

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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**RECEIVED**  
**Nov 19 2021**  
**SC Court of Appeals**

Appeal from Charleston County  
Court of Common Pleas  
The Honorable Debra R. McCaslin, Circuit Court Judge

Appellate No. 2021-000487  
C/A No. 2020-CP-10-02902

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Michelle Cha Holliman, individually and as personal representative  
of the Estate of Allen B. Holliman,

Respondent,

v.

We Are Sharing Hope SC, Medical University of South Carolina,  
United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker,

Defendants,

of which We Are Sharing Hope SC and United Network for Organ Sharing are the

Appellants.

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**RECORD ON APPEAL**  
**Vol. 1 (pp. 1-322)**

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**HOOD LAW FIRM, LLC**

Mary Agnes Hood Craig (SC #6960)  
Jean Marie Jennings (SC #100651)  
172 Meeting Street  
Post Office Box 1508  
Charleston, SC 29402  
(843) 577-4435

**Attorneys for Appellant**  
**We Are Sharing Hope SC**

**HALL BOOTH SMITH, P.C.**

Jack G. Gresh, S.C. Bar No. 75188  
Lauren Spears Gresh, S.C. Bar No. 100994  
111 Coleman Blvd Suite 301  
Mount Pleasant, SC 29464  
(843) 720-3460

**Attorneys for Appellant**  
**United Network for Organ Sharing**

**WYCHE, P.A.**

John C. Moylan, III (S.C. Bar 11227)  
Lucy Dinkins (S.C. Bar 101177)  
James H. May (S.C. Bar 77278)  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
803-254-6542

Rachael L. Anna (S.C. Bar 100486)  
200 E. Camperdown Way  
Greenville, SC 29601  
Telephone: (864) 242-8200

**Attorneys for Respondent**  
**Michelle Cha Holliman**

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## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1002902

Michelle Cha Holliman et al  
PLAINTIFF(S)

We Are Sharing Hope Sc 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:

Plaintiff's Motion to Compel As to Sharing Hope is granted and Sharing Hope's motion to quash is denied. As to MUSC, the Plaintiff's motion to compel is denied. The motion for protective order is granted.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/23/2020 .

Medical University Of South Carolina

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.

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Charleston Common Pleas

**Case Caption:** Michelle Cha Holliman , plaintiff, et al VS We Are Sharing Hope Sc  
, defendant, et al

**Case Number:** 2020CP1002902

**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-07-23 12:46:46 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-2902

**ORDER DENYING DEFENDANT  
UNITED NETWORK FOR ORGAN  
SHARING'S MOTION TO DISMISS**

Pending before the Court is Defendant United Network for Organ Sharing's ("UNOS") motion to dismiss filed on August 20, 2020. Having carefully considered the briefs submitted by the parties, it is the judgment of the Court that UNOS's motion to dismiss is denied.

UNOS argues that it should be dismissed from this case because the Court lacks personal jurisdiction over UNOS, and UNOS is immune from civil liability. UNOS also asserts that Plaintiff's Complaint fails to state a claim for punitive damages or special damages. Each of these contentions fails.

UNOS claims that the Court lacks personal jurisdiction over it because UNOS is a nonprofit 501(c)(3) organization headquartered in Virginia, and it lacks sufficient minimum contacts with South Carolina such that subjecting it to suit in South Carolina would violate due process. Plaintiff's Complaint alleges that UNOS manages and serves as the one and only organ transplant system for the United States, which is known as the Organ Procurement and

Transplantation Network (“OPTN”), pursuant to a contract with the federal government. Compl. ¶ 9. The Complaint further explains that, according to UNOS’s own website, its responsibilities as the OPTN include managing the national transplant waiting list, matching organ donors and recipients, monitoring every organ match in the United States, and managing every organ transplant in the country. *Id.* ¶¶ 10-11. Thus, according to UNOS’s own website, it is involved in every organ transplant in the country, including those involving donors and recipients in South Carolina, which UNOS’s website states is in its “Region 11,” and including Allen Holliman’s (“Mr. Holliman”) transplant at issue in this case and the organ donor whose lungs Mr. Holliman received.

Plaintiff’s Complaint also alleges that UNOS reported the donor lungs that were transplanted into Mr. Holliman as available for transplant, listed the donor as having the incorrect blood type, and matched Mr. Holliman with the donor lungs he received. *Id.* ¶ 25. Such contacts in connection with Mr. Holliman (who was a South Carolina resident) and his transplant (which occurred in South Carolina) are more than sufficient for the Court to exercise personal jurisdiction over UNOS. *See* S.C. Code § 36-2-803; *see also, e.g., State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 88-91, 666 S.E.2d 218, 221-23 (2008). UNOS’s brief suggests, without citing supporting authority, that a nonprofit entity headquartered outside of South Carolina can never be subject to a South Carolina court’s jurisdiction, but that is plainly wrong and unsupported by law. Accordingly, the Court holds that Plaintiff’s Complaint makes a clear prima facie showing of the Court’s personal jurisdiction over UNOS. *See, e.g., Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993).

UNOS also posits that Plaintiff’s claims against it should be dismissed because it is immune from civil liability under the South Carolina Revised Uniform Anatomical Gift Act (the

“Act”), S.C. Code §§ 44-43-300 *et seq.* The Act governs various aspects of the making of anatomical gifts, including the individuals authorized to make anatomical gifts, the methods of making anatomical gifts, the amendment or revocation of an anatomical gift, and documentation of a person’s anatomical gift or refusal to make an anatomical gift. *See* S.C. Code §§ 44-43-300 *et seq.* By its own terms, the Act applies only to an “anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift,” and it defines an “anatomical gift” as “a donation of all or part of a human body.” §§ 44-43-310; 44-43-305(3). There is no dispute in this case regarding whether the donor whose lungs Mr. Holliman received consented to be an organ donor. Accordingly, the Act is inapplicable to this wrongful death case involving a failed organ transplant.

Moreover, the Act, by its express terms, does not provide any immunity for cases alleging malpractice, which this case does. § 44-43-385(A). For circumstances in which the Act is potentially applicable, it only affords protection for a defendant who has “act[ed] in good faith” and “in accord with the terms of this article.” *Id.* Thus, even if the Act were applicable to this case, which the Court holds it is not, whether UNOS acted in good faith and in accordance with the terms of the Act are factual issues that cannot be decided on a motion to dismiss. *See, e.g., Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff relief on any theory, then dismissal under Rule 12(b)(6) is improper.” (citations omitted)).

UNOS asserts that it is also immune from civil liability under Virginia Code § 32.1-127.1, without providing any analysis of whether the claims against it should be governed by South

Carolina or Virginia law. The Court need not decide which state's laws govern Plaintiff's claims against UNOS because UNOS is not afforded blanket immunity under either state's laws. Virginia Code § 32.1-127.1 provides that it applies to officers of hospitals and representatives of organ procurement organization. Va. Code § 32.1-127.1. UNOS is neither a hospital nor an organ procurement organization, and, therefore, the statute is inapplicable to UNOS. Furthermore, the statute provides protection only when the extensive requirements set forth in Va. Code § 32.1-127 have been followed. §§ 32.1-127 and 127.1. Even if UNOS were subject to Va. Code § 32.1-127.1 under some circumstances, which the Court holds it is not, determining whether there had been compliance with the many requirements of § 32.1-127.1 would not be appropriate on a motion to dismiss. *See, e.g., Doe v. Marion*, 373 S.C. at 395, 645 S.E.2d at 247.

Lastly, the Court rejects UNOS's contention that Plaintiff's claims for punitive and special damages should be dismissed. The Court finds that Plaintiff's Complaint satisfies the pleading standards, and it is premature at this stage to determine what types of damages Plaintiff might be entitled to recover. UNOS argues that the South Carolina Solicitation of Charitable Funds Act prohibits Plaintiff from recovering punitive damages against it, but it cannot be determined at this stage whether an exception to the Act might apply. Moreover, UNOS fails to explain why it maintains the South Carolina Solicitation of Charitable Funds Act prohibits punitive damages, but Virginia law affords it immunity. The Court declines to determine whether South Carolina or Virginia law governs Plaintiff's claims against UNOS because, either way, it is premature at this stage to determine whether an award of punitive damages might be warranted.

For the foregoing reasons, it is the judgment of the Court that UNOS's motion to dismiss is DENIED.



---

The Honorable Jennifer McCoy  
South Carolina Circuit Judge, Ninth Circuit

\_\_\_\_\_, 2020  
Charleston, South Carolina



Charleston Common Pleas

**Case Caption:** Michelle Cha Holliman , plaintiff, et al VS We Are Sharing Hope Sc  
, defendant, et al

**Case Number:** 2020CP1002902

**Type:** Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-12-26 15:43:01 page 6 of 6

|                                              |   |                                  |
|----------------------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA                      | ) | IN THE COURT OF COMMON PLEAS     |
|                                              | ) |                                  |
| COUNTY OF CHARLESTON                         | ) | NINTH JUDICIAL CIRCUIT           |
|                                              | ) |                                  |
| Michelle Cha Holliman, individually and      | ) | C/A No. 2020-CP-10-02902         |
| as personal representative of the Estate of  | ) |                                  |
| Allen B. Holliman,                           | ) |                                  |
| Plaintiff,                                   | ) |                                  |
|                                              | ) |                                  |
| vs.                                          | ) | <b>ORDER REGARDING DISCOVERY</b> |
|                                              | ) |                                  |
|                                              | ) |                                  |
| We Are Sharing Hope SC, Medical              | ) |                                  |
| University of South Carolina, United Network | ) |                                  |
| for Organ Sharing, Jacqueline Honig, M.D.,   | ) |                                  |
| and Darla Welker,                            | ) |                                  |
|                                              | ) |                                  |
| Defendants.                                  | ) |                                  |

This matter comes before the Court by way of a Motion to Compel brought by Plaintiff Michelle Cha Holliman (“Mrs. Holliman”), individually and as personal representative of the Estate of Allen Holliman (“Mr. Holliman”) (collectively “Plaintiff”). Plaintiff seeks an Order compelling Defendant We Are Sharing Hope SC (“WASH”) to produce documents withheld on a claim of peer review privilege, to provide complete discovery responses to Plaintiff’s discovery requests, and to obtain full and complete answers to questions posed to Defendant Darla Welker (“Ms. Welker”) during her deposition. The matter was scheduled to be heard during the week of March 15, 2021, and the parties submitted briefs to the Court to rule without oral argument. After a status conference was held on April 13th, 2021, via WebEx Virtual Courtroom, the Court further provided the parties the opportunity to submit supplemental memoranda in support of the arguments described herein. For the reasons set forth below, this Court declines to extend the application of the peer-review privilege under South Carolina law to Defendant WASH and therefore GRANTS Plaintiff’s Motion to Compel.

### **Introduction**

Plaintiff alleges that Allen B. Holliman suffered from lung problems and that physicians at Defendant Medical University of South Carolina (“MUSC”) determined he was a suitable candidate for a double-lung transplant and subsequently placed him on a transplant list. On

November 27, 2018, MUSC informed Holliman he matched with a pair of available donor lungs from donor AFKY198, 2018-0516, and 18-15828 (the “Donor”), which were procured and distributed by Defendant WASH, an organ procurement organization (“OPO”) that provides organ donor services to hospitals throughout South Carolina. Holliman’s MUSC physicians approved him for a double-lung transplant after finding no contraindications for pursuing the transplant. On November 27, 2018, Holliman underwent a double-lung transplant at MUSC. During the surgery, Holliman had complications, and MUSC subsequently discovered the Donor had type A blood, which was incompatible with Holliman’s type O blood. Holliman passed away on November 28, 2018, from hyperacute rejection of his transplanted lungs. Plaintiff alleges Defendant UNOS (“UNOS”) is an organization headquartered in Virginia that manages and serves as the organ transplant system in the United States, the Organ Procurement and Transplantation Network (the “OPTN”), under a contract with the federal government. UNOS manages and serves as the one and only organ transplant system in the United States, and as set forth in Plaintiff’s Complaint, UNOS’s responsibilities as the OPTN for the United States include, “managing the national transplant waiting list,” “matching donors to recipients,” and “monitoring every organ match.” Plaintiff alleges WASH evaluated the suitability of the lungs for transplant, listed the Donor as having type O blood, and distributed the lungs for transplant. Specifically, WASH was the entity responsible for determining the Donor’s blood type by testing at least two blood samples from the Donor indicating a blood-type match.

In discovery, Plaintiff has sought to obtain 335 pages of documents from WASH and deposition responses from WASH’s employee Ms. Welker, who is also a defendant in this case. WASH argues that these documents and the deposition responses are privileged under South Carolina’s two peer review statutes. In the alternative, WASH asks this Court to extend the peer review protections potentially afforded under Virginia law, federal law, or to invoke public policy goals found in both state and federal law, which it argues weigh in favor of a finding that WASH is entitled to invoke peer review privilege, even if WASH does not fall within the current protections of South Carolina’s statutes. These materials, which have been described in WASH’s 4<sup>th</sup> Amended privilege log, were provided to this Court for *in camera* review. Upon review, this Court makes the following findings:

**1) Whether WASH is Entitled to Peer Review Privilege Under South Carolina law**

WASH argues that the withheld materials are protected under the plain language of both the South Carolina's peer review statute, S.C. Code Ann. § 40-71-20 and South Carolina's "new" or supplemental peer review statute, S.C. Code Ann. § 44-7-392. Plaintiff argues that neither statute permits WASH to assert peer review privilege, as they are not included in the terms of the statute.

The cardinal rule of statutory interpretation is to determine the intent of the legislature. *Georgia–Carolina Bail Bonds. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct. App.2003); *see also Gordon v. Phillips Utils. Inc.*, 362 S.C. 403, 608 S.E.2d 425 (2005) ("The primary purpose in construing a statute is to ascertain legislative intent."); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 205, 544 S.E.2d 38, 44 (Ct.App.2001) ("The quintessence of statutory construction is legislative intent."). However, all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *McClanahan v. Richland County Council*, 350 S.C. 433, 567 S.E.2d 240 (2002). The legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct. App.2004). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003).

**A. S.C. Code § 40-71-20**

WASH first asserts that it is entitled to invoke peer review privilege pursuant to SC Code Ann. § 40-71-20, entitled "Confidentiality of certain proceedings, records and information; reporting accidents and incidents". Section (A) of the statute provides:

"All proceedings of and all data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties are confidential unless a respondent in the proceeding requests in writing that they be made public. These proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action except upon appeal from the committee action. Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented

during the committee proceedings, nor shall any complainant or witness before the committee be prevented from testifying in a civil action as to matters of which he has knowledge apart from the committee proceedings or revealing such matters to third persons.”

