Charles S. Rudd, deceased,	)	
through the duly appointed Personal	)	
Representative, Thelma Rudd, Individually	)	
and on behalf of statutory beneficiaries,	)	SECOND AMENDED COMPLAINT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Pepper Hill Nursing & Rehab Center, LLC	)	
d/b/a Pepper Hill Nursing & Rehab Center;	)	
Shiloh Management Company, Inc.; Wade	)	
Jones Jr.; Wade Jones, III; The Estate	)	
of Janice Jones, deceased, through the	)	
duly appointed Personal Representative,	)	
Wade Jones Jr.; and Scott Jones	)	
Defendants.	)	

The Plaintiffs, Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, deceased, and as Personal Representative of the Statutory Beneficiary do hereby respectfully allege as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Thelma Rudd, individually and as Personal Representative of the Estate of Charles S. Rudd, is a resident of the County of Aiken, State of South Carolina.
2. That the statutory beneficiaries of the Estate as defined by S.C. Code § 15-51-10 et seq. and § 15-32-220 is Thelma Rudd.
3. That upon information and belief, Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center (Pepper Hill) is a for-profit entity owned and operated by Wade Jones Sr. incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.

4. That upon information and belief, Wade Jones Jr. is a resident of Aiken, South Carolina, and was the President and manager of Pepper Hill Nursing and Rehab Center.
5. That upon information and belief, Wade H. Jones, III is a resident of Aiken, South Carolina, and was an officer or director of Pepper Hill Nursing and Rehab Center.
6. That upon information and belief, Janice Jones was a resident of Aiken, South Carolina and was a manager of Pepper Hill Nursing and Rehab Center.
7. That upon information and belief, Wade Jones Jr. is the Personal Representative of the Estate of Janice Jones.
8. That upon information and belief, Scott Jones is a resident of Aiken, South Carolina and was the Administrator Officer of Pepper Hill Nursing and Rehab Center.
9. That upon information and belief, Shiloh Management Company, Inc. (Shiloh) is a for-profit entity owned and operated by Wade Jones to assist in the management and operation of the facility and was incorporated under the laws of the State of South Carolina and was licensed and doing business in the County of Aiken, State of South Carolina during the relevant time period.
10. That upon information and belief, Shiloh is the Home Office of Pepper Hill as defined in CMS Manual 15-2 Chapter 10 § 1000 because of common ownership and direct control of the operation of Pepper Hill.
11. That upon information and belief, Shiloh is the management company for Pepper Hill.
12. That upon information and belief, at all times relevant hereto, Pepper Hill has operated a nursing home facility and has done business in the state of South Carolina.

13. That upon information and belief, at all times relevant hereto, Charles Rudd, was a resident at Pepper Hill in the County of Aiken, State of South Carolina and there existed a resident/facility fiduciary relationship between Charles Rudd and the Defendants, and Charles Rudd was thereby entitled to all the protections afforded such residents in South Carolina.
14. That during his residency at Pepper Hill, Charles Rudd was a vulnerable adult as defined by the Omnibus Adult Protection Act, S.C. Code Ann. §43-35-10.
15. Defendants delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Charles Rudd during his residency at Pepper Hill.
16. Shiloh was involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Charles Rudd resided. Further, Shiloh, at all times relevant hereto, exerted managerial control and operational control over Pepper Hill, and that such control was so extensive and pervasive that Shiloh actually operated and managed said facility, and did business as one joint venture. Further, the control by Shiloh was so extensive and pervasive over Pepper Hill that the business of Pepper Hill was the business of Shiloh.
17. Defendants were involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for Pepper Hill and have directly controlled the operations at said nursing home facility.
18. Defendants promulgated and established the policies, procedures, protocols, staffing decisions, and budgetary decisions at the Pepper Hill nursing facility, and all Defendants exert control over the facility at various times.

19. The deficiencies at the Pepper Hill nursing home facility in Aiken County, South Carolina were authorized, approved and ratified by all Defendants.
20. That this action is being brought pursuant to the South Carolina Common Law of Negligence, Gross Negligence, Negligence Per Se, Wrongful Death, Unjust Enrichment, Breach of Fiduciary Duty.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

21. Relevant and consistent allegations contained in paragraphs 1-15 are incorporated by reference as if written verbatim herein.
22. On or about July 27, 2016, Charles Rudd was admitted to the skilled nursing facility with the understanding that he would be provided with the care that his health conditions reasonably required.
23. Charles Rudd suffered a preventable and avoidable fall and subsequent hospitalization in late November 2016 that was caused by neglect and could have been avoided if proper supervision and assistance were care planned and provided.
24. Defendants failed to properly care plan for preventable falls.
25. Defendants failed to properly monitor and supervise his ambulation.
26. Defendants knew or should have known that Charles Rudd needed proper safety to devices to safely sit in his wheelchair.
27. Defendant's Occupational Therapy notes on August 19, 2016 proves that Defendants were no notice that Rudd needed supervision, assistance, and a safety device to maintain vertical stability in his wheelchair because the note clearly states: "The patient tolerates upright sitting in chair/wheelchair maintaining proper alignment and positioning for 0 hours."

28. Defendant's Occupational Therapy note additional stated on August 19, 2016 that Charles Rudd was unable to maintain balance with static or dynamic sitting.
29. Standard of Practice for care planning as defined by CMS.gov states that the care plan "must be consistent with the resident's specific conditions, risks, needs, behaviors, preferences and with current standards of practice and included measureable objectives and timetables with specific interventions."
30. The medical record states on November 27, 2016 entered at 11:59 AM states, "Resident was found on floor from wheelchair. Resident was found lying on floor with beside table at his feet. Resident stated he fell out of chair while trying to eat his breakfast. Resident stated he hit his head on the wheelchair when he slid out of the chair..."
31. On November 28, 2016 at 2:33 PM Charles Rudd was sent to Augusta Health University Hospital for a CT of his head, and diagnosed with "Parenchymal hemorrhage involving the right medial thalamus with intraventricular decompression layering within the right atria and occipital horn without midline shift or significant mass effect."
32. Charles Rudd incurred medical bills from the hospitalization.
33. On December 13, 2016 Charles Rudd was transferred to CM Tucker Nursing; a long-term care facility for rehabilitation and safety.
34. That the Defendants, their subsidiaries, related entities, officers, agents, servants, and employees negligently and carelessly failed to properly manage, operate, and provide care to and keep Charles Rudd safe.
35. That the Defendants were liable and responsible for the acts and delicts of their employees, agents, and servants under the principle of respondeat superior, agency, and joint venture.

36. That, upon information and belief, Charles Rudd's health conditions were aggravated and exacerbated by the Defendant's failure to properly supervise him and monitor his medical conditions. These deviations from the standard of care were the proximate causes of conscious pain and suffering, mental distress, medical bills, loss of dignity, and contributed to his premature and wrongful death.
37. Upon information and belief, Defendants failed to provide adequate and proper nursing services, and custodial care to Charles Rudd, contributing to his premature and wrongful death.
38. Further, that the Defendants, directly or indirectly, received federal and state funds as reimbursement for the care of residents including Charles Rudd.
39. That while residing at Defendants facility, Charles Rudd was damaged and injured, and eventually died as a result of neglect, negligence, recklessness, and violations of the standard of care for nursing and custodial care.
40. That Charles Rudd was a resident of Defendants facility from **Error! Reference source not found.** admission until **Error! Reference source not found.** transfer to the hospital on November 28, 2016.
41. That during Charles Rudd's residency at Pepper Hill, the acts and delicts of Defendants caused, and were the proximate causes of Charles Rudd's conscious pain and suffering, mental distress, medical bills, disability, loss of dignity, and loss of quality of life to Charles Rudd. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.

42. That the Defendants held Pepper Hill out to the State of South Carolina, the South Carolina Department of Health and Environmental Control, the public at large, and to Charles Rudd and **Error! Reference source not found.** family, specifically, as being:
- a. skilled in the performance of nursing, rehabilitative, and other medical support services;
 - b. properly staffed, supervised and equipped to meet the total needs of its residents;
 - c. able to specifically meet the total nursing, personal care, medical, and physical therapy needs of its residents; and,
 - d. Licensed by the South Carolina Department of Health and Environmental Control and complying on a continual basis with all state and federal rules, regulations, and standards established for nursing homes in South Carolina.
43. That the Defendants held Pepper Hill out to the United States of America, the Centers for Medicare and Medicaid Services, the public at large, and Charles Rudd and **Error! Reference source not found.** family, specifically, as being a skilled nursing facility and as a nursing facility meeting the requirements of 42 CFR Part 483.
44. To protect nursing home residents like Plaintiff, the federal government mandates that if a nursing home voluntarily accepted Medicare or Medicaid funds, the nursing home would be required to follow strict mandates for patient safety, documentation, and costs and expenditures. These mandates became known as the OBRA regulations at 42 CFR 483.1-et seq. For example, one of the regulations simply states, "skilled nursing facilities participating in Medicare must meet certain specified requirements." 42 C.F.R. 483.1.
45. That the provisions of the Omnibus Reconciliation Act of 1987 (OBRA) were applicable with regard to the administration and operation of the facility, and the provision of care and services to Plaintiff throughout the residency.
46. Defendants were under an obligation to follow all rules and regulations of OBRA as well as all applicable state and federal laws, rules, regulations, and guidelines including S.C.