S.C. Code Ann. § 40-71-20 (A)

The “committee referred to in § 40-71-10” is “an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section . . . .” S.C. Code Ann. § 40-71-10(B). Section 40-70-10 describes the entities who are provided the authority to invoke peer-review privilege in § 40-71-20 (A), which includes “legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutic, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society and any foundations composed of members of these societies”.

WASH is a South Carolina non-profit corporation that does business as an organ procurement organization and procures and distributes donor organs. WASH does not assert that it is an appointed committee under the statute, nor that it is a committee appointed by a professional society to maintain the professional standards of the society. WASH does not claim to have a majority of eligible licentiates in the area it serves (South Carolina), and it does not have more than a handful of professional licentiates of any type. The plain language of the statute clearly provides protection to committees appointed by a professional society to maintain the professional standards of the society. WASH is not a committee appointed to maintain the professional standards of a professional society, its documents and Ms. Welker’s knowledge regarding WASH’s investigations relating to Mr. Holliman’s death are therefore not subject to peer review privileged under § 40-71-20.

#### **B. S.C. Code Ann. S.C. Code § 44-7-392**

WASH next argues that it may properly invoke peer review privilege pursuant to § 44-7-392(A)(1), which states: “[a]ll proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital's governing body, or

physician practices owned by the hospital (its parent or subsidiaries) relating to the following are confidential . . . .” WASH does not assert that it is a hospital, or that it otherwise falls within the entities specifically described in the statute. Because WASH is not a hospital, nor any entity specifically described in the plain language of the statute, its documents and any knowledge Ms. Welker has about WASH’s investigations related to this case are not privileged under § 44-7-392.

### **C. Documents Provided to a Source which Could Invoke Peer Review Privilege**

WASH next argues that some of its documents and the information sought during Ms. Welker’s deposition are privileged because they were shared with both Grand Strand Hospital and a committee of Defendant United Network Organ Sharing (“UNOS”). This argument does not extend protection to WASH. Both peer review statutes expressly provide that documents and information available from sources other than the hospital or committee protected by the statute are not immune from discovery from such other sources simply because they were presented to the hospital or the committee. Section 40-71-20(A) provides that “Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings . . . .” Likewise Section 44-7-392(A)(3) provides that “Data, documents, records, or information which are otherwise available from original sources are not confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.”

In this context, the South Carolina Supreme Court has explained: “We interpret the ‘otherwise available’ language [of § 40-71-20] to mean that information that is available from a source other than the committee does not become privileged simply by being acquired by the review committee. Accordingly, the statute does not protect information if obtained from alternative sources.” *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993).

Therefore, even if WASH shared some of its documents and information with entities that, unlike WASH, are subject to a peer review statute, such documents and information are still subject to discovery from WASH pursuant to the plain language of the statutes.

## 2) Whether Public Policy Requires this Court to Grant WASH Peer Review Privilege

WASH next argues that the Court should extend peer review privilege under both Virginia state law and federal law, and that public policy favors doing so. Specifically, WASH, a South Carolina non-profit, asks the Court to extend the peer review protections provided by Virginia Code § 8.01-581.17, on the basis that Defendant UNOS is a Virginia entity and that Defendant UNOS required WASH to participate in the self-critical quality assurance and peer review process. WASH also argues public policy behind federal law, including the Patient Safety Quality Improvement Act of 2005 (“PSQIA”) promotes the extension of peer review privilege to organizations like WASH, even if the statute does not expressly do so. See 42 U.S.C.A. § 299b-22.

Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the *lex loci delicti*, the law of the state in which the injury occurred. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997); *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994). However, South Carolina also recognizes a “public policy exception” to the enforcement of an out of state law. *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001).

WASH, at length, implores this Court to extend peer review privilege on the basis of public policy. WASH claims that compelling the disclosure of these documents will lead to “an immediate, chilling effect on full, candid, self-critical assessment in violation of the clearly mandated South Carolina public policy for the same” and that permitting said disclosure of any documents provided to entities who could properly invoke the peer review privilege would “nullify the protections to which other entities are entitled and would undermine the privilege altogether”.

South Carolina indeed recognizes and encourages the policy of extending peer review privilege to promote qualitative review to improve patient care, and the South Carolina Supreme Court has held, “[t]he overriding public policy of the confidentiality statute is to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care.” *Durham v. Vinson*, 360 S.C. 639, 646, 602 S.E.2d 760, 763 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61, 439 S.E.2d 257, 259 (1993). While WASH’s public policy arguments are not without merit, under the plain meaning rule, it is not this Court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509



S.E.2d 261 (1998). Therefore, this Court declines to invoke the public policy exception to extend peer review privilege where the Legislature and the statutes at issue clearly did not do so.

### **Conclusion**

Upon careful review, this Court finds that Defendant We Are Sharing Hope is not entitled to claim peer review privilege under South Carolina law, and this Court must effectuate the plain meaning of the statutes, rather than rely on the public policy exception to extent peer review privilege to new and unique entities. The Court therefore GRANTS the Plaintiff's Motion to Compel and DENIES Defendants Motions for Protective Orders.<sup>1</sup> The Court further orders that:

- 1) WASH produce all of the documents it has withheld on a claim of peer review privilege, which were submitted to the Court for an in camera review and which have been Bates-labeled WASH Privileged 0001-0335;
- 2) Ms. Welker's deposition be reconvened and that Ms. Welker answer all questions she was previously instructed not to answer as well as any related questions; and
- 3) WASH shall provide complete discovery responses to any discovery requests to which a claim of peer review privilege was asserted.

THEREFORE, IT IS HEREBY ORDERED THAT Plaintiff's Motion to Compel is hereby granted, Defendants collective Motions for Protective Orders submitted in opposition are hereby DENIED, and Defendant We Are Sharing Hope shall produce the documents described herein within seven (7) days of this Court's Order.

IT IS SO ORDERED.

---

Debra R. McCaslin  
Circuit Court Judge

Lexington, SC  
April 29, 2021

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<sup>1</sup> The Court declines to award Plaintiff attorneys fees and costs pursuant to § 40-71-30, as the Court finds WASH had a good-faith basis for asserting the claim of confidentiality, and that said claim was not made unreasonably. ("In the event the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.")



Charleston Common Pleas

**Case Caption:** Michelle Cha Holliman , plaintiff, et al VS We Are Sharing Hope Sc ,  
defendant, et al

**Case Number:** 2020CP1002902

**Type:** Order/Other

So Ordered

Debra R. McCaslin

Electronically signed on 2021-04-29 13:53:04 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as personal  
representative of the Estate of Allen B. Holliman,

Plaintiff(s)

vs.

WE ARE SHARING HOPE SC,

Defendant(s)

Submitted By: John C. Moylan, III  
Address: 801 Gervais Street, Suite B  
Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 ~~NI~~ ~~EP~~ 10 - 0060

SC Bar #: 11227  
Telephone #: (803) 254-6542  
Fax #: (803) 254-6544  
Other: \_\_\_\_\_  
E-mail: jmoylan@wyche.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*\*If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/<br>Warranty (160)<br><br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) _____ | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 ____ -NI- ____ - ____<br><input checked="" type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299) _____                     | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Libel (380)<br><input type="checkbox"/> Other (399) _____                                                                                                                                                                                                                               | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499) _____                                                                                                                                                      |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599) _____                                                                                                                                                                                                                                                                                    | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture—Consent Order (850)<br><input type="checkbox"/> Other (899) _____ | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers<br>Compensation Settlement<br>Approval (780)<br><input type="checkbox"/> Incapacitated Adult Settlement<br>(790)<br><input type="checkbox"/> Other (799) _____ | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><br><input type="checkbox"/> Other (999) _____ |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699) _____<br><input type="checkbox"/> Sexual Predator (510)<br><input type="checkbox"/> Permanent Restraining Order (680)<br><input type="checkbox"/> Interpleader (690)                                                                                                    | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

Submitting Party Signature: \_\_\_\_\_

ROA 18

Date: July 15, 20119

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

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

**Pursuant to the ADR Rules, you are required to take the following action(s):**

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

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

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

WE ARE SHARING HOPE SC,  
Defendant.

Civil Action No. 2019-NI-10-60

NOTICE OF INTENT TO FILE SUIT

FILED  
2019 JUL 17 PM 12:46  
JULIE L. ANDERSON  
CLERK OF COURT

PLEASE TAKE NOTICE that the Plaintiff in the above-captioned matter, pursuant to South Carolina Code § 15-79-125, intends to file suit against the above-named Defendant. The parties must participate in a mediation conference within one hundred twenty (120) days of service of this Notice of Intent to File Suit.

#### **THE PARTIES**

1. The plaintiff is Michelle Cha Holliman ("Mrs. Holliman"), acting individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"). Mrs. Holliman is a citizen and resident of Aiken County, South Carolina, and she is the widow of Mr. Holliman.

2. Defendant We Are Sharing Hope SC ("Defendant") is an organ and tissue recovery service provider located in Charleston, South Carolina.

3. Defendant is the designated Organ Procurement Organization ("OPO") for organ recovery services in most of South Carolina, and Defendant provides organ and tissue donor services to numerous hospitals throughout South Carolina.

4. Defendant holds itself out to the public as a competent and qualified OPO.

5. Defendant has a duty to provide competent and qualified medical services in the procurement, testing, evaluation, reporting, and distribution of organs for donation.

### **STATEMENT OF THE FACTS**

6. Mr. Holliman suffered from lung problems, and physicians at the Medical University of South Carolina (“MUSC”) determined that he was in need of a double-lung transplant. The physicians at MUSC further determined that Mr. Holliman was a suitable candidate for such a transplant.

7. On or about November 27, 2018, Mr. Holliman was informed by physicians at MUSC that there was an available pair of donor lungs that was a match for him. Mr. Holliman’s physicians approved him for a double-lung transplant with the available donor lungs, finding that there were no contraindications to pursuing transplant and that Mr. Holliman was in a suitable condition for the surgery.

8. That same day, November 27, 2018, Mr. Holliman underwent a double-lung transplant at MUSC.

9. According to Mr. Holliman’s medical records, the lungs transplanted into Mr. Holliman were from the donor associated with donor identification numbers AFKY198, 2018-0516, and 18-15828 (“the Donor”).

10. Upon information and belief, Defendant was the OPO that procured and distributed the Donor’s lungs that Mr. Holliman received.

11. Upon information and belief, Defendant, as the OPO for the Donor’s lungs, ordered pre-transplant testing of the lungs, evaluated the suitability of the lungs for transplant, reported the lungs as available for transplant, and distributed the lungs for transplant.

12. Mr. Holliman began suffering substantial complications during his lung transplant

surgery. The transplant surgery was eventually completed, but Mr. Holliman remained in critical condition and continued to have significant problems, including but not limited to metabolic acidosis and pronounced hemodynamic instability. Mr. Holliman was given multiple blood transfusion products but never became stable.

13. Upon information and belief, Dr. Timothy Whelan (“Dr. Whelan”) of MUSC was notified in the early morning of November 28, 2018, that Mr. Holliman might have received donor lungs of a blood type incompatible with Mr. Holliman’s blood type.

14. Upon information and belief, Dr. Whelan was informed that another transplant center had tested the blood of the Donor whose lungs Mr. Holliman received and found that the Donor had type A blood.

15. Upon information and belief, MUSC tested the blood of Mr. Holliman’s Donor and also found that the Donor had type A blood.

16. Mr. Holliman had type O blood. Type O blood is incompatible with type A blood.

17. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. Mr. Holliman’s cause of death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs. Mr. Holliman died because the donor lungs he received were of a blood type that was incompatible with his blood type.

18. According to Policy 2 of the Organ Procurement and Transplantation Network, Defendant, as the OPO for the Donor’s lungs, was responsible for determining the Donor’s blood type by testing at least two blood samples from the Donor drawn on separate occasions, having different collection times, and submitted as separate samples. The two blood samples from the Donor were required to have results indicating the same blood type.

19. Defendant ordered pre-transplant blood testing for the Donor whose lungs Mr.

Holliman received from VRL Eurofins (“VRL”). VRL issued two final pre-transplant testing reports for the Donor to Defendant. Both reports showed the Donor’s blood type was indeterminate.

20. Upon information and belief, Defendant failed to determine the Donor’s blood type with two Donor blood samples indicating the same blood type.

21. Defendant should not have reported the Donor’s lungs as available for transplant and should not have distributed the Donor’s lungs for transplant given the VRL test results indicating that the Donor’s blood type could not be determined.

22. As a result of Defendant’s wrongful reporting of the availability of and distribution of the Donor’s lungs for transplant despite pre-transplant laboratory testing results showing that the Donor’s blood type could not be determined, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

23. Defendant’s negligence, gross negligence, and reckless disregard for the health, wellbeing, and rights of Mr. Holliman caused his death.

24. Defendant directly and vicariously through its agents, servants, contractors, and employees failed to provide the requisite and adequate standard of care to Mr. Holliman and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Notice.

25. Attached to this Notice of Intent to Sue is the affidavit of Alexander Duncan, M.B., Ch.B. Dr. Duncan is a licensed physician and is board certified in transfusion medicine and clinical pathology. As Dr. Duncan testifies in his affidavit, Defendant deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of and distributing the Donor’s lungs for transplant in the following ways:



- a. By reporting the availability of the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL Eurofins reporting that the Donor's blood type was indeterminate;
- b. By reporting the availability of the Donor's lungs for transplant without having two blood samples from the Donor indicating the same blood type;
- c. By distributing the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL Eurofins reporting that the blood type for the Donor was indeterminate; and
- d. By distributing the Donor's lungs for transplant without having two blood samples from the Donor indicating the same blood type.

26. Defendant's failure to follow the recognized and generally accepted standards of care in reporting the availability of and distributing for transplant the Donor's lungs proximately caused Mr. Holliman's death.

27. As a direct and proximate result of Defendant's failure to follow the recognized and generally accepted standards of care, Mr. Holliman wrongfully and prematurely lost his life; Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband; and Mrs. Holliman incurred substantial damages and expenses as a result of Mr. Holliman's wrongful death and loss of consortium.

28. If Mr. Holliman had received donor lungs of a blood type compatible with his blood type, he most likely would have successfully recovered from a double lung transplant, and Mrs. Holliman would not have been deprived Mr. Holliman's services, care, comfort, and companionship or have suffered substantial damages and expenses from his wrongful death.

29. Therefore, Mrs. Holliman, both individually and as personal representative of the

Estate of Mr. Holliman, is entitled to judgment for full direct, consequential, and special damages against Defendant in an amount to be determined by a jury, unless the parties can reach a resolution through mediation.

**AFFIDAVIT OF ALEXANDER DUNCAN, M.B., Ch.B.**

The affidavit of expert Alexander Duncan, M.B., Ch.B., specifying the negligent acts and omissions claimed and the factual basis for each claim based upon the available evidence at this time, is attached pursuant to S.C. Code § 15-36-100.

**ANSWERS TO STANDARD INTERROGATORIES**

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

**Response:**

- a. Michelle Holliman  
Emily Holliman  
Lauren Holliman  
Laina Yoswein  
These individuals may be contacted through the undersigned attorneys.
- b. The staff and employees of the Medical University of South Carolina who treated and cared for Mr. Holliman, including but not limited to Dr. Timothy Whelan, Dr. Luca Paeletti, Dr. Chadrick Denlinger, Dr. Sanford Zeigler, and Dr. Zipporah Krishnasami.
- c. The staff and employees of Defendant.
- d. Alexander Duncan, M.B., Ch.B.  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

Plaintiff is not in possession of any written or recorded statements from any witnesses other than the attached expert affidavit of Dr. Alexander Duncan.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the parties that relate to the claim or defense in the case.

**Response:** Mr. Holliman's medical records listed in Exhibit A to Dr. Duncan's expert affidavit.

3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

**Response:** Mr. Holliman received treatment from physicians at the Medical University of South Carolina in Charleston, South Carolina in connection with his double lung transplant. For further information, see response to Interrogatory Number 1.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

**Response:** Unknown at this time.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**Response:** In addition to Mr. Holliman's pain and suffering, Mr. Holliman sustained damages for his wrongful death, and Mrs. Holliman has sustained damages for emotional distress, loss of consortium, funeral expenses, and other such damages as will be supplemented during discovery as further damages are identified and quantified.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

**Response:**

Alexander Duncan,  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

**Response:**

Mrs. Holliman, Emily Holliman (Mr. Holliman's daughter), Lauren Holliman (Mr. Holliman's daughter), and Laina Yoswein (Mrs. Holliman's daughter) will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and wrongful death. They will also testify regarding the damages incurred as a result of Mr. Holliman's wrongful death and Mrs. Holliman's loss of consortium.

It is anticipated that the staff and employees of the Medical University of South Carolina who treated and cared for Mr. Holliman will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and death.

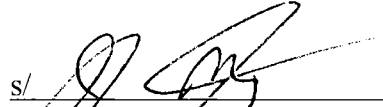
It is anticipated that the staff and employees of Defendant will testify regarding the testing, evaluation, reporting the availability of, and distribution of the donor lungs for transplant that Mr. Holliman received.

Dr. Duncan will testify about the opinions in his attached affidavit and respond to any defenses suggested by Defendant.

[Signature Block on Following Page]

Respectfully submitted,

Wyche, P.A.

  
s/

John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

801 Gervais Street, Suite B

Columbia, South Carolina 29211

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

July 15, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

WE ARE SHARING HOPE SC,

Defendant.

Civil Action No: \_\_\_\_\_

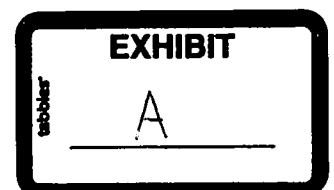
**AFFIDAVIT OF  
ALEXANDER DUNCAN, M.B., Ch.B.**

Personally appeared before me, Alexander Duncan, M.B., Ch.B., who being duly sworn  
hereby deposes and says that:

1. I am an expert in the fields of transfusion medicine and clinical pathology, and I  
am familiar with the generally recognized and accepted practices and procedures that would be  
followed by average, competent organ and tissue recovery providers and other health care  
providers caring for a patient being matched with and/or receiving a donated organ.

2. I have reviewed the medical records listed in Exhibit A attached hereto.

3. It is my opinion that We Are Sharing Hope SC (“Defendant”) wrongfully reported  
the availability of and distributed lungs for transplant from the donor associated with donor  
identification numbers AFKY198, 2018-0516, and 18-15828 (the “Donor”) despite pre-transplant  
laboratory testing results performed by VRL Eurofins at Defendant’s request, which reported that  
the blood type of the Donor could not be determined. It is further my opinion that Defendant’s  
wrongful reporting of the availability of and distribution of lungs from the Donor for transplant  
proximately caused Allen B. Holliman’s (“Mr. Holliman”) death.



4. It is my opinion, to a reasonable degree of medical certainty, that Defendant deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of and distributing for transplant lungs from the Donor in the following ways:

- a. By reporting the availability of the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL Eurofins reporting that the Donor's blood type was indeterminate;
- b. By reporting the availability of the Donor's lungs for transplant without having two blood samples from the Donor indicating the same blood type;
- c. By distributing the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL Eurofins reporting that the blood type for the Donor was indeterminate; and
- d. By distributing the Donor's lungs for transplant without having two blood samples from the Donor indicating the same blood type.

5. Mr. Holliman's physicians determined that he was in need of a double lung transplant, and he was placed on the transplant list.

6. Mr. Holliman was informed that there was an available pair of donor lungs that were a match for him, and he underwent a double lung transplant surgery on November 27, 2018.

7. Defendant was the source of the donor lungs that Mr. Holliman received.

8. Defendant requested pre-transplant testing of Donor's blood from VRL Eurofins. VRL Eurofins tested two samples of Donor's blood and transmitted reports of the test results to Defendant. Both reports listed the Donor's blood type as "indeterminate."

9. Mr. Holliman began suffering substantial complications during his lung transplant

surgery, and an additional surgeon had to be called in to assist with the surgery. The transplant surgery was eventually completed, but Mr. Holliman continued to suffer significant problems and remained unstable.

10. Mr. Holliman had type O blood. It was determined shortly after his lung transplant surgery that the donor of the lungs Mr. Holliman received had type A blood. Type A blood is incompatible with type O blood. Therefore, Mr. Holliman received ABO incompatible donor lungs.

11. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. According to Mr. Holliman's relevant medical records, the undisputed cause of his death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs.

12. It is my opinion, to a reasonable degree of medical certainty, that Defendant's deviations from the standards of care in reporting the availability of and distributing for transplant lungs from the Donor proximately caused Mr. Holliman's death and that Mr. Holliman most likely would have successfully recovered from a double lung transplant of ABO compatible lungs.

13. Attached as Exhibit B is a copy of my curriculum vitae showing my education, training, licensures, board certifications, patents, teaching, publications, and experience in the fields of transfusion medicine and clinical pathology evidencing that I am competent to testify as to the matters stated above.

14. I am licensed to practice medicine in the State of Georgia, and I practice medicine in that State. I am board certified in transfusion medicine and clinical pathology. I have regularly engaged in the active practice of transfusion medicine and clinical pathology for at least three of the last five years immediately preceding this opinion as required by S.C. Code § 15-36-100.

15. If new information becomes available, my opinions are subject to change, and



additional opinions may be rendered.

Alexander Duncan M.D.  
Alexander Duncan, M.B., Ch.B

SWORN to by me this 12 day of June 2019

Sue C. Searcy  
Notary Public for the State of Georgia  
My Commission Expires 7/12/19



Exhibit A  
to  
Affidavit of  
Alexander Duncan, M.B., Ch.B.

Records Reviewed by Alexander Duncan, M.B., Ch.B

Records for Allen B. Holliman from MUSC dated 2017-2018 (HOLLIMAN 000001 – 001095)

Admission Records and Consent Forms  
Patient History and Physical Records  
Operative Reports and Notes  
Surgery Report  
Consultation Reports  
Transfusion Service Blood Tag Reports  
Perfusion Services Reports  
Nurses Notes  
Progress Notes  
Lab Reports  
Imaging Reports  
ECG/EMG, Cardiac and GI Orders and Results  
Pathology Reports  
Medication Reports  
Committee Review Notes  
Telephone Encounter Reports  
Flowsheets  
Patient Education Notes  
Care Plan  
Report of Death Report  
Death Summary  
Autopsy Report

Records from VRL Eurofins for the donor associated with identification numbers AFK198, 2018-0516, and 18-15828 (VRL EUROFINS 000001 – 000104)

Test requisitions  
Testing records  
Final reports

Death Certificate for Allen B. Holliman

Exhibit B  
to  
Affidavit of  
Alexander Duncan, M.B., Ch.B.

**OFFICE ADDRESS**

Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

Telephone: (404) 712-4637

Fax: (404) 712-4632

**Email Address:** aduncan@emory.edu

**BIRTH DATE AND PLACE:** October 16, 1943 - Edinburgh, Scotland

**CITIZENSHIP:** United Kingdom. US. Permanent Resident

**CURRENT TITLES AND AFFILIATIONS**

**Academic Appointments:**

|              |                                                                                                                        |
|--------------|------------------------------------------------------------------------------------------------------------------------|
| 1984-present | Assistant Professor, Department of Pathology and Laboratory Medicine, Emory University School of Medicine, Atlanta, GA |
| 2008-present | Assistant Professor, Department of Hematology. Emory University School of Medicine, Atlanta GA.                        |

**Clinical Appointments:**

|              |                                                                                                                                             |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1986-present | Member, The Emory Clinic, Atlanta, GA                                                                                                       |
| 1988-present | Director, Special Coagulation Laboratory, Emory University Hospital, Atlanta, GA                                                            |
| 1996-2002    | Medical Director, Clinical Laboratories, Emory Adventist Hospital, Smyrna, GA                                                               |
| 2000-2003    | Hemapheresis Unit, Emory Healthcare, Atlanta, GA<br>Associate Director of Clinical Laboratory Services, Crawford Long Hospital, Atlanta, GA |
| 2002-2014    | Medical Director, Hemapheresis Unit, Emory Healthcare, Atlanta, GA                                                                          |

**PREVIOUS ACADEMIC AND PROFESSIONAL APPOINTMENTS:**

|           |                                                                                                                                     |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------|
| 1963-1970 | Medical Technologist, S.E. Scotland Blood Transfusion Service                                                                       |
| 1976-1977 | Intern in Medicine Surgery, Glasgow Royal Infirmary, Scotland                                                                       |
| 1977-1978 | Research Associate, San Diego Blood Bank, San Diego, CA                                                                             |
| 1984-1992 | Director, Transfusion Medicine and Hemostasis Laboratory<br>Grady Memorial Hospital, Atlanta, GA                                    |
| 1992-1996 | Medical Director, PERL (Pathology Emory Reference Laboratories), Emory Medical Laboratories, Emory University Hospital, Atlanta, GA |

**LICENSURES/BOARDS**

**Licensure:**

|              |                                                     |
|--------------|-----------------------------------------------------|
| 1968         | State registered Medical Technologist (U.K.) #V7288 |
| 1979         | State of Minnesota, #0024877                        |
| 1981         | State of Wisconsin, #23562                          |
| 1984-present | State of Georgia, #27049                            |

**Boards:**

|      |                                                            |
|------|------------------------------------------------------------|
| 1976 | Education certificate for Foreign Medical Graduate (ECFMG) |
| 1977 | Federation of State Medical Examiners (FLEX)               |
| 1982 | Board certification in Clinical Pathology                  |
| 1986 | Board certification in Internal Medicine                   |
| 1994 | Board certification in Transfusion Medicine                |

## ***EDUCATION***

1970-1976 M.B. Ch.B, University of Glasgow, Scotland  
1968-1970 B.S., Napier College, Edinburgh, Scotland, (Chemistry)  
1963-1970 Fellow-Institute of Medical Laboratory Technology, Napier College, Edinburgh, Scotland.

## ***POSTGRADUATE TRAINING:***

1976-1977 Intern in Medicine and Surgery, Glasgow Royal Infirmary, Scotland  
1978-1981 Residency in Clinical Pathology, Mayo Clinic, Rochester, MN,  
1981-1984 Residency in Internal Medicine, Mayo Clinic, Rochester, MN

## ***COMMITTEE MEMBERSHIPS***

### ***Institutional:***

1997-2003 Lab Operations Committee, Emory Medical Laboratory, Atlanta, GA  
1997-2002 Performance Improvement Committee, Emory Adventist Hospital, Smyrna, GA  
2000-2003 Medical Executive Committee and Laboratory Services at Emory Midtown Hospital

## ***EDITORSHIPS AND EDITORIAL BOARDS***

1997-2008 Blood Coagulation and Fibrinolysis

## ***MANUSCRIPT REVIEWER***

1997-2008 American Journal of Hematology  
1997-2008 Blood Coagulation and Fibrinolysis (an International Journal in Hemostasis and Thrombosis)

## ***SOCIETY MEMBERSHIPS***

American Association of Blood Banks  
American Association of Clinical Chemistry  
American Heart Association  
American Society of Clinical Pathology  
College of American Pathologists  
International Society of Thrombosis and Hemostasis  
NASCOLA, North American Specialized Coagulation Laboratory Association

## ***RESEARCH FOCUS***

Thrombophilia – Congenital & Acquired  
Hemostasis- Complications of Pregnancy & Reproduction  
Transfusion Medicine- Optimised Treatment of Complicated Bleeding

## ***PATENTS***

### ***Issued:***

1/89 #4801,452 Fibrinolytic composition (combination with fibrinolytic enzyme)  
6/89 #4837,014 An improved method for treating sickle cell anemia  
10/89 #4873,083 Improved fibrinolytic composition improved composition (treating tumors)

|       |           |                                                                                       |
|-------|-----------|---------------------------------------------------------------------------------------|
| 10/89 | #4874,915 | Apparatus for the rapid microwave thawing of blood, blood components and tissue       |
| 9/90  | #4954,679 | Method for the rapid thawing of cryopreserved blood, blood components and tissue      |
| 11/91 | #5064,643 | Improved method of treating sickle cell anemia (intravenous and intramuscular routes) |
| 1/92  | #5080,894 | Composition comprising of oxygen radical scavenger and surface active copolymer       |
| 1/92  | #5078,995 | Method of reducing tissue damage (with anticoagulants)                                |
| 2/92  | #5089,260 | Method of treating ischemic tissue                                                    |
| 3/94  | #5297,234 | Method and apparatus for the rapid thermal processing of transfusion fluid            |
| 11/94 | #5364,385 | Storage bag for blood and blood components                                            |
| 7/97  | #5648,071 | Method of treating tumors                                                             |

### ***CLINICAL SERVICE CONTRIBUTIONS***

|              |                                                      |
|--------------|------------------------------------------------------|
| 1994-present | Clinical Pathways Committees                         |
| 1998-present | Establishment of "Eats A Lot" Thrombophilia Database |
| 2000-present | Member of Anticoagulant Drug Guidelines committee    |