Regulations 61-17, the Board of Nursing Advisory Opinions, the South Carolina Adult Protection Act, the South Carolina Nurse Practice Act, S.C. Code § 40-33-5 et. seq., and the South Carolina Long Term Health Care Administrators statute, S.C. Code § 40-35-5 et seq.

47. Defendants were under an obligation to follow the provisions and standards of the Federal Nursing Home Act applicable to the administration and operation of the facility and the provision of services, care and treatment as well as all applicable state laws, rules, regulations, and guidelines including but not limited to The Adult Protection Act of South Carolina Code § 43-35-5, et. seq.; South Carolina Department of Health and Environmental Control regulations for Nursing Homes at Regulation 61-17, et. seq.; the South Carolina Nursing Practice Act; Board of Nursing Advisory Opinions; South Carolina Code of Laws Title 40 Chapter 35; and South Carolina Code of Regulations Chapter 93.
48. The regulations are designed to reduce or eliminate accidents, assure proper staffing and supervision, and establish and maintain a reasonable quality of life for each resident.
49. OBRA regulations go to great lengths to ensure nursing home patients will be "in an environment that promotes maintenance or enhancement of each resident's quality of life." 42 C.F.R. 483.10.
50. They state that each patient "must" receive, and the facility "must" provide the necessary care and services to "attain or maintain the highest practicable physical, mental, and psychosocial well-being[.]" See e.g. 42 C.F.R. 483.24.
51. The OBRA regulations require that each nursing home has sufficient staff to provide the necessary care and services. 42 C.F.R. 483.30.
52. Defendants specifically violated the applicable standard for the administration of a nursing

home found at §483.75 which expressly states: “A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.”

53. Defendants must submit “cost reports” to both state and federal agencies which include additional staffing information as well as the expenditures of the Defendants on staffing costs, facility costs, supplied, operating and management fees, etc submitted by Defendants to government agencies under penalty of perjury. 42 C.F.R. 413.24(f)(4)(iv).).

54. These regulations and reporting have a distinct purpose: “Collectively, these reports establish a basis for evaluation of the reasonableness of the rate paid to the nursing homes and determination of what constitutes an economically and efficiently operated facility.” Nursing Home Cost Report Instruction Manual.

55. In particular, Defendants used their business structure as a means to evade the federal requirement that their nursing homes, including Pepper Hill, be administered in a manner that enables them to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. See 42 CFR § 483.75.

56. By siphoning profits to related entities in non-arms’ length transactions, Defendants deny the Facility sufficient resources to care for its residents.

57. Additionally, Defendants’ use of “shell” limited liability companies and trusts serves to further the unjust practice of concealment and misrepresentation of the identity of the responsible ownership, management, and financial interest, or concealment of personal business activities.

58. This is an integral part of Plaintiffs’ corporate negligence claim which include allegations

that Defendants siphoned profits away from resident care to related parties. This is a concept noted in the federal regulations and seen in nursing home operations across the country.

. . .when services, facilities, or supplies are furnished to a provider by a "related organization," there is "a significant likelihood that charges incurred by providers . . . will be artificially inflated because of the absence of bona fide arms-length bargaining." *American Hosp. Management Corp. v. Harris*, 638 F.2d 1208, 1212 (9th Cir. 1981). . . "Reasonable costs" for such a provider are the actual costs incurred by the related supplier, rather than the amount the provider pays to it. 42 C.F.R. § 405.427(a) (1982).

Biloxi Reg'l Med. Ctr. v. Bowen, 266 U.S. App. D.C. 281, 835 F.2d 345, 349-50 (1987).

59. Part of determining an economically and efficiently operated facility includes disclosure of monies transferred to "related organizations."
60. "Federal Regulations, 42 CFR 447.284, requires the nursing home to identify related organizations and to summarize costs incurred in transactions between the NH and such related organizations." ("A related organization is one in which there is a common ownership or controlling interest existing between the vendor and the NH.) See Cost Report Manual.
61. Defendants are also required to report "related organizations" under 42 CFR §420.206.
62. The cost reports mentioned supra include information regarding transactions with what are referred to as "related parties". CMS considers a party to be "related" to a nursing facility when the nursing facility "to a significant extent is associated or affiliated with or ... is controlled by the organization furnishing the services, facilities, or supplies." 42 C.F.R. §413.17(b)(1).
63. The Centers for Medicare and Medicaid Services ("CMS") is the federal agency that is tasked with regulating all nursing facilities in this country.

64. Federal law requires nursing facilities to disclose information on related parties that meet the following criteria:

- a. anyone with direct or indirect ownership in the nursing facility of 5% or more;
- b. officers, director, and partners;
- c. managing employees; and
- d. anyone who is an “additional disclosable party” which is defined as any person or entity who
 - 1) exercises operational, financial, or managerial control over the nursing facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the nursing facility;
 - 2) leases or subleases real property to the nursing facility, or owns a whole or part interest of 5% of more of the total property value of the nursing facility; or
 - 3) provides management services, administrative services, clinical consulting services, accounting services, or financial services to the nursing facility.
 (See 42 U.S.C. §1320a-3).

65. Plaintiffs allege that while holding Pepper Hill out to Charles Rudd and other members of the public as providing excellent care, Defendants and their related parties extracted considerable profits through the management and operation of Pepper Hill by overpaying Wade Jones and his immediate family members and other related parties from funds which should have been utilized instead to hire, train, and retain a sufficient number of qualified staff to meet the needs of all of their residents including Charles Rudd.

66. Included in the costs are extensive details as to how much money the nursing facility spent on RNs, LPNs, and CNAs during that year based on payroll records. The cost report also reports the resident census, hours paid, and the hourly rate that the nursing facility paid each category of direct caregivers during that year. By dividing the paid hours by the resident census it is possible to determine how many hours the nursing facility paid for each category of direct caregivers per resident, per day for the time period covered by that

- particular cost report. This number is referred to as the “reported HPPD”.
67. CMS is able to set a number of hours of direct care that they expect to be provided to residents by RNs, LPNs, and CNAs based on the nursing facility’s total acuity level. This expectation is expressed in terms of “hours per patient day” or “HPPD”.
 68. The long-term care industry typically measures nursing department staffing in “hours per patient day”, often cryptically referred to as “HPPD” or “PPD”.
 69. The cost reports provide information about the number of patients, acuity or illness levels of patients, and the staffing of the facility to meet the patients' needs.
 70. Not only do the cost reports contain information on expenditure, they must contain information about the facility’s residents, in particular their acuity levels as determined by the RUG scores. CMS 2540 Cost Report Instruction Manual.
 71. The term used by caregivers and health science literature to describe the intensity of nursing care required by a resident is “acuity level”.
 72. Acuity levels are reflected in the resident’s ‘Resource Utilization Group’ classification or “RUGs”. RUGs are mutually exclusive categories that reflect the amount of resources that will be needed in order to meet the needs of a particular resident in nursing facilities. They are assigned to residents based on data derived from an assessment tool referred to as a “Minimum Data Set” (MDS”).
 73. An MDS is prepared for each resident of a nursing facility regardless of who is paying for their stay in the nursing facility. MDSs are required to be prepared when a resident initially arrives at the facility and periodically thereafter depending on the course of the resident’s medical profession. At a minimum, an MDS is to be prepared for every resident in a nursing facility on a quarterly basis.

74. The completion of an MDS by a nursing facility is a part of the federally mandated process for clinical assessments of all residents in nursing facilities. MDSs need to be as detailed and comprehensive as possible so that they reflect all of the needs of each of the residents in the nursing facility. When done properly, an MDS provides a comprehensive assessment of each resident's functional capabilities and helps the staff of a nursing facility identify all of the health problems of each of their residents.
75. The information contained in an MDS is used to slot the resident into a RUG.
76. RUGs are organized in a hierarchy from residents who will need the greatest amount of resources to residents who will need the least amount of resources during their stay at the nursing facility.
77. Residents who will need the greatest amount of resources are assigned to higher groups in the RUG hierarchy.
78. RUGs also determine the level of compensation a nursing facility will receive in order to provide the level of care necessary for each of their residents.
79. Residents in higher RUGs place higher demands for care and services on the nursing facility and its staff.
80. Providing care to residents in higher RUGs requires more staff and is, therefore, reimbursed at a higher level.
81. The RUG assigned to a resident can be found in section Z of each resident's MDS.
82. The only way to determine the total acuity level and corresponding RUG of each of the residents at Millennium Post-Acute Rehabilitation on any given day is by examining section Z of *every* MDS in effect on that day.
83. Using the information contained in the MDSs of every resident in a nursing facility, CMS

is able to determine an HPPD that is expected for each nursing facility in the country. This is referred to as the "expected HPPD" and can be found on the CMS.gov website. They are also able to adjust the HPPD per facility on a quarterly basis based on the updated MDSs that are provided to them.