### ***FORMAL TEACHING***

#### ***Residency:***

|              |                                                                   |
|--------------|-------------------------------------------------------------------|
| 1984-present | Coagulation and Transfusion Medicine, Pathology Residency Program |
| 2006-present | Coagulation Medicine, Hematology Fellowship Program               |

#### ***Other:***

|              |                                 |
|--------------|---------------------------------|
| 1999-2002    | Atlanta Technical College       |
| 2008-present | Emory Medical Technology School |



### ***LECTURESHIPS, SEMINAR INVITATIONS AND VISITING PROFESSORSHIPS:***

1. **Duncan A.** 1993. Coagulation factors and natural inhibitors as therapeutic agents in hemostasis disease. XVII World Congress of Anatomic and Clinical Pathology. Acapulco, Mexico
2. **Duncan A.** 1993. Laboratory control of anticoagulant therapy. CLMA & ASMT meeting, Portland, Maine.
3. **Duncan A.** 1993. Fibrinolysis: The principals, the practice, the problems. Annual Convention, Northwest Florida Laboratory Association. Pensacola, FL.
4. **Duncan A.** 1993. Laboratory control of anticoagulant therapy (INR, or should it be called international nuisance ratio?) Workshop Update in Hematology and Hematopathology. Atlanta, GA
5. **Duncan A.** 1993. Recognition, diagnosis and treatment of inherited and acquire hypercoagulable states. Louisiana Coagulation Conference. Covington, Louisiana.
6. **Duncan A.** 1993. Overview of blood components. Am. Soc. Hospital Pharmacists. Atlanta, GA.
7. **Duncan A.** 1993. Basics of blood components and blood substitutes. Am. Soc. Hospital Pharmacists. Atlanta, GA.
8. **Duncan A.** 1994. Workshop 231: Coagulation tests in the diagnosis and management of arterial and venous thrombosis. AACC Meeting, New Orleans.
9. **Duncan A.** 1994. Lab role in monitoring of anticoagulant therapy. ASCLS Region X Spring Symposium, Ariz.
10. **Duncan A.** 1994. Current concepts in thrombophilia. La Raza Medical Center, Mexico City, Mexico
11. **Duncan A.** 1995. Thrombophilia current concepts and lab testing. Beijing Hospital, China.
12. **Duncan A.** 1995. Antiphospholipid antibodies. Univ. of Malaysia, Kuala Lumpur and Kota Baru.
13. **Duncan A.** 1995. Thrombophilia evaluation treatment. Univ. of Madras, India.
14. **Duncan A.** 1996. Genetic testing and thrombophilia. National Blood Transfusion Center, Kuala Lumpur, Malaysia.
15. **Duncan A.** 1996. Control and treatment for anticoagulation. Walt Disney Cancer Institute, Hospital, Orlando, FL.
16. **Duncan A.** 1996. Coagulation problems in community practice. Walt Disney Cancer Institute, Orlando, FL.
17. **Duncan A.** 1996. Coagulation problems in community practice. Piedmont Hospital, Atlanta, GA
18. **Duncan A.** 1997. Coagulation problems in the community: Who and what to evaluate. Emory School of Medicine Workshop: A potpourri of Clinical Disease for Primary Care Physicians and Specialist. Sea Island, GA.
19. **Duncan A.** 1997. Thrombotic risk factors and coronary heart disease; and free radicals, oxidative stress & hemostasis. ASCL, Atlanta, GA
20. **Duncan A.** 1998. Malignancy and markers of coagulation and hemostasis activation (MOCHA). Hamilton Civic Hospitals Research Center, McMaster University, Canada
21. **Duncan A.** 1998. The prothrombin gene mutation. An evolving story. Hamilton Civic Hospitals Research Center, McMaster University, Canada

22. **Duncan A.** 1999. Transfusion Medicine Grand Rounds, Emory University Hospital, Atlanta
23. **Duncan A.** 1999. Diagnosis and management of thrombophilia patients. University of Malaysia Hospital, Jahore Bahru.
24. **Duncan A.** 1999. Bleeding and clotting problems in the real world. St. Joseph Hospital, Benton Harbor, Michigan.
25. **Duncan A.** 1999. Laboratory management of anticoagulant therapy. Southern Regional Medical Center, Riverdale, GA.
26. **Duncan A.** 2000. Update in hemostasis, focus on management. National Blood Transfusion Center. Kuala Lumpur, Malaysia
27. **Duncan A.** 2000. Fat never killed anybody. University of Miami, Miami, FL.
28. **Duncan A.** 2000. D-dimer testing - a new tool for the hemostasis lab. Hershey Medical Center, Hershey, PA.
29. **Duncan, A.** 2001. New Coagulation Factor Products. SEABB Annual Meeting, Atlanta, GA
30. **Duncan, A.** 2001. Coagulopathy in the extremely small premature infant. Atlanta, GA.
31. **Duncan, A.** 2002. Clinic relevance of more sensitive routine coagulation reagents. Grand Rounds. Newark Beth Israel Medical Center, New Jersey
32. **Duncan A.** 2002. Update in coagulation testing. National Blood Transfusion Centre, Kuala Lumpur Malaysia
33. **Duncan A.** 2003. Xigris. A New Tool for Septic Shock. Medical Grand Rounds Emory University Hospital Atlanta GA.
34. **Duncan A.** 2003. Antiphospholipid Antibodies. Diagnosis and Treatment. Emory Clinic, Atlanta GA
35. **Duncan A.** 2003. Coagulation Issues in the Elderly. Beijing Hospital, Beijing China
36. **Duncan A.** 2003. Bleeding in the Surgical Patient. University of Minnesota Hospitals, Minneapolis, MN
37. **Duncan A.** 2003. Bleeding Issues in the Neonate. British Society of Hematology. Belfast. Northern Ireland.
38. **Duncan A.** 2003. The use of MOCHA's and other modern coagulation tests. National Blood Transfusion Centre, Dublin, Ireland
39. **Duncan A.** 2003. Modern Coagulation testing. International Society of Laboratory Hematology Meeting, Orlando FL.
40. **Duncan A.** 2003. Modern Coagulation Testing. Annual British Lab. Medicine Meeting London UK
41. **Duncan A.** 2004. Management of Bleeding, Role of rVIIa : Michigan State University Lansing MI
42. **Duncan A.** 2004. Bleeding in the Surgical & Medical Patient: Grand Rounds Temple University Hospital, Philadelphia PA
43. **Duncan A.** 2004. DIC and Sepsis: Swiss MedLab International Meeting, Lucerne Switzerland

44. **Duncan A.** 2004 Aspirin Resistance: Cardiology Grand Rounds University of Connecticut, Greenwich CT
41. **Duncan A.** 2004 New Test. New Pest, Stago Coagulation Symposium Milwaukee WI
42. **Duncan A.** 2005 The Management of Surgical and Medical Bleeding: National Blood Transfusion Centre, KL, Malaysia
43. **Duncan A.** 2005 Management & Monitoring of High Risk Pregnancies. OB Grand Rounds Grady Memorial Hospital, Atlanta GA
44. **Duncan A.** 2005 Management of Medical and Surgical Bleeding: University of Vermont Fletcher Medical Centre Burlington VT.
45. **Duncan A.** 2005 Aspirin Resistance: Cardiology Grand Rounds Emory Heart Centre Atlanta GA.
46. **Duncan A.** 2005 Recombinant F VIIa : ASCP teleconference.
47. **Duncan A** 2005 Transfusion Reactions. National Blood Transfusion Centre, Nairobi Kenya
48. **Duncan A** 2006 Management of High risk pregnancies. Florida Hospital Orlando Florida.
49. **Duncan A** 2006 Evaluation of Congenital and Acquired Thrombophilia . Grand Rounds, University of Nairobi Kenya
50. **Duncan A** 2006 Coagulopathies in the ICU. Grand Rounds Aga Khan University, Nairobi Kenya
51. **Duncan A** 2007 Visiting Scholar, University of Nairobi. Kenya
52. **Duncan A** 2008 DVT prevention & treatment in the medically ill patient. University of Mississippi Jackson MS
53. **Duncan A** 2008 Modern anticoagulant use and monitoring. Surgical Grand Rounds. Emory University Hospital Atlanta GA
- 54: **Duncan A** 2008 DVT prophylaxis in the medical ill patient. Grand Rounds: Tuscaloosa AL.
- 55: **Duncan A** 2008 DVT prophylaxis in the medical ill patient. Grand Rounds: Erlanger Medical Center. Chattanooga TN
56. **Duncan A.** 2008 Plenary Lecture. APECSA meeting Mombassa Kenya
57. **Duncan A.** 2009 Update in Anticoagulation. Surgical Grand Rounds Emory University Hospital Atlanta
58. **Duncan A** 2009 Visiting Lecturer, University of Nairobi.
59. **Duncan A** 2009 Diagnostica Stago National Hemostasis Symposium Atlanta GA
61. **Duncan A.** 2010 Grand Rounds, Department Orthopedic Surgery University of Nairobi .
62. **Duncan A.** 2010 Invited Speaker Louisiana Coagulation Symposium. New Orleans LA
63. **Duncan A.** 2010 Hematology Grand Rounds. NE. GA Regional Medical Centre Gainesville GA
64. **Duncan A.** 2010 Quest Diagnostics National Hemostasis Symposium Washington DC

65. **Duncan A.** 2010 Siemens Diagnostics National Symposium , New Orleans LA
66. **Duncan A.** 2010 Medical Grand Rounds Athens Regional Medical Centre Athens GA
67. **Duncan A.** 2010 Medical Grand Rounds Erlanger Hospital Chattanooga TN
68. **Duncan A.** 2010 Invited Speaker National Hospital Critical Care Meeting Atlanta GA
69. **Duncan A.** 2010 Plenary Lecture Founding Meeting of COPECSA Kampala, Uganda
70. **Duncan A.** 2012 Invited Speaker Loiusana Coagulation Symposium New Orleans.
71. **Duncan A.** 2012 Invited Speaker SEABB meeting Atlanta GA
71. **Duncan A.** 2012 Plenary Lecture PathNet Lab Meeting, Cape Town, South Africa
72. **Duncan A.** 2012 Plenary Lecture 1<sup>st</sup> National Hemostasis Symposium, Nairobi, Kenya
73. **Duncan A.** 2012 Invited Speaker Stago Coagulation Symposium, Boston MA
74. **Duncan A.** 2013 Invited Speaker Emory School of Global Health, Atlanta GA
75. **Duncan A.** 2013 Invited Speaker ACLPS Symposium Atlanta GA
76. **Duncan A.** 2013 Invited Speaker SEABB Symposium Atlanta
77. **Duncan A.** 2014 Visiting Lecturer University of Nairobi, Kenya
78. **Duncan A.** 2015 Grand Rounds Speaker University of Tennessee Chattanooga TN
78. **Duncan A.** 2015 Visiting Lecturer University of Nairobi, Kenya
79. **Duncan A.** 2016 Invited Speaker SEABB Symposium Atlanta GA
80. **Duncan A.** 2017 Invited Speaker Memorial Hospital Jacksonville FL
81. **Duncan A.** 2017 Invited Speaker Stanford University Palo Alto CA

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## BIBLIOGRAPHY

1. **Duncan A.**, V.J. Depratti, R.P. George. 1981. Elevated beta-TG levels associated with smoking and oral contraceptives. *Thromb Res* 21:4-5.
2. **Duncan A.**, D.B. Young. 1982. Limited usefulness of measurement of serumcolloid osmotic pressure. *Clin Chem* 28:1.
3. **Duncan A.**, E.J.W. Bowie, C.A. Owen Jr., D.N. Fass. 1985. A clinical evaluation of automated chromogenic tests as substitutes for conventional prothrombin time and activated partial thromboplastin time tests. *Clin Chem* 31:6.
4. Lucas F.V., **A. Duncan**, R. Jay, R. Coleman, P. Craft, B. Chan, L. Winfrey, D.R. Mungall, T Hirsh. 1987. A novel whole blood capillary technique for measuring the prothrombin time. *Am J Clin Pathol* 88:442-6.
5. Welles E.F., K.W. Prasse, **A. Duncan**, M.J. Morris. 1990. Antigenic assay for protein C determination of horses. *Am J Vet Res* 51:7.
6. Welles E.F., K.W. Prasse, **A. Duncan**. 1990. Chromogenic assay of equine plasminogen. *Am JK. Vet Res.* 51:7.
7. Stahl R., **A. Duncan**, M. Hooks, J.M. Henderson, W.D. Warren. 1990. A hypercoagulable state follows orthotopic liver transplantation. *Hepatology* 12:553-558.
8. Prasse K.W., D. Allen, J.N. Moore, **A. Duncan**. 1990. Evaluation of coagulation and fibrinolysis during the prodromal stages of carbohydrate-induced acute laminitis in horses. *Am J Vet Res* 51:12.
9. Stein S.F., **A. Duncan**, D. Cutler, S. Glazer. 1990. Disseminated intravascular coagulation (DIC) in a hemophiliac treated with recombinant factor VIIa. *Blood* 76:438a.
10. Stahl R., J.M. Henderson, M.A. Hooks, L.G. Martin, **A. Duncan**. 1991. Therapy of the Kasabach-Merrit syndrome with cryoprecipitate plus intra-arterial thrombin and EACA. *Am J Hematol* 36:272-274.
11. Stahl R.L., W. Chan, **A. Duncan**, C.C. Corley Jr. 1991. Malignant angio-endotheliomatosis presenting as disseminated intravascular coagulopathy. *Cancer* 68:2319-2323.
12. Freedman D.S., T. Byers, J.J. Barboriak, W.D. Flanders, **A. Duncan**, R. Yip, E.N. Meilahn. 1992. The relation of prothrombin times to coronary heart disease risk factors among 31- to 45-year old men. *Am J Epidemiol* 136:513-524.
13. **Duncan A.**, S.J. Wells, J.M. Henderson, C.J. Whitsett, C.D. Hillyer. 1992. Case records of the Emory University Hospital. Disseminated intravascular coagulation in liver transplantation. *The Emory Univ. J. Med.* 6:50-54.
14. Perez RL, **A. Duncan**, R.L. Hunter, G.W. Staton. 1993. Elevated D Dimer in the lungs in blood of patients with sarcoidosis. *Chest* 103:1100-1106.
15. **Duncan A.** 1994. Toward laboratory acceptance of chromogenic assays. *Advance for Administrators of the laboratory.* *Advance* 2(5):53-56.
16. **Duncan A.** 1994. Chemiluminescence: A lesson from the firefly. *Advance* 3(7):57.

17. Hillyer, C.D., **A. Duncan**, M. Ledford, T.J. Barrett, S.A. Klumpp, D.C. Anderson, H.M. McClure, E.F. Winton. 1995. Chemotherapy-induced hemolytic uremic syndrome: Description of a potential animal model. *J Med Primatol* 24:68-73.
18. Topper, M.J., K.W. Prasse, M.J. Morris, **A. Duncan**, N.A. Crowe. 1996. Enzyme-linked immunosorbent assay for thrombin-antithrombin III complex in horses. *Am J Vet Res* 57:427-431.
19. Howard, T.E., M. Marusa, C. Channell, **A. Duncan**. 1997. A patient homozygous for a mutation in the prothrombin gene 3'-untranslated region associated with massive thrombosis. *Blood Coag. and Fibrinolysis* 8:316-319.
20. Howard, T.E., M. Marusa, J. Boisa, A. Young, J. Sequeira, C. Channell, C. Guy, E. Benson, **A. Duncan**. 1998. The prothrombin gene 3'-untranslated region mutation is frequently associated with factor V Leiden in thrombophilic patients and shows ethnic-specific variation in allele frequency [letter] *Blood* 91(3):1092.
21. Trainor, L.D., E.Z. Benson, S.B. Barclay, C.D. Hillyer, **A. Duncan**. 1998. Simultaneous expression of red cell autoantibodies and anti-cardiolipin antibodies. *Modern Pathol.* 11(1):166A.
22. Kottke-Marchant K, **A. Duncan**. 2002. Antithrombin deficiency: issues in laboratory diagnosis. *Archives of Pathology & Laboratory Medicine.* 126(11):1326-36.
23. Heffron, T, Welch D, Pillen T, Spivey J, **Duncan A**, Fasola C, Guy M, et al, 2006 Successful ABO-incompatible liver transplantation utilizing standard immunosuppression. *Liver Transplantation.* 12: 972-978.
24. Bolliger D, Sreeram G, **Duncan A**, Molinaro R, Szlam F, Chen E, Tanaka K. 2009. Prophylactic Use of Factor IX concentrate in a Jehovah's Witness Patient. *Ann Thorac Surg* 88: 1666-1668.
25. Onlamoon N, Noisakram S, Hsiao HM, **Duncan A**, Villinger F, Ansari A, Perng, G. 2010 Dengue virus induced hemorrhage fever in a non human primate model. *Blood* 115:1823-1834.
26. Winkler A, Sheppard CA, Culler E, Myers R, **Duncan A**, Hillyer CD, Josephson C. 2010 Effects of storage duration & volume on quality of apheresis derived platelets: *Transfusion.* 2010 Oct ;50 (10) 2193-8
27. Zhou A, Winkler A, Emamifir A, Gartland B, **Duncan A**, Antun A, Arellano M, Tindol GA, Levy JH, Bornstein WA, Horowitz IR, Khoury HJ. Is the incidence of HIT affected by the increased use of heparin for VTE prophylaxis. *Chest* 2012 Nov; 142(5) 1175-1178
28. Guarner J, **Duncan A**, Nelson AM, Messele T. Laboratory control for all. Can this be achieved. *Am J Clin Pathol* 2012 Nov;138(5) 639-641.

## **BOOK CHAPTERS AND INVITED ARTICLES**

1. **Duncan A.**, N. Warfarin. 1984. A case report, in *Applied Therapeutic Drug Monitoring*, Vol. 2, Chapter 57.
2. **Duncan A.**, E.J.W. Bowie, C.A. Owen, D.N. Fass. 1985 Assay of coagulation factors using synthetic substrates in the prothrombin time and activated thromboplastin time, in *Advances in Coagulation Testing*, Vol. 5, Chapter VII.
3. **Duncan A.** 1988. Coagulation defects, in *Medicine for the Practicing Physician*. 2nd ed. (Butterworth). Chapter 304
4. **Duncan A.** 1988. Hemophilia and other inherited disorders of coagulation, in *Medicine for the Practicing Physician*, 2nd ed. (Butterworths) Chapter 305.
5. **Duncan A.** 1988. Von Willebrand's disease, in *Medicine for the Practicing Physician*, 2nd ed (Butterworths) Chapter 306.
6. **Duncan A.** 1988. Acquired disorders of anticoagulants, in *Medicine for the Practicing Physician*, 2nd ed (Butterworths) Chapter 307.
7. **Duncan A.** 1988. Disseminated intravascular coagulation, in *Medicine for the Practicing Physician*, 2nd ed (Butterworths) Chapter 308.
8. **Duncan A.** 1988. Acquired disorders of coagulation that are not secondary to accelerated consumption or factor inhibition, 2nd ed (Butterworths) Chapter 309.
9. **Duncan A.** RL. Hunter. 1988. Plasminogen activator inhibitor (PAI) in plasma samples, in *Manual of Procedures for the Seminar on Diagnostic Hematology*. (FW Sunderman ed, Inst for Clin Sci, Inc., Philadelphia) p. 29-37.
10. **Duncan A.** 2008 Postanaesthesia & post operative care (Chapter 8) *Te Linde's Operative Gynecology* 10<sup>th</sup> edition ( Lippencott Williams)
11. **Duncan A.** 2008. Overview of Pharmacogenetics in Anticoagulation therapy. *Clinics in Laboratory Vol 28. ( Saunders)*
12. **Duncan A.** 2015 Postanaesthesia & postoperative care ( Chapter 9) *Te Linde's Operative Gynecology* 11<sup>th</sup> edition ( Wolters Kuwer)
13. **Duncan A.** 2016. Pharmacogenetics in Oral Anticoagulant Therapy. *Pharmacogenomics in Precision Medicine* Vol 36 Number 3 ( Elsevier)
14. **Duncan A.** 2016 Pharmacogenomics In Oral Anticoagulant Therapy. *Clin. Lab. Med.* 36(3) 461-472

## **ABSTRACTS/LETTERS**

1. **Duncan A.** 1979. Beta-thromboglobulin and oral contraceptives. *Lancet* ii(8068).
2. **Duncan A.**, R.P. Tracy, R.L. Vliwestra. 1980. Influence of propranolol in platelet function. *Proc Am Assoc Clin Chem*.
3. **Duncan A.**, S.B. Moore, P. Barker. 1981. Thrombocytopenia caused by a furosemide induced platelet antibody. *Lancet* i(8231):1210.
4. Torres V.F., H. Wanner, **A. Duncan**, E.J.W. Bowie. 1981. Platelet survival and imaging studies in reflux nephropathy. *Proc VIII Int Cong of Nephrol*.
5. **Duncan A.**, E.J.W. Bowie, C.A. Owen Jr., D.N. Fass. 1981. Automated activated partial thromboplastin screen using a thrombin special chromogenic substrate. *Proc Fed Am Soc Exp Biol (FASEB)*.
6. **Duncan A.**, E.J.W. Bowie, C.A. Owen Jr., D.N. Fass. 1981. Automated coagulation factor assays using a thrombin specific chromogenic substrates. *Proc VIII Int Cong Thromb Haemostasis*.
7. **Duncan A.**, P. Didisheim. 1981. Factors influencing plasma beta-tg and PF4 values in normal healthy subjects. *Proc VIII Int Cong Thromb Haemostasis*.
8. **Duncan A.**, D. Macris. 1986. Assessment of a coagulation profile to evaluate the incidence of DIC in critically ill patients. *Proc. XXI Congress of Intl Soc of Haematol/Blood Transfusion*.
9. **Duncan A.**, D.H. Vroon. 1986. Arterial thrombosis in neonates & infants associated with protein C deficiency. *Proc XXI Cong of the Intl Soc of Haematol/Blood Transfusion*.
10. **Duncan A.**, D.H. Vroon. 1986. A rapid quantitative assay for activated protein C. *Proc XXI Congress of the Intl Soc of Haematol/Blood Transfusion*.
11. Grossman B., **A. Duncan**. 1987. Prevalence of primary coagulation deficiencies in patients with deep venous thrombosis. *XIth Int Congress on Thrombosis and Haemostasis*
12. Prasse K.W., J.N. Moore, **A. Duncan**. 1987. Protein C acts as an acute phase reactant in equine laminitis. *XIth Int Congress on Thrombosis and Haemostasis*.
13. Perez R.L., **A. Duncan**, R.L. Hunter, G.W.D. Staton. 1988. D Dimer, a fibrin degradation product of cross-linked fibrin, and fibrinolytic activity in the alveolar fluid of patients with sarcoidosis. *American Thorac. Society*.
14. **Duncan A.** 1989. Are LA and antiphospholipid antibodies different in various ethnic groups. *Proc XIIth Congress ISTH, Tokyo, Japan*.
15. **Duncan A.**, R. Stahl. 1989. Evidence for the exclusive hepatic clearance of D-dimer fragments. *Proc XIIth Cong ISTH, Tokyo, Japan*.
16. **Duncan A.**, P. Rawlins, B.A Bell. 1989. Pediatric lupus associated with a circulating anticoagulant and severe factor II deficiency. *Proc. XIIth Congress ISTH, Tokyo, Japan*.
17. Sprague M., **A. Duncan**. 1989. Influence of various antibody conjugates on the assay of anti-cardiolipin antibodies. *Proc. XIIth Congress ISTH, Tokyo, Japan*.



18. Stein S.F., **A. Duncan**, D. Cutler, S. Glazer. 1990. Disseminated intravascular coagulation (DIC) in a hemophiliac treated with recombinant factor VIIa. American Society of Hematology.
19. Bueso-Ramos C., **A. Duncan**, D. Vroon. 1991. In-vivo effect of factor VIII on the activated partial thromboplastin time monitoring of heparin therapy.
20. **Duncan A.**, P. Rawlins, D. Bowen. 1991. Optimized automated assay for factor VIII using a chromogenic technique. British Society of Hematology.
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# W Y C H E

Attorneys at Law

July 15, 2019

Via FedEx

Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401-2210

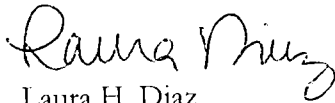
Re: Michelle Cha Holliman, individually and as personal representative of the  
Estate of Allen B. Holliman vs. WE ARE SHARING HOPE SC

Dear Ms. Armstrong:

Enclosed please find for filing one original and two copies of the Notice of Intent in the above-referenced matter, along with a filing fee of \$10.00. I would appreciate your filing and returning the filed stamped copies via the enclosed prepaid FedEx envelope.

Should you have any questions or need anything further, please do not hesitate to contact me.

Most respectfully,



Laura H. Diaz  
Litigation Paralegal  
[ldiaz@wyche.com](mailto:ldiaz@wyche.com)  
(803) 771-2442

Enclosures (As Referenced)

W Y C H E  
PROFESSIONAL ASSOCIATION

PO Box 12247, Columbia, SC 29211-2247  
p: 803.254.6542 | f: 803.254.6544  
[www.wyche.com](http://www.wyche.com)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2019-NI-10-60

**AMENDED NOTICE OF INTENT TO  
FILE SUIT**

PLEASE TAKE NOTICE that the Plaintiff in the above-captioned matter, pursuant to South Carolina Code § 15-79-125, intends to file suit against the above-named Defendants. The parties must participate in a mediation conference within one hundred twenty (120) days of service of this Notice of Intent to File Suit.

**THE PARTIES**

1. The plaintiff is Michelle Cha Holliman (“Mrs. Holliman”), acting individually and as personal representative of the Estate of Allen B. Holliman (“Mr. Holliman”). Mrs. Holliman is a citizen and resident of Aiken County, South Carolina, and she is the widow of Mr. Holliman.

2. Defendant We Are Sharing Hope SC (“Sharing Hope”) is an organ and tissue recovery service provider located in Charleston, South Carolina.

3. Sharing Hope is the designated Organ Procurement Organization (“OPO”) for organ recovery services in most of South Carolina, and it provides organ and tissue donor services to numerous hospitals throughout South Carolina, including Defendant Medical University of

South Carolina (“MUSC”).

4. Sharing Hope holds itself out to the public as a competent and qualified OPO.

5. Sharing Hope has a duty to provide competent and qualified services in the procurement, testing, evaluation, reporting, and distribution of organs for donation.

6. Defendant MUSC is a hospital and health care provider located in Charleston, South Carolina. MUSC has a transplant center that performs organ transplants, including lung transplants. MUSC is the only solid organ transplant center in South Carolina.

7. MUSC holds itself out to the public as a competent and qualified health care provider and organ transplant center.

8. MUSC has a duty to provide competent and qualified medical services in the course of performing organ transplants and caring for patients undergoing an organ transplant.

9. Defendant United Network for Organ Sharing (“UNOS”) is an organization with headquarters in Richmond, Virginia that manages and serves as the organ transplant system in the United States, which is known as the Organ Procurement and Transplantation Network (“OPTN”), under a contract with the federal government.

10. According to UNOS’s website, its responsibilities include, but are not limited to, “managing the national transplant waiting list,” “matching donors to recipients,” “maintaining the database that contains all organ transplant data for every transplant event that occurs in the U.S.,” and “monitoring every organ match to ensure organ allocation policies are followed.” <https://unos.org/about/>, last accessed April 7, 2020.

11. UNOS advertises that it “provides a vital link in the organ transplant process” because “[i]ts policies and computerized network match donated organs with transplant candidates in ways that save as many lives as possible and provide transplant recipients with the best possible

chance of long-term survival.” <https://unos.org/transplant/how-we-match-organs/>, last accessed April 7, 2020. In fact, according to UNOS, “[e]very lifesaving organ transplant is managed through UNOS’ computer system, which matches donors with potential transplant recipients 24 hours a day, 365 days a year.” <https://unos.org/about/>, last accessed April 7, 2020.

12. UNOS holds itself out to the public as a competent and qualified manager of the organ transplant system in the United States and provider of services related to the organ transplant and donation system and process in the United States.

13. UNOS has a duty to provide competent and qualified services in connection with its management of the country’s organ transplant system and its provision of services for the organ transplant and donation system and process in the United States.

#### **STATEMENT OF THE FACTS**

14. Mr. Holliman suffered from lung problems, and physicians at MUSC determined that he was in need of a double-lung transplant. The physicians at MUSC further determined that Mr. Holliman was a suitable candidate for such a transplant, and he was placed on the transplant list.

15. On or about November 27, 2018, Mr. Holliman was informed by physicians at MUSC that there was an available pair of donor lungs that was a match for him. Mr. Holliman’s physicians approved him for a double-lung transplant with the available donor lungs, finding that there were no contraindications to pursuing transplant and that Mr. Holliman was in a suitable condition for the surgery.

16. That same day, November 27, 2018, Mr. Holliman underwent a double-lung transplant at MUSC.

17. According to Mr. Holliman’s medical records, the lungs transplanted into Mr.

Holliman were from the donor associated with donor identification numbers AFKY198, 2018-0516, and 18-15828 (“the Donor”).