84. Through the years, CMS has sponsored multiple studies to determine the amount of time that RNs, LPNs, and CNAs in nursing facility spend providing direct care to residents as well as other elements of resident care.
85. Expected hours are calculated by summing the nursing times in minutes (from the CMS Time Study found in Appendix Table A1) connected to each RUG category across all residents in the category and across all categories. The total minutes are then divided by the number of residents included in the calculations. The number of minutes per resident is converted to hours by dividing by 60. The result is the "expected" number of hours per resident day for each nursing category.
86. 70% of RUG reimbursement rate is attributable to the labor requirements associated with the RUG score.
87. Defendants knew or should have known that CMS publishes quarterly the facility's expected hppd for direct care caregivers at CMS.gov.
88. The CMS "expected" staffing associated with the monthly or quarterly reports and the CMS "estimated" staffing associated with RUG scores are notice of potential under-staffing and knowledge of the dangers associated therewith.
89. The government has recognized the "considerable evidence of a relationship between nursing home staffing levels and resident outcomes." (CMS Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide). A government

staffing study found "a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems."

90. In conjunction with these facts, Medicare has promulgated staffing 'expectations' based on the number and acuity of patients as reported by nursing homes. These expected staffing numbers drive higher quality of care and also serve as a basis for how much nursing homes are paid.
91. The staffing data is in the public domain via the CMS website and provides notice to nursing homes of CMS' expectations and estimated staffing requirements based on the facilities' average RUG scores.
92. That labor is the biggest component of the nursing home budget.
93. That nursing labor is the biggest component of the labor budget.
94. That RNs are the highest paid employees among the nursing staff.
95. That experienced, more senior, RNs cost more on an hourly basis than less experienced, less senior RNs.
96. According to the Federal Nursing Home Act at 42 CFR 483.35, the facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).
97. The federal requirement for staffing is that the nursing home must provide sufficient

staffing to meet all of the needs of all of the residents at all times. 42 CFR 483.30(a).

98. Providing adequate and appropriate staffing, resources and financial solvency to a facility

is crucial to meeting the needs of the residents.

99. The regulations are exact in what information must be provided:

(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1128I(g) [42 USCS § 1320a-7j(g)], including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include--

(I) concise explanations of how to interpret the data (such as a plain English explanation of data reflecting "nursing home staff hours per resident day");

(II) **differences in types of staff (such as training associated with different categories of staff);**

(III) **the relationship between nurse staffing levels and quality of care; and**

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

42 USCS § 1395i-3.

100. According to the CMS Technical User Guide for Design for Nursing Home Compare Five-Star Quality Rating System, there is considerable evidence of a relationship between nursing home staffing levels and resident outcomes.

101. The CMS Nursing Home Compare program serves to provide consumers of long-term care services “easily accessible, readily understandable” information about nursing facilities. 42 CFR § 1395i-3(i)(1)(A). The information that must be made available includes specific staffing information – which is reported by the facilities themselves.

102. The self-reported HPPD is actually an inflated number due to the fact that hours paid includes sick pay and vacation pay. By removing the sick pay and vacation pay from the hours paid the resulting HPPD would be closer to the actual HPPD provided by

caregivers to residents in nursing facilities.

103. The actual HPPD for any given nursing facility can be determined by examining the data that nursing facilities use to track the number of hours their employees work. This information is easily accessed through reports that are commonly referred to as "Time Detail Reports", "Punch Detail Data Reports", or some other similarly named report depending on the time-keeping system used by the particular nursing facility. This information can reveal the actual HPPD for any period of time including a year, a quarter, a month, or even a day.
104. Defendants are required to report their staffing levels for RNs, LPNs and aides, the combination of which is commonly called "direct-care providers."
100. By failing to provide adequate RN and other staffing, Defendants saved significant dollars to increase their profits, and put their residents, including Charles Rudd, at greater risk.
101. Indeed, Charles Rudd's death is directly attributable to a lack of assessment and care planning because of the lack of RN staffing
102. The lack of RN staffing leads to lack of assessments or allowing unqualified LPNs to assess which is outside their scope of practice in violation of the Board of Nursing's Advisory Opinions.
103. According to the South Carolina Board of Nursing Advisory Opinion #21 which constitutes competent and safe nursing practice, the State Board of Nursing for South Carolina has determined that it is NOT within the role and scope of practice for the licensed practical nurse (LPN) to perform physical assessments. It is within the role of the LPN to assist with the collection of patient health data to be used for the complete physical assessment. However, the analysis and synthesis of clinical information and the

formulation of problem statements and/or nursing diagnoses requires the knowledge base and skills that are within the scope of practice of the registered nurse (RN) and may NOT be delegated to the LPN.

104. According to the South Carolina Board of Nursing Advisory Opinion #46 which constitutes competent and safe nursing practice, the Board of Nursing for South Carolina recognizes that it is NOT within the role and scope of the licensed practical nurse (LPN) to evaluate and/or stage vascular, diabetic/neuropathic or pressure ulcers. However, the LPN may collect and document health data related to vascular, diabetic /neuropathic and/or pressure ulcer(s) in order to assist the RN with decisions regarding wound classification/stage and continued management.

105. S.C. Code § 40-33-20 (48) states the scope of practice for registered nursing which means the performance of health care acts in the nursing process that involve assessment, analysis, intervention, and evaluation. This practice requires specialized independent judgment and skill and is based on knowledge and application of the principles of biophysical and social sciences.

106. S.C. Code § 40-33-20 (48) states the scope of practice of registered nursing includes, but is not limited to:

- a. assessing the health status of persons and groups;
- b. analyzing the health status of persons and groups;
- c. establishing outcomes to meet identified health care needs of persons and groups;
- d. prescribing nursing interventions to achieve outcomes;
- e. implementing nursing interventions to achieve outcomes;
- f. administering and delivering medications and treatments prescribed by an authorized licensed provider;
- g. delegating nursing interventions to qualified others;
- h. providing for the maintenance of safe and effective nursing care rendered directly or indirectly;
- i. providing counseling and teaching for the promotion and maintenance of

- health;
- j. evaluating and revising responses to interventions, as appropriate;
- k. teaching and evaluating the practice of nursing;
- l. managing and supervising the practice of nursing;
- m. collaborating with other health care professionals in the management of health care;
- n. participating in or conducting research, or both, to enhance the body of nursing knowledge;
- o. consulting to improve the practice of nursing; and
- p. performing additional acts that require special education and training and that are approved by the board.

107. This information on “Nursing Home Compare” is compiled into what is commonly called a “Star Rating.” A portion of the CMS Star rating formulation includes a calculation of the differential between reported and expected staffing levels for a facility.

108. Medicare/CMS clearly states on their website and in their manuals to providers, including Defendants, that part of the reason for their star rating system is that there “is evidence of a relationship between nursing home staffing levels, staffing stability, and resident outcomes.

109. The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at a substantially higher risk of quality problems.” Nursing Home Compare Five Year Report. The staffing rating is a combination of RN and total nurse staffing.

110. Staffing is the biggest issue in the star rating system as CMS has noted that “staffing has the lowest proportion of any domain receiving five stars.”

111. The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems. See Kramer AM, Fish R. “The Relationship Between Nurse Staffing Levels and the Quality of Nursing Home

Care.” Chapter 2 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II Final Report. Abt Associates, Inc., Winter 2001.

112. Defendants knew or should have known that the US GAO (2009a) found that the most poorly performing nursing homes in the United States tended to be owned by for-profit chains.
113. Defendants knew or should have known that studies have found that poor nursing home quality is directly related to inadequate staffing levels (Harrington et al. 2000; US Centers for Medicare and Medicaid Services [CMS] 2001; Schnelle et al. 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).
114. Defendants knew or should have known that nurse staffing levels have been documented to have a positive impact on both the process and the outcomes of nursing home care, such as fewer pressure ulcers, improved functional status, better mortality rates, and fewer deficiencies for poor quality (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Castle and Engberg 2007, 2008; Castle 2008).
115. Defendants knew or should have known that a systemic review of 87 research articles and reports from 1975 to 2003 found that high total staffing levels, especially licensed staff, were associated with higher quality of care (Bostick et al. 2006).
116. Defendants knew or should have known that the Relationship of Nursing Home Staffing to Quality of Care at HSR: Health Services Research 39:2 (April 2004) study is supported by other correlational data documenting a relationship between staffing (particularly RNs) and a variety of outcomes, including: lower death rates, higher rates of discharges to home, improved functional outcomes fewer pressure ulcers, fewer urinary tract infections, lower

urinary catheter use, and less antibiotic use (Linn, Gurel, and Linn 1977; Nyman 1988; Munroe 1990; Cherry 1991; Spector and Takada 1991; Aaronson, Zinn, and Rosko 1994; Bliesmer et al. 1998; Harrington et al. 2000; U.S. Department of Health and Human Services 2000b).

117. Defendants knew or should have known that inadequate staffing has been associated with inadequate feeding assistance during meals, poor skin care, lower activity participation, and less toileting assistance (Spector and Takada 1991; Kayser-Jones 1996, 1997; Kayser-Jones and Schell 1997).

118. Defendants knew or should have known that lower staffing levels, especially RN staffing, translate into lower labor costs, which appears to be a management strategy by the top 10 chains as well as other for-profit facilities to reduce costs. Nurse Staffing and Deficiencies in the Largest For-Profit Nursing Home Chains and Chains Owned by Private Equity Companies. DOI: 10.1111/j.1475-6773.2011.01311.x

119. Defendants knew or should have known that low staffing levels are a major concern because low staffing, especially RN staffing, have been associated with more federal deficiencies and poorer resident outcomes as noted in previous studies (Cohen and Spector 1996; Harrington et al. 2000; Grabowski 2001a, b; US CMS 2001; Schnelle et al. 2004; Zhang and Grabowski 2004; Bostick et al. 2006; Castle and Engberg 2007, 2008; Castle 2008; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).

120. Defendants knew or should have known that a clear link has been demonstrated between lower nurse staffing levels in nursing homes and adverse patient outcomes.

121. Defendants knew or should have known that more RN direct care time per resident per day (examined in 10-minute increments up to 30 to 40 minutes per resident per day) was

associated with fewer pressure ulcers, hospitalizations, and UTIs; less weight loss, catheterization, and deterioration in the ability to perform ADLs; and greater use of oral standard medical nutritional supplements.

122. Defendants knew or should have known that more certified nursing assistants and licensed practical nurse time was associated with fewer falls.

123. Defendants knew or should have known that numerous studies have shown positive relationships between staffing levels for different types of staff (RN, LPN, nursing assistant) and a range of quality measures (e.g. number of deficiencies, functional improvement, pressure ulcer rates, and discharged home). See Feuerberg M, Reilly K, Kramer AM, Kane RA. "Review of selected research on nursing home staffing and resident outcomes. Chapter 6 in Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." Health Care Financing Administration, 2000; Bliesmer MM, Smayling M, Kane RL, Shannon I. The relationship between nursing staffing levels and nursing home outcomes. J Aging Health 1998; 10(3):351-371; Cohen JW, Spector WD. The effect of Medicaid reimbursement on quality of care in nursing homes. J Health Econ 1996; 15:23-48; Harrington C, Zimmerman D, Karon S, Robinson J, Bjorkling F. Nursing home staffing and its relationship to deficiencies. (This research was funded by the Health Care Financing Administration and the Agency for Health Policy & Research). 1999; and Spector WD, Takada HA. Characteristics of nursing homes that affect resident outcomes. J Aging Health 1991; 3(4):427-454.

124. Defendants knew or should have known that a number of studies have found that for-profit ownership is related to poorer quality of care than nonprofit ownership (Hillmer et al. 2005; Comondore et al. 2009).

125. Defendants knew or should have known that there is evidence that nursing home chains, defined as companies that own or operate two or more facilities, also have lower staffing, poor resident outcomes, and more deficiencies (violations of regulations) (Cohen and Spector 1996; Grabowski 2001a, b; Harrington et al. 2001; Banaszak-Holl et al. 2002; O'Neill et al. 2003; Harrington, Mullan, and Carrillo 2004; Kim, Harrington, and Greene 2009a; Kim et al. 2009b).
126. Because of their joint venture, Defendants had a joint obligation to sufficiently fund Pepper Hill to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with their residents' comprehensive assessments and plans of care.
127. This joint obligation required Defendants to sufficiently fund Pepper Hill so that there would be enough staff and resources in order to meet the needs of their residents.
128. Pepper Hill was totally dependent on Defendants' generosity in their decision-making process as to whether they would allow them to keep the money they were earning.
129. Plaintiffs allege that the overpayments to related parties left Pepper Hill with insufficient cash to provide sufficient and qualified staff to meet the individual needs of the residents in their facility during Charles Rudd's period of residency therein.
130. Plaintiffs allege that throughout 2016, Defendants, through their operational, budgetary, consultation, and managerial decisions and actions, provided grossly inadequate capitalization as measured by the nature and magnitude of the corporate undertaking of ensuring that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with each residents' comprehensive assessments and plans of care

including those of Charles Rudd.

131. In other words, Defendants' actions in 2016 resulted in an underfunded nursing home during Charles Rudd's residency.

132. Plaintiffs allege that this underfunding and corresponding understaffing, although profitable for Defendants and their related parties, directly resulted in their failure to provide the necessary and basic services to Charles Rudd that he needed in order to keep him safe and avoid injury from preventable falls.

133. Because of their joint venture, Defendants have a joint obligation to sufficiently staff the facility to ensure that each of their residents received the necessary care and services in order for them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

134. This joint obligation required Defendants to base the number of Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nurse Aides (CNAs) to be provided at Pepper Hill not only upon the number of residents residing in their facility (commonly referred to as "resident census") but also on the intensity of nursing care or acuity required by their residents' needs.

135. Plaintiffs allege that Defendants jointly exercised control over the operation and management of the facility prior to and during Charles Rudd's period of residency therein, including but not limited to, the creation, setting, funding and/or implementation of budgets; the monitoring of resident acuity levels; the monitoring of staffing levels; control over resident admissions and discharges; and control over the number of hours of direct care provided to the residents by RNs, LPNs, and CNAs.

136. Plaintiffs allege that each of these managerial and operational functions had a direct impact

on the amount and quality of care delivered to Charles Rudd while **Error! Reference source not found.** resided at Pepper Hill and were taken in furtherance of operational and managerial objectives of Shiloh.

137. Plaintiffs allege that Defendants engaged in a systematic process of under-staffing which made it impossible for the staff to meet the individual needs of their residents including fall prevention during Charles Rudd's residency.

138. Plaintiffs allege that this understaffing, although quite profitable for Defendants, directly resulted in their failure to provide the necessary and basic services Charles Rudd needed in order to keep him safe and avoid injury from a preventable fall.

139. According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

140. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for **Error! Reference source not found.** own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

According to the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-

"vulnerable adult" means a person eighteen years of age or older who has a

condition which substantially impairs the person from adequately

providing for **Error! Reference source not found.** own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

142. Plaintiff Charles Rudd was a resident of Defendant facility and was therefore a vulnerable adult under the South Carolina Omnibus Adult Protection Act in S.C. Code § 43-35-10(11).

143. S.C. Regulation 61-17 Section 603(A) states that the facility must meet the following standard: "There shall be direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs.[care plans]"

144. S.C. Regulation 61-17 Section 803(B) states that the facility must meet the following standard regarding the resident's Individual Care Plan (ICP): The ICP shall describe:

1. The needs of the resident, including the services that are to be furnished, *i.e.*, what assistance, how much, who will provide the assistance, how often, and when;
2. Advance directives and healthcare power-of-attorney, as applicable;
3. Recreational and social activities that are suitable, desirable, and important to the resident;
4. Dietary needs and preferences of resident as approved by a physician;
5. Discharge planning, to include assessing continuing care needs and developing a plan designed to assure the resident's needs will be met after discharge or transfer.

145. S.C. Regulation 61-17 Section 605(A) states that the facility must meet the following standard: "An adequate number of licensed nurses shall be on duty to meet the total nursing needs of residents. Licensed nursing staff shall be assigned to duties consistent

with their scope of practice as determined through their licensure and educational preparation.

146.S.C. Regulation 61-17 Section 605(B) states that the facility must meet the following standard for unlicensed Nursing Staff: "The required number of nurse aides and other unlicensed nursing staff shall be determined by the number of residents assigned to beds at the facility. Additional staff members shall be provided if the minimum staff requirements are inadequate to provide appropriate care and services to the residents of a facility."

147.S.C. Regulation 61-17 Section 601(E) states that the facility must meet the following standard regarding staffing information: "Time schedules shall be maintained indicating the numbers and classification of all staff, including relief staff, who work on each shift of duty. The time schedules shall reflect all changes so as to indicate who actually worked."

148.S.C. Regulation 61-17 Section 601(H) states that the facility must meet the following standard regarding third party providers: "When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, recreation, meal service, social services, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and the requirement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, treatment, services, and rights.

149.S.C. Regulation 61-17 Section 607(A) states that the facility must meet the following standard regarding training: "Staff members shall be provided the necessary training to perform the duties for which they are responsible."

150.S.C. Regulation 61-17 Section 607(B) states that the facility must meet the following standard regarding training: "Before performing any duties, all newly-hired staff members shall be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members shall be instructed in the provisions of S.C. Code § 43-35-5 et seq., "Omnibus Adult Protection Act" and S.C. Code § 44-81-10 et seq., "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in this regulation.