18. Sharing Hope was the OPO that procured and distributed the Donor’s lungs that Mr. Holliman received.

19. Upon information and belief, Sharing Hope, as the OPO for the Donor’s lungs, ordered pre-transplant testing of the lungs, evaluated the suitability of the lungs for transplant, reported the lungs as available for transplant to UNOS, and distributed the lungs for transplant.

20. Upon information and belief, UNOS reported the Donor’s lungs as available for transplant, listed the Donor as having type O blood, and matched Mr. Holliman with the Donor’s lungs.

21. Mr. Holliman began suffering substantial complications during his lung transplant surgery. The transplant surgery was eventually completed, but Mr. Holliman remained in critical condition and continued to have significant problems, including but not limited to metabolic acidosis and pronounced hemodynamic instability. Mr. Holliman was given multiple blood transfusion products but never became stable.

22. Upon information and belief, Dr. Timothy Whelan (“Dr. Whelan”) of MUSC was notified in the early morning of November 28, 2018, that Mr. Holliman might have received donor lungs of a blood type incompatible with Mr. Holliman’s blood type.

23. Upon information and belief, Dr. Whelan was informed that another transplant center had tested the blood of the Donor whose lungs Mr. Holliman received and found that the Donor had type A blood.

24. Upon information and belief, MUSC tested the blood of Mr. Holliman’s Donor after it transplanted the Donor’s lungs into Mr. Holliman and also found that the Donor had type



A blood.

25. Mr. Holliman had type O blood. Type O blood is incompatible with type A blood.

26. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. Mr. Holliman's cause of death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs. Mr. Holliman died because the donor lungs he received were of a blood type that was incompatible with his blood type.

27. According to OPTN Policy 2.6.A, Sharing Hope, as the OPO for the Donor's lungs, was responsible for determining the Donor's blood type by testing at least two blood samples from the Donor drawn on separate occasions, having different collection times, and submitted as separate samples. The two blood samples from the Donor were required to have results indicating the same blood type.

28. Sharing Hope ordered pre-transplant blood testing for the Donor whose lungs Mr. Holliman received from VRL Eurofins ("VRL"). VRL issued two final pre-transplant testing reports for the Donor to Sharing Hope. Both reports showed the Donor's blood type was indeterminate and that the samples used for the ABO blood typing were drawn after the Donor received emergency blood transfusions.

29. Upon information and belief, Sharing Hope failed to determine the Donor's blood type with two Donor blood samples indicating the same blood type.

30. Sharing Hope should not have reported the Donor's lungs as available for transplant and should not have distributed the Donor's lungs for transplant given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

31. As a result of Sharing Hope's wrongful reporting of the availability of and

distribution of the Donor's lungs for transplant, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

32. UNOS should not have reported the Donor's lungs as available for transplant and should not have matched Mr. Holliman with the Donor's lungs given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

33. As a result of UNOS's wrongful reporting of the Donor's lungs as available for transplant and wrongful matching of Mr. Holliman with the Donor's lungs, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

34. MUSC should not have approved Mr. Holliman for a transplant with the Donor's lungs and should not have transplanted the Donor's lungs into Mr. Holliman given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

35. As a result of MUSC's wrongful transplanting of the Donor's lungs into Mr. Holliman, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

36. The negligence, gross negligence, and reckless disregard for the health, wellbeing, and rights of Mr. Holliman by Sharing Hope, UNOS, and MUSC (collectively "Defendants") caused Mr. Holliman's death.

37. Defendants, directly and vicariously through their agents, servants, contractors, and employees, failed to provide the requisite and adequate standard of care to Mr. Holliman and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Notice.

38. Attached to this Amended Notice of Intent to Sue is the affidavit of Alexander Duncan, M.B., Ch.B. Dr. Duncan is a licensed physician and is board certified in transfusion medicine and clinical pathology.

39. As Dr. Duncan testifies in his affidavit, Sharing Hope deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of and distributing the Donor's lungs for transplant in the following ways:

- a. By reporting the availability of the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate;
- b. By reporting the availability of the Donor's lungs for transplant without having two ABO blood typing samples from the Donor indicating the same ABO blood type;
- c. By distributing the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the ABO blood type for the Donor was indeterminate;
- d. By distributing the Donor's lungs for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type; and
- e. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL.

40. As Dr. Duncan testifies in his affidavit, UNOS deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of the Donor's lungs for transplant and matching of Mr. Holliman with the Donor's lungs in the following ways:

- a. By wrongfully reporting the Donor's lungs as available for transplant despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By wrongfully reporting the Donor's lungs as available for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type for the Donor;
- c. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL;
- d. By wrongfully reporting the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions; and
- e. By wrongfully matching Mr. Holliman with the Donor's lungs despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions.

41. As Dr. Duncan testifies in his affidavit, MUSC deviated from the recognized and generally accepted standards of care in connection with Mr. Holliman's double lung transplant in the following ways:

- a. By wrongfully transplanting lungs from the Donor into Mr. Holliman despite

having access to pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;

- b. By failing to identify or ignoring that the Donor's ABO blood typing was unreliable, as manifest by the indeterminate ABO blood typing reported by VRL; and
- c. By failing to identify the ABO incompatibility of the Donor's lungs with Mr. Holliman and failing to prevent the lung transplant.

42. Defendants' deviations from the standards of care outlined in Paragraphs 39-41 above proximately caused Mr. Holliman's death.

43. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mr. Holliman wrongfully and prematurely lost his life; Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband; and Mrs. Holliman incurred substantial damages and expenses as a result of Mr. Holliman's wrongful death and loss of consortium.

44. If Mr. Holliman had received donor lungs of a blood type compatible with his blood type, he most likely would have successfully recovered from a double lung transplant, and Mrs. Holliman would not have been deprived Mr. Holliman's services, care, comfort, and companionship or have suffered substantial damages and expenses from his wrongful death.

45. Therefore, Mrs. Holliman, both individually and as personal representative of the Estate of Mr. Holliman, is entitled to judgment for full direct, consequential, and special damages against Defendants in an amount to be determined by a jury, unless the parties can reach a resolution through mediation.

**AFFIDAVIT OF ALEXANDER DUNCAN, M.B., Ch.B.**

The affidavit of expert Alexander Duncan, M.B., Ch.B., specifying the negligent acts and omissions of Defendants and the factual basis for each, based upon the available evidence at this time, is attached pursuant to S.C. Code § 15-36-100.

**ANSWERS TO STANDARD INTERROGATORIES**

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

**Response:**

- a. Michelle Holliman  
Emily Holliman  
Lauren Holliman  
Laina Yoswein  
These individuals may be contacted through the undersigned attorneys.
- b. The staff and employees of the Medical University of South Carolina who treated and cared for Mr. Holliman, including but not limited to Dr. Timothy Whelan, Dr. Luca Paeletti, Dr. Chadrick Denlinger, Dr. Sanford Zeigler, and Dr. Zipporah Krishnasami.
- c. The staff and employees of We Are Sharing Hope SC.
- d. The staff and employees of United Network for Organ Sharing.
- e. Alexander Duncan, M.B., Ch.B.  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

Plaintiff is not in possession of any written or recorded statements from any witnesses other than the attached expert affidavit of Dr. Alexander Duncan and the expert affidavit of Dr. Duncan dated June 12, 2019, which was attached to Plaintiff's initial Notice of Intent to File Suit filed on July 17, 2019.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the parties that relate to the claim or defense in the case.

**Response:** Mr. Holliman's medical records from MUSC dated 2017-2018; records from VRL Eurofins for the Donor; records produced by MUSC in response to a subpoena dated July 30, 2019; records produced by UNOS in response to a subpoena dated August 22, 2019; records produced by Sharing Hope (WASH0001-5). For additional information, see Exhibit A to Dr. Duncan's expert affidavit.

3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

**Response:** Mr. Holliman received treatment from physicians at the Medical University of South Carolina in Charleston, South Carolina in connection with his double lung transplant. For further information, see response to Interrogatory Number 1.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

**Response:** Unknown at this time.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**Response:** In addition to Mr. Holliman's pain and suffering, Mr. Holliman sustained damages for his wrongful death, and Mrs. Holliman has sustained damages for emotional distress, loss of consortium, funeral expenses, and other such damages as will be supplemented during discovery as further damages are identified and quantified.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

**Response:**

Alexander Duncan,  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

**Response:**

Mrs. Holliman, Emily Holliman (Mr. Holliman's daughter), Lauren Holliman (Mr. Holliman's daughter), and Laina Yoswein (Mrs. Holliman's daughter) will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and wrongful death. They will also testify regarding the damages incurred as a result of Mr. Holliman's wrongful death and Mrs. Holliman's loss of consortium.

It is anticipated that the staff and employees of the MUSC who treated and cared for Mr. Holliman, including but not limited to the individuals identified in response to Interrogatory Number 1, will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and death.

It is anticipated that the staff and employees of Sharing Hope will testify regarding the testing, evaluation, reporting the availability of, and distribution of the donor lungs for transplant that Mr. Holliman received.



It is anticipated that the staff and employees of UNOS will testify regarding the reporting the availability of the Donor's lungs for transplant and the matching of the Donor's lungs with Mr. Holliman.

Dr. Duncan will testify about the opinions in his attached affidavit and respond to any defenses suggested by Defendants.

Respectfully submitted,

s/ John C. Moylan  
John C. Moylan, III (S.C. Bar 11227)  
Lucy Dinkins (S.C. Bar 101177)  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: 803-254-6542  
Facsimile: 803-254-6544  
Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)  
[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

April 7, 2020

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No.: \_\_\_\_\_

**SUMMONS**

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 807 Gervais Street, Suite 301, Columbia, SC 29201, within thirty (30) days after service hereof upon you, exclusive of the day 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.

Respectfully submitted,

Wyche, P.A.

s/John C. Moylan, III  
John C. Moylan, III (S.C. Bar 11227)  
Lucy Dinkins (S.C. Bar 101177)  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: 803-254-6542  
Facsimile: 803-254-6544  
Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)  
[ldinkins@wyche.com](mailto:ldinkins@wyche.com)  
*Attorneys for Plaintiff*

July 9, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No.: \_\_\_\_\_

(Action No. 2019-NI-10-60)

**COMPLAINT**  
**(Jury Trial Demanded)**

Michelle Cha Holliman, complaining of Defendants as set forth herein, would respectfully show unto the Court and jury as follows:

**THE PARTIES**

1. The plaintiff is Michelle Cha Holliman (“Mrs. Holliman”), acting individually and as personal representative of the Estate of Allen B. Holliman (“Mr. Holliman”). Mrs. Holliman is a citizen and resident of Aiken County, South Carolina, and she is the widow of Mr. Holliman.

2. Defendant We Are Sharing Hope SC (“Sharing Hope”) is an organ and tissue recovery service provider located in Charleston, South Carolina.

3. Sharing Hope is the designated Organ Procurement Organization (“OPO”) for organ recovery services in most of South Carolina, and it provides organ and tissue donor services to numerous hospitals throughout South Carolina, including Defendant Medical University of South Carolina (“MUSC”).

4. Sharing Hope holds itself out to the public as a competent and qualified OPO.

5. Sharing Hope has a duty to provide competent and qualified medical services in the procurement, testing, evaluation, reporting, and distribution of organs for donation.

6. Defendant MUSC is a hospital and health care provider located in Charleston, South Carolina. MUSC has a transplant center that performs organ transplants, including lung transplants. MUSC is the only solid organ transplant center in South Carolina.

7. MUSC holds itself out to the public as a competent and qualified health care provider and organ transplant center.

8. MUSC has a duty to provide competent and qualified medical services in the course of performing organ transplants and caring for patients undergoing an organ transplant.

9. Defendant United Network for Organ Sharing (“UNOS”) is an organization with headquarters in Richmond, Virginia that manages and serves as the organ transplant system in the United States, which is known as the Organ Procurement and Transplantation Network (“OPTN”), under a contract with the federal government.

10. According to UNOS’s website, its responsibilities include, but are not limited to, “managing the national transplant waiting list,” “matching donors to recipients,” “maintaining the database that contains all organ transplant data for every transplant event that occurs in the U.S.,” and “monitoring every organ match to ensure organ allocation policies are followed.” <https://unos.org/about/>, last accessed July 6, 2020.

11. UNOS advertises that it “provides a vital link in the organ transplant process” because “[i]ts policies and computerized network match donated organs with transplant candidates in ways that save as many lives as possible and provide transplant recipients with the best possible chance of long-term survival.” <https://unos.org/transplant/how-we-match-organs/>, last accessed July 6, 2020. In fact, according to UNOS, “[e]very lifesaving organ transplant is managed through

UNOS' computer system, which matches donors with potential transplant recipients 24 hours a day, 365 days a year.” <https://unos.org/about/>, last accessed July 6, 2020.

12. UNOS holds itself out to the public as a competent and qualified manager of the organ transplant system in the United States and provider of services related to the organ transplant and donation system and process in the United States.

13. UNOS has a duty to provide competent and qualified services in connection with its management of the country's organ transplant system and its provision of services for the organ transplant and donation system and process in the United States.

### **JURISDICTION, VENUE, AND PROCEDURAL BACKGROUND**

14. Many of the events giving rise to this action occurred in Charleston County, South Carolina, including Mr. Holliman's transplant surgery and resulting death.

15. The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County, South Carolina.

16. Mrs. Holliman's initial Notice of Intent to File Suit and supporting expert affidavit were filed in this Court on July 17, 2019.

17. On April 7, 2020, Mrs. Holliman filed an Amended Notice of Intent to File Suit and supporting expert affidavit.

18. The parties have participated in a pre-suit mediation conference in accordance with the requirements of S.C. Code §§ 15-79-110, *et seq.*

### **STATEMENT OF THE FACTS**

19. Mr. Holliman suffered from lung problems, and physicians at MUSC determined that he was in need of a double-lung transplant. The physicians at MUSC further determined that Mr. Holliman was a suitable candidate for such a transplant, and he was placed on the transplant

list.

20. On or about November 27, 2018, Mr. Holliman was informed by physicians at MUSC that there was an available pair of donor lungs that was a match for him. Mr. Holliman's physicians approved him for a double-lung transplant with the available donor lungs, finding that there were no contraindications to pursuing transplant and that Mr. Holliman was in a suitable condition for the surgery.

21. That same day, November 27, 2018, Mr. Holliman underwent a double-lung transplant at MUSC.

22. According to Mr. Holliman's medical records, the lungs transplanted into Mr. Holliman were from the donor associated with donor identification numbers AFKY198, 2018-0516, and 18-15828 ("the Donor").