151.S.C. Regulation 61-17 Section 607(C) states that the facility must meet the following standard regarding training: "All staff shall be provided in-service training programs that identify training needs related to problems, needs, care of residents and infection control and are sufficient to assure staff's continuing competency. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, and/or services delineated in Section 1000."

152.S.C. Regulation 61-17 Section 601(D) states that the facility must meet the following standard regarding employee information: "There shall be accurate current information maintained regarding all staff members of the facility that shall include:

1. Name, address and telephone number;
2. Date of hire;
3. Past employment, experience, and education;
4. Professional licensure or registration number or certificate or letter of completion;
5. Position in the facility and job description;

6. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, job duties, in-service training and on-going education;
7. Health status, health assessment, and tuberculin testing results;
8. Evidence that a criminal record check has been completed;
9. For former staff members, the date of separation;
10. Date of initial resident contact may be maintained by the facility.

153.S.C. Regulation 61-17 Section 805(B) states that the facility must meet the following standard regarding the resident's Electronic Resident Records: "A facility that maintains electronic records shall:

1. Retain the hard copy originals of any materials that cannot be electronically stored;
2. Employ an off-site backup storage system as protection in the event that the on-site system is damaged or destroyed;
3. Use an imaging mechanism that is able to copy documents with signatures;
4. Assure that records, once put in electronic form, are unalterable.

154.S.C. Regulation 61-17 Section 805(C) states that the facility must meet the following standard regarding the resident's **Electronic Resident Records**: "Electronic signatures may be used any place in the resident or outpatient record that requires a signature, provided signature identification can be verified and an electronic signature may be legally used. Electronic authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry to preclude the improper or unauthorized use of any electronic signature.

155.The facility as a health care provider maintains electronic records which requires the facility to maintain an audit trail. See the requirements of 45 CFR §164.312.

156.The audit trail is a document that shows the sequence of events related to the use of and access to an individual patient's electronic health records (EHR). For instance, the audit trail will reveal who accessed a particular patient's records, when, and where the health care provider accessed the record.

157. The audit trail shows what the provider did with the records—e.g., simply reviewed them, prepared a note, or edited a note. Each time a patient's EHR is opened, regardless of the reason, the audit trail documents this detail.

158. The audit trail cannot be erased and all events related to the access of a patient's EHR are permanently documented in the audit trail.

159. 45 C.F.R. § 164.306(a)(1) commands the facility to "[e]nsure the confidentiality, integrity, and availability of all electronic protected health information [that it] creates, receives, maintains, or transmits."

160. 45 C.F.R. § 164.304 provides that "availability" in this context means "that data or information is accessible and useable upon demand by an authorized person."

161. 45 C.F.R. § 164.308(a)(7)(ii) provides that a facility must "[e]stablish and implement procedures to create and maintain retrievable exact copies of electronic protected health information."

162. 45 C.F.R. § 164.312(b) provides that a facility must "[i]mplement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information."

163. 45 C.F.R. § 170.210(b) requires that "[t]he date, time, patient identification, user identification must be recorded when electronic health information is created, modified, accessed, or deleted; and an indication of which action(s) occurred and by whom must be recorded."

164. 21 C.F.R. § 11.10(e) provides that a facility shall employ procedures and controls including the "[u]se of secure, computer generated, time-stamped audit trails to independently record the date and time of operator entries and actions that create, modify,

or delete electronic records" and that "[s]uch audit trail documentation shall be retained for a period at least as long as that required for the subject electronic records"

165.21 C.F.R. § 11.10(k)(2) states that a facility shall employ appropriate controls over systems documentation including "[r]evision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation."

166.42 U.S.C. §1320d-2(d)(2) provides that a facility "shall maintain reasonable and appropriate administrative, technical, and physical safeguards —(A) to ensure the integrity and confidentiality of the [health] information; (B) to protect against any reasonably anticipated—(i) threats or hazards to the integrity of the information; and (ii) unauthorized uses or disclosures of the information"

167.42 U.S.C. § 1320d(6) [provides that] "individually identifiable health information" is defined to include "any information created or received by a health care provider [that] relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual; or can be used to identify the individual."

168. According to §483.20 applicable to nursing homes, a Resident Assessment requires the facility to provide with ongoing assessment information necessary to develop a care plan, to provide the appropriate care and services for each resident, and to modify the care plan and care/services based on the resident's status. The facility is expected to use resident observation and communication as the primary source of information when completing the RAI. In addition to direct observation and communication with the resident, the facility

should use a variety of other sources, including communication with licensed and non-licensed staff members on all shifts and may include discussions with the resident's physician, family members, or outside consultants and review of the resident's record.

169. According to CMS' Long-Term Care Facility Resident Assessment Instrument 3.0 User's Manual Section 2.4, the Federal regulatory requirement at 42 CFR 483.20(d) requires nursing homes to maintain all resident assessments completed within the previous 15 months in the resident's active clinical record.

170. According to §483.20(k) applicable to nursing homes related to Comprehensive Care Plans:

(1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following:

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §483.25; and

(ii) Any services that would otherwise be required under §483.25 but are not provided due to the resident's exercise of rights under §483.10, including the right to refuse treatment under §483.10(b)(4).

171. Defendants' facility had a duty to properly assess, care plan, and attempt interventions to prevent falls, and other preventable injuries.

172. According to §483.25 related to Quality of Care requires the facility to provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

173. According to §483.25(h) related to Accidents, the facility must ensure that:

(1) The resident environment remains as free from accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

174.S.C. Regulation 61-17 Section 701(A) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall maintain a record of each accident and incident, including each serious accident and incident as defined in Section 701.B, involving residents or staff members or volunteers, occurring in the facility or on the facility grounds. A facility's record of each accident and incident shall be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures, and retained by the facility for six (6) years after the resident stops receiving services.

175.S.C. Regulation 61-17 Section 701(E) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall retain a copy of every serious accident and incident with all of the information provided to the Department and the names, injuries, and treatments associated with each resident, staff, and/or visitor involved. A facility shall retain all serious accident and incident records for six (6) years after the resident stops receiving services."

176.S.C. Regulation 61-17 Section 801(B) states that the facility must meet the following standard regarding documentation in the resident record: "Contents of the resident record may be stored in separate files, in separate areas within the facility, and the record shall include the following information:

1. Medical history and physical examination;
2. Consent form for treatment signed by the resident or **Error! Reference source not found.** legal representative;
3. Care and services agreement;
4. Healthcare directives and special information, *e.g.*, advance directive information, do-not-resuscitate (DNR) orders, and allergies;
5. **Incidents involving the resident;**

6. Medical treatment;
7. Orders, including telephone and standing orders, for all medication, care, services, therapy, procedures, and diet from physicians or other legally authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted;
8. Individual Care Plan;
9. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician;
10. **Assessments and progress notes**, *e.g.*, dietary, activity, therapy;
11. Record of administration of each dose of medication;
12. Record of the use of restraints, if applicable, including time, type, reason and authority for applying;
13. Treatment, procedure, wound care report (dictated or written into the record after treatment, procedure, or wound care) to include at least:
 - a. Description of findings;
 - b. Techniques utilized to perform treatments and procedures;
 - c. Specimens removed, if applicable;
 - d. Name of provider;
 - e. Progress notes generated by physicians and healthcare professionals;
 - f. Notes of observation, including temperature, pulse, respiration, blood pressure and weight when indicated by physician's orders or by a change in the resident's condition;
 - g. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms, diagnosis, and/or treatment of infectious conditions including but not limited to tuberculosis, influenza, pneumonia, therapies;
 - h. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated;
 - i. Consultations by physicians or other healthcare professionals;
 - j. Photograph of resident, if the resident or **Error! Reference source not found.** responsible party approves;
 - k. Date and hour of discharge or transfer, as applicable;
 - l. Discharge and/or transfer summary, including care and condition at discharge or transfer, date and time of discharge or transfer, instructions for self-care, instructions for obtaining post-treatment or procedure emergency care, and signature of physician authorizing discharge or transfer;
 - m. Date and circumstances of death, as applicable.

177. The federal regulation at §483.75(l) related to documentation in the clinical records requires:

- (1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are--
 - (i) Complete;
 - (ii) Accurately documented;
 - (iii) Readily accessible; and

(iv) Systematically organized.

178. Defendants' facility had a duty to document the respective interventions and incidents adequately in the nurses' notes.

179. S.C. Regulation 61-17 Section 701(D) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall submit a written report of its investigation of every serious accident and incident to the Department within five (5) days of the serious accident or incident. A facility's written report to the Department shall provide at a minimum:

1. Facility name;
2. License number;
3. Type of accident or incident;
4. Date accident or incident occurred;
5. Number of residents directly injured or affected;
6. Resident record number or last four (4) digits of Social Security Number;
7. Resident age and sex;
8. Number of staff directly injured or affected;
9. Number of visitors directly injured or affected;
10. Name(s) of witness(es);
11. Identified cause of accident or incident;
12. Internal investigation results if cause unknown; and
13. Brief description of the accident or incident including the location of occurrence and treatment of injuries."

180. S.C. Regulation 61-17 Section 701(B) states that the facility must meet the following standard regarding accidents and incidents: "A facility shall report every serious accident and incident that results in resident's death or significant loss of function or damage to a body structure, not related to the natural course of a resident's illness or underlying condition or normal course of treatment, and resulting from an accident or incident occurring to resident within the facility or on the facility grounds. Serious accidents and incidents requiring reporting include, but are not limited to:

1. Crime(s) against resident;

2. Confirmed or suspected cases of abuse, neglect, or exploitation;
3. Medication error with adverse reaction;
4. Hospitalization as a result of the accident or incident;
5. Severe hematoma, laceration, or burn requiring medical attention or hospitalization;
6. Bone fracture or joint fracture;
7. Severe injury involving use of restraints;
8. Attempted suicide; or
9. Fire.

181.S.C. Regulation 61-17 Section 500(A) states that the facility must meet the following standard: "There shall be written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The written policies and procedures shall accurately reflect actual facility practice regarding care, treatment, procedures, services, record keeping and reporting, admission and transfer, physician services, nursing services, social services, resident rights and assurances, medication management, pharmaceutical services, meal service operations, emergency procedures, fire prevention, maintenance, housekeeping and infection control, the operation of the facility, and other special care and procedures as identified in this section. The policies and procedures shall address the provision of any special care offered by the facility that would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically or developmentally disabled, in accordance with any laws that pertain to that service offered, for example, Alzheimer's Special Care Disclosure Act."

182.S.C. Regulation 61-17 Section 500(C) states that the facility must meet the following standard: "All policies and procedures shall:

1. Establish a time period for review of policies and procedures in writing and such reviews shall be documented;
2. Be revised as appropriate in order to reflect actual facility practice; and

3. Be accessible to staff, printed or electronically, at all times."

183. The facility Administrator shall be licensed as a nursing home Administrator in accordance with S.C. Code § 40-35-30. In addition, all other applicable provisions of S.C. Code Title 40, Chapter 35, shall be followed.

184. S.C. Regulations applicable to nursing homes found in 61-17 Section 602 requires that "each facility shall have a full-time licensed Administrator".

185. S.C. Code § 40-35-110 states that "Misconduct" includes the following:

- (1) acting in a manner inconsistent with the health or safety of the patients of the nursing home or community residential care facility;
- (2) failing to ensure that the nursing home or community residential care facility in which he is an administrator complies with the provisions of law and regulations of the licensing or supervising authority or agency, whether federal, state, or local, having jurisdiction over the operation and licensing of the nursing home or community residential care facility;
- (3) intentional or knowing, direct or indirect, violation of or the aiding and abetting in the violation of this chapter or a regulation promulgated under this chapter;
- (4) failing to operate a nursing home or community residential care facility in a manner that ensures the safety, health, and welfare of the patients;
- (5) use of a false, fraudulent, or forged statement in the practice of nursing home administration or community residential care facility administration.

186. The federal regulation at §483.75(k) requires that: "The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services."

187. What while at Pepper Hill, Charles Rudd suffered a hospitalization and preventable fall that caused mental anguish, pain and suffering, including one that resulted in a brain bleed.

188. The complications from Charles Rudd's brain bleed contributed to his untimely and wrongful death.

189. That the facility failed to keep Charles Rudd safe from preventable falls.

190. That the facility failed to utilize safety devices with Charles Rudd.
191. That the facility failed to monitor Charles Rudd for changes in condition.
192. Defendants' facility had a duty to ensure that proper preventative measures were in place to keep the resident safe and free from avoidable and preventable injuries.
193. Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.
194. That at all times relevant hereto, Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.
195. That the facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical nursing, nutritional, mental, and psychological needs as identified in the comprehensive assessment.
196. That the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.
197. That the nursing home had a duty to ensure that Charles Rudd received necessary treatment and services to prevent falls, hospitalization, and to keep him safe.
198. That treatment and prevention of falls and injuries in the nursing home should be part of an interdisciplinary approach.
199. That several types of personnel have essential roles in the assessment, care planning, prevention, and treatment of fall prevention.
200. That evaluation, multi-disciplinary documentation of treatment, and detailed individual care plans must be developed and implemented.

201. That the acts and delicts of Defendants caused, and were the proximate causes of, Charles Rudd's falls, multiple hospitalizations, loss of dignity, conscious pain and suffering, mental distress, medical bills and disability to the Charles Rudd.
202. Pursuant to S.C. Code § 15-5-90, causes of action survive the death of Charles Rudd and are properly brought by the Personal Representative on behalf of Charles Rudd's estate.
203. That the Plaintiffs institute this action in order to recover for Charles Rudd's injuries and wrongful death, and for damages to the statutory heirs of Charles Rudd, deceased, pursuant to and under the authority of S.C. Code § 15-51-10.
204. Pursuant to S.C. Code § 15-51-20, the wrongful death beneficiaries and claimant as defined by S.C. Code § 15-31-26(2) is Charles Rudd's widow: Thelma Rudd.
205. As a result of the death of Charles Rudd, the wrongful death beneficiaries have suffered grief and sorrow, mental shock and suffering, wounded feelings, loss of companionship, and deprivation of the use and comfort of the Charles Rudd's society. These damages were the proximate result of the acts and delicts of Defendants.
206. That the Defendants were jointly, directly, and vicariously liable and responsible for the acts and delicts of their employees, agents, and servants.
207. That the Defendants hold themselves out as specialists in the field of adult geriatric care with the expertise necessary to maintain the health, safety, and highest practicable quality of life of persons unable to adequately care for themselves.
208. That the Defendants were under a duty to provide reasonable, appropriate and adequate care to Charles Rudd pursuant to state and federal laws, rules, regulations, guidelines, and existing industry standards.
 - a. Defendants failed to provide the highest practicable level of care, training, and competency. (42 CFR § 483.75)

- b. Defendants repeatedly failed to maintain nursing and other staffing at levels necessary to meet the needs of Charles Rudd. 42 CFR §§ 483.30 and 483.25)
- c. Defendants failed to provide proper and timely assessments, and provide a 1:1 sitter, throughout Charles Rudd's stay and on the days of the subject falls. 42 CFR §§ 483.35, and 483.25)
- d. Defendants repeatedly failed to follow proper skilled nursing care standards to maximize the health, safety, and well-being of Charles Rudd.
- e. Defendants repeatedly failed to ensure that Charles Rudd was safe, free from abuse, neglect, and accorded the dignity and respect owed.

209. Defendants failed to follow, implement, and adhere to all physician's orders.

210. Defendants failed to establish and implement a resident care plan for Charles Rudd based upon **Error! Reference source not found.** needs.

211. That at all times pertinent hereto, Charles Rudd resided at the above-named facility and as such was under the exclusive control and care of Defendants and their employees, agents, officers, and servants while a resident.

212. That the Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Charles Rudd.

213. That, upon information and belief, at all times during Charles Rudd's residency, the facility was understaffed, suffered a high turnover rate, and failed to properly screen, train, supervise, and discipline their staff, and failed to put them in suitable positions for their skills, experience, and competence.

214. That, upon information and belief, Defendants were involved in the budget and staffing decisions of the facility, and were more concerned about profits and siphoning funds to the billion dollar national chain than creating a budget that provided quality care to the residents.

215. That, upon information and belief, at all times during Charles Rudd's residency, the facility was underfunded, under-supplied, and under-equipped to care for residents, and

was forced to operate on a budget that did not allow for the best care of the residents, including Charles Rudd.

216. That, upon information and belief, Defendant Shiloh is jointly, directly, and vicariously liable and also liable as alter ego defendants in creating the budget for the facility and siphoning money away from the facility to related entities with common ownership to the Defendants.

ALLEGATIONS REGARDING DEFENDANTS' JOINT VENTURE

217. Relevant and consistent allegations contained in paragraphs 1-216 are incorporated by reference as if written verbatim herein.

218. Plaintiffs allege that Defendants were engaged in a joint venture in the operation of Pepper Hill nursing home.

219. Defendants' joint venture in the operation of Pepper Hill included:

- a. an agreement, express or implied, among the members of the group;
- b. a common purpose to be carried out by the group;
- c. a community of pecuniary interest in that purpose, among the members; and
- d. an equal right to a voice in the direction of the enterprise, which give an equal right of control.

220. Because of the joint venture, Defendants owed a joint duty to Charles Rudd to provide the same level of care and treatment as any other reasonable, prudent, similar business that owns, operate, manages, and/or controls a nursing facility would have provided under the same or similar circumstances taking into consideration Charles Rudd's known medical condition.