23. Sharing Hope was the OPO that procured and distributed the Donor's lungs that Mr. Holliman received.

24. Upon information and belief, Sharing Hope, as the OPO for the Donor's lungs, ordered pre-transplant testing of the lungs, evaluated the suitability of the lungs for transplant, reported the lungs as available for transplant, and distributed the lungs for transplant.

25. Upon information and belief, UNOS reported the Donor's lungs as available for transplant, listed the Donor as having type O blood, and matched Mr. Holliman with the Donor's lungs.

26. Mr. Holliman began suffering substantial complications during his lung transplant surgery. The transplant surgery was eventually completed, but Mr. Holliman remained in critical condition and continued to have significant problems, including but not limited to metabolic acidosis and pronounced hemodynamic instability. Mr. Holliman was given multiple blood

transfusion products but never became stable.

27. Upon information and belief, Dr. Timothy Whelan (“Dr. Whelan”) of MUSC was notified in the early morning of November 28, 2018, that Mr. Holliman might have received donor lungs of a blood type incompatible with Mr. Holliman’s blood type.

28. Upon information and belief, Dr. Whelan was informed that another transplant center had tested the blood of the Donor whose lungs Mr. Holliman received and found that the Donor had type A blood.

29. Upon information and belief, MUSC tested the blood of Mr. Holliman’s Donor after it transplanted the Donor’s lungs into Mr. Holliman and also found that the Donor had type A blood.

30. Mr. Holliman had type O blood. Type O blood is incompatible with type A blood.

31. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. Mr. Holliman’s cause of death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs. Mr. Holliman died because the donor lungs he received were of a blood type that was incompatible with his blood type.

32. According to OPTN Policy 2.6.A, Sharing Hope, as the OPO for the Donor’s lungs, was responsible for determining the Donor’s blood type by testing at least two blood samples from the Donor drawn on separate occasions, having different collection times, and submitted as separate samples. The two blood samples from the Donor were required to have results indicating the same blood type.

33. Sharing Hope ordered pre-transplant blood testing for the Donor whose lungs Mr. Holliman received from VRL Eurofins (“VRL”). VRL issued two final pre-transplant testing reports for the Donor to Sharing Hope. Both reports showed the Donor’s blood type was

indeterminate and that the samples used for the ABO blood typing were drawn after the Donor received emergency blood transfusions.

34. Upon information and belief, Sharing Hope failed to determine the Donor's blood type with two Donor blood samples indicating the same blood type.

35. Sharing Hope should not have reported the Donor's lungs as available for transplant and should not have distributed the Donor's lungs for transplant given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

36. As a result of Sharing Hope's wrongful reporting of the availability of and distribution of the Donor's lungs for transplant, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

37. UNOS should not have reported the Donor's lungs as available for transplant and should not have matched Mr. Holliman with the Donor's lungs given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

38. As a result of UNOS's wrongful reporting of the Donor's lungs as available for transplant and wrongful matching of Mr. Holliman with the Donor's lungs, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

39. MUSC should not have approved Mr. Holliman for a transplant with the Donor's lungs and should not have transplanted the Donor's lungs into Mr. Holliman given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

40. As a result of MUSC's wrongful transplanting of the Donor's lungs into Mr.



Holliman, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

41. The negligence, gross negligence, and reckless disregard for the health, wellbeing, and rights of Mr. Holliman by Sharing Hope, UNOS, and MUSC (collectively “Defendants”) caused Mr. Holliman’s death.

42. Defendants, directly and vicariously through their agents, servants, contractors, and employees, failed to provide the requisite and adequate standard of care to Mr. Holliman and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Complaint.

43. Sharing Hope deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of and distributing the Donor’s lungs for transplant in the following ways:

- a. By reporting the availability of the Donor’s lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the Donor’s blood type was indeterminate;
- b. By reporting the availability of the Donor’s lungs for transplant without having two ABO blood typing samples from the Donor indicating the same ABO blood type;
- c. By distributing the Donor’s lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the ABO blood type for the Donor was indeterminate;
- d. By distributing the Donor’s lungs for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type; and
- e. By failing to recognize or ignoring that the two initial ABO blood typing samples

for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL.

44. UNOS deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of the Donor's lungs for transplant and matching of Mr. Holliman with the Donor's lungs in the following ways:

- a. By wrongfully reporting the Donor's lungs as available for transplant despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By wrongfully reporting the Donor's lungs as available for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type for the Donor;
- c. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL;
- d. By wrongfully reporting the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions; and
- e. By wrongfully matching Mr. Holliman with the Donor's lungs despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type

was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions.

45. MUSC deviated from the recognized and generally accepted standards of care in connection with Mr. Holliman's double lung transplant in the following ways:

- a. By wrongfully transplanting lungs from the Donor into Mr. Holliman despite having access to pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By failing to identify or ignoring that the Donor's ABO blood typing was unreliable, as manifest by the indeterminate ABO blood typing reported by VRL; and
- c. By failing to identify the ABO incompatibility of the Donor's lungs with Mr. Holliman and failing to prevent the lung transplant.

46. Defendants' deviations from the standards of care outlined in Paragraphs 43-45 above proximately caused Mr. Holliman's death.

47. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mr. Holliman wrongfully and prematurely lost his life; Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband; and Mrs. Holliman incurred substantial damages and expenses as a result of Mr. Holliman's wrongful death and loss of consortium.

48. If Mr. Holliman had received donor lungs of a blood type compatible with his blood type, he most likely would have successfully recovered from a double lung transplant, and Mrs. Holliman would not have been deprived of Mr. Holliman's services, care, comfort, and

companionship or have suffered substantial damages and expenses from his wrongful death.

**FIRST CAUSE OF ACTION**

(Negligence/Gross Negligence/Recklessness by We Are Sharing Hope SC Resulting in Wrongful Death)

49. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

50. At all times relevant to this action, Sharing Hope owed a duty to Mr. Holliman and others to provide competent and qualified medical services in the procurement, testing, evaluation, reporting, and distribution of organs for donation, including the Donor's lungs that were transplanted into Mr. Holliman.

51. Sharing Hope breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with its reporting the availability of and distributing the Donor's lungs for transplant in the following ways:

- a. By reporting the availability of the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate;
- b. By reporting the availability of the Donor's lungs for transplant without having two ABO blood typing samples from the Donor indicating the same ABO blood type;
- c. By distributing the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the ABO blood type for the Donor was indeterminate;
- d. By distributing the Donor's lungs for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type; and
- e. By failing to recognize or ignoring that the two initial ABO blood typing samples

for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL.

52. Sharing Hope's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.

53. Mrs. Holliman, as the personal representative of the Estate of Mr. Holliman, is entitled to recover from Sharing Hope all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

### **SECOND CAUSE OF ACTION**

(Negligence/Gross Negligence/Recklessness by UNOS Resulting in Wrongful Death)

54. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

55. At all times relevant to this action, UNOS owed a duty to Mr. Holliman and others to provide competent and qualified services in connection with its management of the country's organ transplant system and its provision of services for the organ transplant and donation system and process in the United States, including in reporting the Donor's lungs as available for transplant and in matching Mr. Holliman with the Donor's lungs.

56. UNOS breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with its reporting the availability of the Donor's lungs for transplant and matching of Mr. Holliman with the Donor's lungs in the following ways:

- a. By wrongfully reporting the Donor's lungs as available for transplant despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;

- b. By wrongfully reporting the Donor's lungs as available for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type for the Donor;
  - c. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL;
  - d. By wrongfully reporting the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions; and
  - e. By wrongfully matching Mr. Holliman with the Donor's lungs despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions.
57. UNOS's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.
58. Mrs. Holliman, as personal representative of the Estate of Mr. Holliman, is entitled to recover from UNOS all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

### **THIRD CAUSE OF ACTION**

(Negligence/Gross Negligence/Recklessness by MUSC Resulting in Wrongful Death)

- 59. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.
- 60. At all times relevant to this action, MUSC owed a duty to Mr. Holliman and others

to provide competent and qualified medical services in the course of performing organ transplants and caring for patients undergoing an organ transplant, including Mr. Holliman.

61. MUSC breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with Mr. Holliman's double lung transplant in the following ways:

- a. By wrongfully transplanting lungs from the Donor into Mr. Holliman despite having access to pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By failing to identify or ignoring that the Donor's ABO blood typing was unreliable, as manifest by the indeterminate ABO blood typing reported by VRL; and
- c. By failing to identify the ABO incompatibility of the Donor's lungs with Mr. Holliman and failing to prevent the lung transplant.

62. MUSC's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.

63. Mrs. Holliman, as personal representative of the Estate of Mr. Holliman, is entitled to recover from MUSC all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

#### **FOURTH CAUSE OF ACTION** (Loss of Consortium against All Defendants)

64. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

65. As a direct and proximate result of Defendants' negligence, gross negligence, and recklessness, as set forth in detail above, Mr. Holliman wrongfully and prematurely lost his life,

and Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband.

66. Mrs. Holliman is entitled to recover all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death and loss of consortium in an amount to be determined by a jury.

### **REQUEST FOR RELIEF**

67. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

68. As a direct and proximate result of the wrongful conduct of Defendants described above, Mrs. Holliman, both individually and as personal representative of the Estate of Mr. Holliman, requests judgment against Defendant, jointly and severally, for the following:

- a. Full direct, consequential, punitive, and special damages against Defendants in an amount to be determined by a jury;
- b. Reasonable attorney's fees and costs; and
- c. Any other such relief the Court deems just and proper.

### **JURY TRIAL DEMAND**

69. A trial by jury is demanded as to all issues to the extent permitted by law.

Respectfully submitted,

Wyche, P.A.

s/John C. Moylan, III  
 John C. Moylan, III (S.C. Bar 11227)  
 Lucy Dinkins (S.C. Bar 101177)  
 807 Gervais Street, Suite 301  
 Columbia, South Carolina 29201  
 Telephone: 803-254-6542  
 Facsimile: 803-254-6544  
 Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)  
[ldinkins@wyche.com](mailto:ldinkins@wyche.com)  
*Attorneys for Plaintiff*

July 9, 2020



|                                                   |   |                                        |
|---------------------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS           |
|                                                   | ) | NINTH JUDICIAL CIRCUIT                 |
| COUNTY OF CHARLESTON                              | ) |                                        |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902               |
| personal representative of the Estate of Allen B. | ) |                                        |
| Holliman,                                         | ) |                                        |
|                                                   | ) |                                        |
| <i>Plaintiff,</i>                                 | ) | <b>DEFENDANT</b>                       |
|                                                   | ) | <b>WE ARE SHARING HOPE SC'S</b>        |
| Versus                                            | ) | <b>AMENDED</b>                         |
|                                                   | ) | <b>ANSWER TO PLAINTIFF'S COMPLAINT</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b><i>(Jury Trial Requested)</i></b>   |
| of South Carolina, and United Network for         | ) |                                        |
| Organ Sharing,                                    | ) |                                        |
|                                                   | ) |                                        |
| <i>Defendants.</i>                                | ) |                                        |

The Defendant, We Are Sharing Hope SC, (hereinafter "this Defendant"), by and through their undersigned attorneys hereby answers the allegations in the Plaintiff's Complaint, subject to all affirmative defenses and motions as set forth below:

1. This Defendant denies each and every allegation contained in the Plaintiff's Complaint that is not specifically admitted in this Answer.
2. This Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Plaintiff's Complaint and, therefore, denies the same.
3. In response to the allegations contained in Paragraph 2 of the Plaintiff's Complaint, this Defendant admits it is the federally-designated Organ Procurement Organization for organ recovery services in South Carolina and provides organ donor services to numerous hospitals throughout the state, including the Medical University of South Carolina. All remaining and inconsistent allegations contained in Paragraph 2 of the Plaintiff's Complaint are denied.

4. The allegations contained in Paragraph 4 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required to the allegations contained in Paragraph 4 of the Plaintiff's Complaint, this Defendant admits it is certified by the federal government as the designated Organ Procurement Organization for organ recovery services in South Carolina.

5. The allegations contained in Paragraph 5 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant admits it provides organ donor services to numerous hospitals throughout South Carolina. All remaining and inconsistent allegations contained in Paragraph 5 of the Plaintiff's Complaint are denied.

6. The allegations contained in Paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required.

**AS TO JURISDICTION, VENUE, AND PROCEDURAL BACKGROUND**

7. In response to the allegations contained in Paragraph 14 of the Plaintiff's Complaint, this Defendant admits Mr. Holliman's transplant surgery occurred in Charleston County. All remaining and inconsistent allegations are denied.

8. The allegations contained in Paragraph 15 of the Plaintiff's Complaint contain conclusions of law to which no response is required.

9. In response to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, this Defendant admits the Notice of Intent to File Suit and expert affidavit were filed on July 17, 2019. This Defendant denies the content of the expert affidavit and allegations against this Defendant.

10. In response to the allegations contained in Paragraph 17 of the Plaintiff's Complaint, this Defendant admits an Amended Notice of Intent to File Suit and affidavit were filed on April 7, 2020. This Defendant denies the content of the expert affidavit and allegations against this Defendant.

11. The allegations contained in Paragraph 18 of the Plaintiff's Complaint contain legal conclusions to which no response is required. Further responding, this Defendant admits the parties participated in pre-suit mediation.

### **AS TO THE STATEMENT OF THE FACTS**

12. In response to the allegations contained in Paragraphs 19, 20, 21, and 22 of the Plaintiff's Complaint this Defendant craves reference to all the medical records of Mr. Holliman. To the extent the allegations contained in Paragraphs 19, 20, 21, and 22 of the Plaintiff's Complaint are inconsistent with Mr. Holliman's medical records, those allegations are denied.

13. In response to the allegations contained in Paragraphs 23 and 24 of the Plaintiff's Complaint this Defendant craves reference to the medical records of the Donor. To the extent the allegations contained in Paragraphs 23 and 24 are inconsistent with the medical records of the Donor, those allegations are denied.

14. The allegations contained in Paragraph 25 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required from this Defendant.

15. In response to the allegations contained in Paragraphs 26, 27, 28, 29, 30, and 31 of the Plaintiff's Complaint this Defendant craves reference to all the medical records of Mr. Holliman. To the extent the allegations contained in Paragraphs 26, 27, 28, 29, 30, and 31 of the Plaintiff's Complaint are inconsistent with Mr. Holliman's medical records, those allegations are denied.

16. In response to the allegations contained in Paragraph 32 of the Plaintiff's Complaint, this Defendant admits there is an OPTN Policy 2.6A and craves reference to the policy in effect at the time of the alleged incidents in this case. To the extent the pertinent policy is inconsistent with the allegations contained in Paragraph 32 of the Plaintiff's Complaint, those allegations are denied.