FIRST CAUSE OF ACTION **(Negligence/Recklessness)**

221. Relevant and consistent allegations contained in paragraphs 1-220 are incorporated by reference as if written verbatim herein.

222. That Defendants Shiloh and Pepper Hill, had a duty of due care to their patients and residents, to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

223. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More particularly the Defendants were negligent in the following particulars:

- e. failing to properly supervise as required, and as promised to the family upon admission;
- f. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for **Error! Reference source not found.** health and safety;
- g. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, **Error! Reference source not found.**;
- h. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- i. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- j. failing to hire a sufficient number of trained and competent staff;
- k. failing to follow the licensing and regulatory rules of the State of South Carolina;
- l. failing to develop and follow an appropriate Plan of Care;
- m. failing to properly train employees to deal with residents who were unable to care for themselves;
- n. failing to properly monitor Charles Rudd;
- o. failing to appropriately diagnose Charles Rudd's condition;
- p. failing to provide timely emergency services to Charles Rudd;
- q. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- r. failing to prevent **Error! Reference source not found.** from suffering from a fall;
- s. failing to prevent Charles Rudd's hospitalization;
- t. failing to monitor and assess Charles Rudd adequately for pain and discomfort;
- u. failing to treat Charles Rudd with dignity and respect;
- v. failing to exercise due care; and
- w. by other negligent acts and/or omissions yet to be determined or defined.

224. That the Defendants independently and through their agents, servants, and employees demonstrated conscious and intentional disregard of and indifference to the rights and safety of Charles Rudd and other patients at Pepper Hill as demonstrated by:

- x. Their business practice of attempting to care for residents with an inadequate number of trained staff, which their officers and managers knew or should have known was reasonably likely to result in injury to **Error! Reference source not found.** and their other patients; and
- y. Their business practice of failing to supervise and train their staff in order to ensure that their policies and procedures were known to and adhered to by licensed staff, and that licensed staff practiced within their scopes of practice.

225. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, **Error! Reference source not found.** wrongful death beneficiaries suffered the damages and injuries stated herein above.

226. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's damages, injuries and death, and were the sole and proximate cause of the damage and injuries sustained by the wrongful death beneficiaries.

SECOND CAUSE OF ACTION
(Corporate Negligence)

227. Relevant and consistent allegations contained in paragraphs 1-226 are incorporated by reference as if written verbatim herein.

228. That Defendants had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

229. That the Shiloh facility was negligently administered and managed by Defendants who were working together to manage and operate the facility.

230. That the facility was negligently administrated in violation of 42 C.F.R. 483.75 by Defendants Pepper Hill and Shiloh **Error! Reference source not found.** who were working together to govern, administer, control, manage and operate the facility.

231. That the Defendants, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless, and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Charles Rudd. More specifically, the Defendants were negligent in the following particulars:

- z. failing to properly supervise as required, and as promised to the Plaintiffs upon admission;
- aa. failing to provide the care, supervision and monitoring of patients, residents, and in particular Charles Rudd, which was required by law and which was necessary for **Error! Reference source not found.** health and safety;
- bb. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Charles Rudd;
- cc. failing to provide sufficient numbers of qualified personnel including nurses, nurse assistants, medication aides, and/or orderlies to meet the total needs of Charles Rudd;
- dd. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- ee. failing to hire a sufficient number of trained and competent staff;
- ff. failing to follow the licensing and regulatory rules of the State of South Carolina;
- gg. failing to develop and follow an appropriate Plan of Care;
- hh. failing to properly train employees to deal with residents who were unable to care for themselves;
- ii. failing to follow physicians' orders;
- jj. failing to properly monitor Charles Rudd;
- kk. failing to appropriately diagnose Charles Rudd's condition;
- ll. failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- mm. failing to keep Charles Rudd's chart free of fraudulent documentation;
- nn. failing to prevent Charles Rudd from suffering preventable falls;
- oo. failing to prevent Charles Rudd from being hospitalized;
- pp. failing to prevent Charles Rudd from sustaining a fracture;
- qq. failing to treat Charles Rudd with dignity and respect;
- rr. failing to exercise due care; and
- ss. by other negligent acts and/or omissions yet to be determined or defined.

232. That as a result, Charles Rudd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, **Error! Reference source not found.** wrongful death beneficiaries suffered the damages and injuries stated herein above.

233. That the aforesaid acts and delicts were the sole and proximate cause of Charles Rudd's injuries and wrongful death.

THIRD CAUSE OF ACTION **(Joint Venture)**

234. Relevant and consistent allegations contained in paragraphs 1-233 are incorporated by reference as if written verbatim herein.

235. That a joint venture is an association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation.

236. That the elements of joint venture in the State of South Carolina are:

- tt. an agreement;
- uu. a joint interest in a common business;
- vv. an understanding that profits and losses will be shared, and;
- ww. a right to joint control.

237. That a joint venture exists when there is:

- xx. contribution of resources by both parties;
- yy. joint proprietorship and control over the subject matter of the property engaged in the venture;
- zz. sharing of profits by express or implied agreement, and;
- aaa. an express or implied contract showing joint venture.

238. That Defendants Pepper Hill and Shiloh, were involved in a joint venture.

FOURTH CAUSE OF ACTION

(Alter Ego/Piercing the Corporate Veil)

239. Relevant and consistent allegations contained in paragraphs 1-238 are incorporated by reference as if written verbatim herein.

240. That, upon information and belief, Pepper Hill was dominated and controlled by Defendant Shiloh before, during, and after Charles Rudd's residency. This Defendant and its related entities, agents, and managers siphoned profits from the nursing home chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries, death and suffering, including that of Charles Rudd at Pepper Hill.

FIFTH CAUSE OF ACTION
(Neglect of a Vulnerable Adult)

241. Relevant and consistent allegations contained in paragraphs 1-240 are incorporated by reference as if written verbatim herein.

242. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Charles Rudd was considered a vulnerable adult.

243. That, according to the South Carolina Adult Protection Act, ANeglect@ means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health and safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.

244. That Defendants failed to supervise Charles Rudd and allowed **Error! Reference source not found.** to suffer preventable falls.
245. That Defendants failed to provide care, goods, and services to Charles Rudd in the form of fall prevention and fall prevention devices.
246. That Defendants failed to provide care and medical services to Charles Rudd by not transferring **Error! Reference source not found.** to the hospital in a timely manner after a change of condition.
247. That Charles Rudd trusted in, confided in and relied upon Defendants to use their expertise and discretion for Plaintiff's care.
248. That Defendants Pepper Hill and Shiloh, accepted Charles Rudd's trust and reliance and so became responsible for Charles Rudd's health while residing at the nursing home facility.
249. That as a result of aforementioned reliance and trust upon Defendants Pepper Hill and Shiloh, Charles Rudd's physical, mental and emotional health was placed in the hands of Defendants Pepper Hill and Shiloh.
250. That Defendants Pepper Hill and Shiloh received compensation for the care and treatment they were responsible for providing to Charles Rudd during **Error! Reference source not found.** residency but did not provide that care and treatment.

SIXTH CAUSE OF ACTION
(Wrongful Death)

251. Relevant and consistent allegations contained in paragraphs 1-250 are incorporated by reference as if written verbatim herein.

252. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, Charles Rudd was severely injured in Pepper Hill.

253. That the injuries so inflicted on Charles Rudd were the cause of Charles Rudd's wrongful death on May 10, 2018.

254. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Charles Rudd and by the wrongful death beneficiaries was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of the action, and for such other and further relief as this Court may deem just and proper.

s/Raymond P. Mullman, Jr.
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Attorneys for the Plaintiffs

Date: September 2, 2020
 Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd,
deceased, through the duly appointed
Personal Representative, Thelma
Rudd, individually and on behalf of
statutory beneficiaries,

Civil Action No. 2019-CP-02-02840

Plaintiffs,

v.

Pepper Hill Nursing & Rehab Center,
LLC d/b/a Pepper Hill Nursing &
Rehab Center and Shiloh
Management, Inc.,

MOTION TO LIFT STAY

Defendants.

TO: MARK GENDE AND BRANDON GOTTSCHALL, ATTORNEYS FOR
DEFENDANTS.

PLEASE TAKE NOTICE THAT the Plaintiffs, by and through their undersigned attorneys, hereby move before this Court pursuant to SCACR 241 to lift the automatic stay in this matter for the limited scope of Plaintiffs' Motion to Amend the Complaint. Plaintiffs' previous Motion to Amend the Complaint does not fall under the purview of the automatic stay and should be allowed to continue before this Court.

Plaintiffs filed the Notice of Intent for this matter on June 3, 2019. On November 13, 2019 Plaintiffs filed their Summons and Complaint alleging nursing home neglect which led to the wrongful death of Charles Rudd. Defense Counsel informed Plaintiffs' Counsel that the entity was named incorrectly in the original Summons & Complaint, and on November 20, 2019 with the consent of the Defendants Plaintiffs filed an Amended Summons and Complaint.

On March 2nd, 2020 Defendants filed their Motion to Dismiss and to Compel Arbitration. A hearing was held on Defendants' Motion May 05, 2020. The Court subsequently issued an Order denying Defendants' Motion on August 14, 2020. On August 24, 2020 Defendants filed their Motion to Reconsider the Court's Order Denying Arbitration.

On September 2, 2020 Plaintiffs filed a Motion to Amend the Complaint to add individual Defendants under the theories of alter ego, and piercing the corporate veil. On October 26, 2020 a hearing was held on Plaintiffs' Motion to Amend the Complaint, but the matter was held in continuance as the Court had not resolved the issue of Reconsideration on the denial of Defendants' Motion to Compel Arbitration. The Court asked Defense Counsel to draft an Order relaying such, and Defendants have submitted said Order and are awaiting the Court's approval.

The Court did not have any hearings on Defendants' Motion to Reconsider, and on October 29, 2020 the Court issued a Form 4 Order denying Reconsideration. On October 30, 2020 Plaintiffs wrote a letter to the Honorable Clifton Newman, the Judge who presided over Plaintiffs' Motion to Amend the Complaint, informing Judge Newman that a Form 4 Order had been issued denying Arbitration and that Plaintiffs' Motion was now ripe for consideration. Additionally, Plaintiffs made their objection to certain language the Defendants included in their Proposed Order known. The language Plaintiffs drew issue with was postponing any final ruling on Plaintiffs' Motion to Amend the Complaint until after the conclusion of any appeal. Defendants' also wrote to Judge Newman reaffirming their stance.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the

administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any Matters not stayed by the appeal.

Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal as it states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

However, an automatic stay under Rules 205 and 241 is not unassailable: a party to the action need only petition either the trial court or the appellate court for an order lifting the stay. See Rule 241.

Rule 241(a), a corollary rule that governs matters stayed on appeal, provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR (emphasis added).

"After service of notice of appeal, any party may move [the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court] for an order lifting the automatic stay." Rule 241(c)(1). The supersedeas or lifting of the automatic stay, as well as any other affirmative relief granted, may be conditioned on such terms as the tribunal, court, judge, or justice entering the order deems appropriate. Rule 241(c)(3).

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule states: "Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." Rule 205, SCACR; *see also* Rule 241(a), SCACR ("The lower court . . . retains jurisdiction over matters not affected by the appeal . . ."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the Court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter affected by the appeal" under Rules 205 and 241(a). *See Arnal v. Fraser*, 371 S.C. 512, 518-19, 641 S.E.2d 419, 422 (2007) (per curiam) (explaining that Rules 205 and 241(a) permit the Court's action on matters not affected by the appeal and prohibit action on matters that are affected by the appeal).

Plaintiffs contend that amending the complaint was not decided in the Order denying reconsideration on arbitration under appeal, and therefore this Court has appropriate jurisdiction

under SCACR 241. Plaintiffs are asking this Court for an Order to lift the automatic stay to rule on Plaintiffs' Motion to Amend the Complaint.

RESPECTFULLY SUBMITTED,

s/Gary W. Poliakoff

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Attorneys for the Plaintiffs.

Date: November 20, 2020
Spartanburg, SC.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	THE SECOND JUDICIAL CIRCUIT
	)	
The Estate of Charles S. Rudd,	)	Civil Action No.: 2019CP0202840
deceased, through the duly appointed	)	
Personal Representative, Thelma	)	
Rudd, individually and on behalf of	)	
statutory beneficiaries	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Pepper Hill Nursing & Rehab Center,	)	ORDER
LLC d/b/a Pepper Hill Nursing &	)	
Rehab Center n/k/a The Place at	)	
Pepper Hill, LLC; and Shiloh	)	
Management, Inc.	)	
	)	
Defendants.	)	

This matter came before the Court on January 25, 2021 for a hearing on Plaintiff's Motion to Lift Stay. Attorney Gary Poliakoff appeared as counsel for Plaintiffs and attorney Brandon R. Gottschall appeared as counsel for Defendants. After consideration of the Parties' briefs, arguments, and supporting materials, the Court finds that Plaintiffs' Motion to Lift Stay should be DENIED.

I. Background:

This matter involves disputed allegations of nursing home negligence against Defendants in relation to a former resident, Charles S. Rudd. Plaintiffs filed a Notice of Intent to File Suit on June 3, 2019. Following unsuccessful pre-suit mediation, Plaintiffs filed a Summons and Complaint on November 13, 2019. Defendants filed a motion to dismiss and compel arbitration based on the arbitration provision contained in the admissions agreement signed by Ms. Rudd. The Court entered an Order denying the Motion to Dismiss and Compel Arbitration on August 14,

2020. On September 2, 2020, Defendants filed a motion requesting the Court to reconsider the ruling.

While the September 2, 2020 Motion to Reconsider was pending, Plaintiffs filed a Motion to Amend the Complaint to add certain additional defendants in their personal capacities. The Circuit Court conducted a hearing on the Motion to Amend on October 26, 2020, finding that a continuance was appropriate while the Motion to Reconsider was under advisement.

Shortly after the October 26, 2020 hearing, the Defendants' Motion to Reconsider was denied on October 29, 2020. Thereafter, on October 30, 2020, Defendants filed a Notice of Appeal appealing the Circuit Court's August 13, 2020 Order Denying Appellants' Motions to Strike, Dismiss and Compel Arbitration and the October 29, 2020 Order Denying Appellants' Motion to Reconsider. That appeal is currently pending.

After the appeal was filed, Plaintiffs filed a Motion to Lift the Automatic Stay for the purpose of obtaining a ruling on Plaintiffs' Motion to Amend the Complaint.

II. Standard

Rule 205 of the South Carolina Appellate Court Rules provides that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal[.]" SCACR 205. It further provides that the lower court is not prohibited from proceeding with certain matters, provided they are "not affected by the appeal." *Id.*

III. Analysis

Plaintiff's Motion seeks to lift the automatic stay in this matter to obtain a ruling on Plaintiff's Motion to Amend the Complaint to add four defendants in their individual capacities. For the reasons explained below and based on the arguments and briefs presented by the parties, the Court finds that the Motion to Amend has been stayed by the appeal and that the Motion to

Amend involves matters affected by the pending appeal. As a result, the stay should remain in place.

Plaintiff's Motion to Amend seeks to name four new individual defendants in their personal capacity under alter ego and veil-piercing theories. However, the pending appeal involves whether Plaintiffs' actions against the corporate entities should be compelled to go to arbitration. If arbitration is ordered, the corporate entities would be dismissed from this case and subject to arbitration, leaving no corporations in this action. As a result, the Court finds that the Motion to Amend involves matters affected by the appeal.

In addition, the Court finds that the stay should remain in place because the arbitration issues on appeal have a direct bearing on whether the causes of action against the individual defendants are also subject to arbitration. If the Court of Appeals finds that arbitration is appropriate as to the corporate defendants, arbitration would also be appropriate to the individuals addressed in Plaintiffs' Motion to Amend. If, on the other hand, the Plaintiffs moved forward with their Motion to Amend and was permitted to add additional parties, the Defendants have indicated their intent to move to compel arbitration as to the new defendants. This would result in duplicative proceedings to compel arbitration and, potentially, a second notice of appeal. This duplication of efforts regarding arbitration would result in increased and unnecessary costs, inefficiency for the parties, and inefficiency for the Circuit and Appellate Courts.

The Court also notes that the Plaintiffs' Motion to Amend was previously scheduled for a hearing on October 26, 2020. At that time, Defendants requested that the Court continue the hearing based on the pending Motion to Reconsider the arbitration order (and any related appeal). The Court granted the continuance following Defendants' briefing and arguments.

CONCLUSION

For the reasons discussed above and based on the arguments presented by counsel in their briefs and oral arguments, the Plaintiffs' Motion to Lift the Automatic Stay is DENIED.

IT IS SO ORDERED.

The Honorable Courtney Clyburn Pope
Presiding Judge, 2nd Judicial District

February __, 2021



Aiken Common Pleas

Case Caption: Charles S Rudd , plaintiff, et al VS Pepper Hill Nursing And Rehab
Center Llc , defendant, et al
Case Number: 2019CP0202840
Type: Order/Lift Automatic Stay

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2021-03-16 16:03:00 page 5 of 5

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0202840

Charles S Rudd et al
PLAINTIFF(S)

Pepper Hill Nursing And Rehab Center 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:

Plaintiff's Motion to Alter/Amend is DENIED.

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 06/15/2021 .

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.



Aiken Common Pleas

Case Caption: Charles S Rudd , plaintiff, et al VS Pepper Hill Nursing And Rehab Center Llc , defendant, et al

Case Number: 2019CP0202840

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2021-06-15 18:55:11 page 3 of 3

RECEIVED

Sep 30 2021

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 29, 2021

s/Brandon R. Gottschall

Mark V. Gende, SC Bar No. 72835

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