17. In response to the allegations contained in Paragraph 33 of the Plaintiff's Complaint, this Defendant craves reference to the VRL Eurofins records. To the extent the allegations contained in Paragraph 33 of the Plaintiff's Complaint are inconsistent with the VRL Eurofins records, those allegations are denied.

18. The allegations contained in Paragraphs 34, 35, and 36 of the Plaintiff's Complaint are denied.

19. The allegations contained in Paragraphs 37, 38, 39, and 40 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 37, 38, 39 and 40 of the Plaintiff's Complaint.

20. This Defendant denies the allegations contained in Paragraphs 41, 42, and 43 of the Plaintiff's Complaint including subparagraphs a, b, c, d, and e.

21. The allegations contained in Paragraph 44, including subparagraphs a, b, c, d, e and Paragraph 45, including subparagraphs a, b, c of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, the allegations contained in Paragraphs 44 and 45, including subparagraphs, of the Plaintiff's Complaint are denied.

22. This Defendant denies the allegations contained in Paragraphs 46, 47, and 48 of the Plaintiff's Complaint.

**AS TO THE FIRST CAUSE OF ACTION**  
**(Negligence/Gross Negligence/Recklessness by We Are Sharing Hope SC Resulting in Wrongful Death)**

23. In response to the allegations contained in Paragraph 49 of the Plaintiff's Complaint, this Defendant reasserts and realleges its responses to the above paragraphs as if set forth verbatim herein.

24. The allegations contained in Paragraph 50 of the Plaintiff's Complaint contain conclusions of law to which no response is required.

25. This Defendant denies the allegations contained in Paragraph 51 of the Plaintiff's Complaint, including subparagraphs a, b, c, d, e, and Paragraphs 52 and 53 of the Plaintiff's Complaint.

**AS TO THE SECOND CAUSE OF ACTION**  
**(Negligence/Gross Negligence/Recklessness by UNOS Resulting in Wrongful Death)**

26. In response to the allegations contained in Paragraph 54 of the Plaintiff's Complaint, this Defendant reasserts and realleges its responses to the above paragraphs as if set forth verbatim herein.

27. The allegations contained in Paragraphs 55, 56, including subparagraphs a, b, c, d, e, Paragraphs 57 and 58 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the same.

**AS TO THE THIRD CAUSE OF ACTION**  
**(Negligence/Gross Negligence/Recklessness of MUSC Resulting in Wrongful Death)**

28. In response to the allegations contained in Paragraph 59 of the Plaintiff's Complaint, this Defendant reasserts and realleges its responses to the above paragraphs as if set forth verbatim herein.

29. The allegations contained in Paragraphs 60, 61 including subparagraphs a, b, c, Paragraphs 62 and 63 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the same.

**AS TO THE FOURTH CAUSE OF ACTION**  
**(Loss of Consortium Against All Defendants)**

30. In response to the allegations contained in Paragraph 64 of the Plaintiff's Complaint, this Defendant reasserts and realleges its responses to the above paragraphs as if set forth verbatim herein.

31. This Defendant denies the allegations contained in Paragraphs 65 and 66 of the Plaintiff's Complaint.

**AS TO THE REQUEST FOR RELIEF**

32. In response to the allegations contained in Paragraph 67 of the Plaintiff's Complaint, this Defendant reasserts and realleges its responses to the above paragraphs as if set forth verbatim herein.

33. This Defendant denies the allegations contained in Paragraph 68 including subparagraphs a, b, and c, of the Plaintiff's Complaint, those being the remaining allegations contained in the Plaintiff's Complaint.

**AS TO THE JURY TRIAL DEMAND**

34. In response to the allegations contained in Paragraph 69, this Defendant also demands a jury trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Deviation from Standard of Care)**

35. That the care and treatment administered by this Defendant conformed to and was in full compliance with the standard of care. All care and treatment administered by this Defendant was within acceptable medical standards and methods, and, at no time pertinent hereto, did this Defendant deviate from any medical standard while caring for or tending to the Plaintiff. Consequently, the Plaintiff is barred from recovery against this Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Proximate Cause)**

36. That, even if this Defendant were negligent, as alleged in the Complaint, which is specifically denied, the negligence of this Defendant is not the direct or proximate cause of any injury alleged by the Plaintiff and; therefore, this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Failure to State a Claim)**

37. The allegations contained in Plaintiff's Complaint fail in their entirety to state a claim upon which relief may be granted against this Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Lack of Foreseeability)**

38. That upon information and belief, even if the damages alleged in the Plaintiff's Complaint, if any, were proximately caused by the acts and/or omissions of this Defendant, which is otherwise denied except for the purpose of these affirmative defenses, this Defendant did not and could not have foreseen that Plaintiff's damages, if any, could have proximately resulted from the alleged incident.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Charitable Organization)**

39. This Defendant is a charitable organization as defined by S.C. Code Ann 33-56-170(1) and, as such is entitled to the benefits and protections of S.C. Code Ann. 33-56-180(A).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Charitable Caps)**

40. This Defendant affirmatively states that pursuant to S.C. Code Ann 33-56-170 and S.C. Code Ann. 33-56-180, any liability, which is expressly denied, is limited to \$300,000.00 actual damages as a protected "charitable organization". This Defendant is not subject to a claim for punitive damages.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of Punitives)**

41. As stated above, this Defendant is not subject to a claim for punitive damages. Nevertheless, any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530, et. seq.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

42. As stated above, this Defendant is not subject to a claim for punitive damages. Nevertheless, any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**THIS DEFENDANT ALLEGES:**  
**(Statutory Caps Damages)**

43. This Defendant invokes all applicable statutory caps on damages Plaintiff may claim (including caps on punitive and non-economic damages).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

44. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(S.C. Code Ann. § 44-43-385: Immunity)**

45. This Defendant alleges it acted in good faith pursuant to the terms of the Uniform Anatomical Gift Act S.C. Code Ann. §44-43-300, et seq.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Superseding/Intervening Cause)**

46. Whatever injuries and damages, if any, may have been sustained by the Plaintiff, they were due to the superseding and/or intervening cause beyond the control of this Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Reasonableness and Good Faith)**

47. This Defendant alleges that it acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by it at the time he so acted. Accordingly, Plaintiff is not entitled to the recovery of any damages whatsoever.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Reservation and Non-Waiver)**

48. This Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Complaint, and having asserted these affirmative defenses, this Defendant, We Are Sharing Hope SC, prays that the Plaintiff's Complaint be dismissed with prejudice and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC  
 172 Meeting Street  
 Post Office Box 1508  
 Charleston, SC 29402  
 Phone: (843) 577-4435 / Facsimile: (843) 722-1630

**s/ Jean Marie Jennings**  
 Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
 Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)  
 Julia A. Bradshaw (103767)  
[julia.bradshaw@hoodlaw.com](mailto:julia.bradshaw@hoodlaw.com)

*Attorneys for the Defendant*  
*We Are Sharing Hope SC*

**August 12, 2020**  
 Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

Versus

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 2020-CP-10-002902

**ANSWER OF THE DEFENDANT  
MEDICAL UNIVERSITY OF SOUTH  
CAROLINA  
(Jury Trial Demanded)**TO: JOHN C. MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE, ATTORNEYS FOR  
THE PLAINTIFF:

Comes now the Defendant Medical University of South Carolina (hereinafter "MUSC" and  
"this Defendant") by and through its undersigned attorneys answering the Plaintiff's Complaint as  
follows:

1. This Defendant denies each and every allegation of the Plaintiff's Complaint which  
is not hereinafter specifically admitted.

2. Answering Paragraph 1 of the Plaintiff's Complaint, this Defendant lacks sufficient  
information to admit or deny the citizenship and residency status of the Plaintiff. All remaining  
allegations of this Paragraph are admitted upon information and belief.

3. This Defendant admits Paragraphs 2 and 3 of the Plaintiff's Complaint.

4. Paragraphs 4 and 5 of the Plaintiff's Complaint apply to a party other than this  
Defendant. Upon information and belief, this Defendant admits Sharing Hope provides competent  
services and has a duty to comply with the prevailing standard of care.

5. Answering Paragraph 6 of the Plaintiff's Complaint, this Defendant admits it is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to South Carolina Code Ann. § 15-78-60. Consequently, the provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq., including all subparts, apply to this action. Further answering, this Defendant admits it has a transplant center that performs organ transplants to include lung transplants as the only solid organ transplant center in South Carolina.

6. Answering Paragraphs 7 and 8 of the Plaintiff's Complaint, this Defendant admits it has a duty to provide care and treatment that complies with the prevailing standard of care. Further answering, this Defendant admits all of its care and treatment of the decedent met the standard of care in all respects.

7. This Defendant admits Paragraph 9 of the Plaintiff's Complaint.

8. Answering Paragraphs 10 and 11 of the Plaintiff's Complaint, it appears these Paragraphs refer to partial quotations from the web addresses referenced therein.

9. Paragraphs 12 and 13 of the Plaintiff's Complaint apply to a party other than this Defendant. Upon information and belief, this Defendant admits Paragraphs 12 and 13 of the Plaintiff's Complaint.

10. This Defendant admits Paragraph 14 of the Plaintiff's Complaint.

11. This Defendant admits Paragraph 15 of the Plaintiff's Complaint subject to the defenses set forth within this Answer and as will be developed during discovery.

12. This Defendant admits Paragraphs 16, 17 and 18 of the Plaintiff's Complaint. This Defendant reserves the right to challenge the right of the affiant to testify at the time of trial.

13. This Defendant admits Paragraph 19 of the Plaintiff's Complaint.

14. Answering Paragraph 20 of the Plaintiff's Complaint, this Defendant admits late on the evening of November 26, 2018 into the early morning hours of November 27, 2018, an offer was made to MUSC for donor lungs that had been established to be a match for the decedent. The offer was accepted by MUSC based upon the information provided and Mr. Holliman agreed to go forward with the double-lung transplant surgery. Further answering, this Defendant refers to the medical records related to the care and treatment of the decedent as well as to the testimony of the healthcare providers involved for a complete and accurate recitation of the treatment provided. All allegations of this Paragraph inconsistent with the defenses of this Defendant are denied. This Defendant further admits all of the care and treatment it provided to the decedent met the standard of care.

15. This Defendant admits Paragraphs 21, 22, 23, 24 and 25 of the Plaintiff's Complaint.

16. Answering Paragraph 26 of the Plaintiff's Complaint, this Defendant refers to the medical records related to the care and treatment of the decedent as well as to the testimony of the healthcare providers involved for a complete and accurate recitation of the treatment provided. All allegations of this Paragraph inconsistent with the defenses of this Defendant are denied. This Defendant further admits all of the care and treatment it provided to the decedent met the standard of care.

17. Answering Paragraphs 27 and 28 of the Plaintiff's Complaint, this Defendant admits Dr. Whelan was contacted about a potential incompatibility issue in the early morning hours of the day after Mr. Holliman's transplant. Further answering, this Defendant admits another transplant center reported this concern initially.

18. This Defendant admits Paragraph 29 of the Plaintiff's Complaint.

19. Answering Paragraph 30 of the Plaintiff's Complaint, this Defendant admits the decedent was identified as having blood type O. Further answering, this Defendant admits there can be incompatibility issues between type O blood and type A blood.

20. Answering Paragraph 31 of the Plaintiff's Complaint, this Defendant admits the decedent died on November 28, 2018. This Defendant further admits his certificate of death states Cause of Death – Part I was “Complication of ABO incompatibility and hyperacute rejection.”

21. Answering Paragraph 32 of the Plaintiff's Complaint, this Defendant admits the Plaintiff has cited a provision of OPTN Policy 2.6.A.

22. Answering Paragraph 33 of the Plaintiff's Complaint, this Defendant admits the Plaintiff has referred to results from VRL Eurofins.

23. This Defendant denies Paragraph 34 of the Plaintiff's Complaint.

24. Answering Paragraphs 35, 36, 37 and 38 of the Plaintiff's Complaint, it is the understanding of this Defendant the blood type of the Donor was established and confirmed by two tests run by an outside medical facility who is not a party to this litigation. Further answering, this Defendant admits the Donor's blood type was reported to it as being compatible with the blood type of the decedent.

25. This Defendant denies Paragraphs 39 and 40 of the Plaintiff's Complaint.

26. This Defendant denies Paragraphs 41 and 42 of the Plaintiff's Complaint as those Paragraphs are intended to apply to it and its employees.

27. Paragraphs 43 and 44 including all of their subparts apply to parties other than this Defendant. To the extent these Paragraphs and their subparts are intended to apply to this Defendant and its employees, these Paragraphs and subparts are denied.

28. This Defendant denies Paragraph 45 of the Plaintiff's Complaint and all of its subparts.

29. This Defendant denies Paragraphs 46 and 47 of the Plaintiff's Complaint as those Paragraphs are intended to apply to or refer to this Defendant and its employees.

30. Answering Paragraph 48 of the Plaintiff's Complaint, this Defendant responds that the surgery performed on the decedent involved the potential for risks and complications to include disability and death. Further answering, this Defendant admits all of the care and treatment it provided to the decedent met the standard of care in all respects.

31. Answering Paragraph 49 of the Plaintiff's Complaint, the Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 30 above as if fully repeated herein verbatim.

32. Paragraphs 50, 51 including all subparts, 52 and 53 of the Plaintiff's Complaint apply to a party other than this Defendant. To the extent these Paragraphs are intended to apply to or refer to this Defendant, these Paragraphs are denied. Further answering, this Defendant admits all of the care and treatment it provided to the decedent met the standard of care in all respects.

33. Answering Paragraph 54 of the Plaintiff's Complaint, the Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 32 above as if fully repeated herein verbatim.

34. Paragraphs 55, 56 including all subparts, 57 and 58 of the Plaintiff's Complaint apply to a party other than this Defendant. To the extent these Paragraphs are intended to apply to or refer to this Defendant, these Paragraphs are denied. Further answering, this Defendant admits all of the care and treatment it provided to the decedent met the standard of care in all respects.

35. Answering Paragraph 59 of the Plaintiff's Complaint, the Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. Answering Paragraph 60 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care that complied with the prevailing standard of care. Further answering, this Defendant admits all of the care and treatment it provided to the decedent met the standard of care in all respects.

37. This Defendant denies Paragraph 61 including all subparts, 62 and 63 of the Plaintiff's Complaint.

38. Answering Paragraph 64 of the Plaintiff's Complaint, the Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 37 above as if fully repeated herein verbatim.

39. This Defendant denies Paragraphs 65 and 66 of the Plaintiff's Complaint as those Paragraphs are intended to apply to or refer to this Defendant.

40. Answering Paragraph 67 of the Plaintiff's Complaint, the Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 39 above as if fully repeated herein verbatim.

41. This Defendant denies the Plaintiff is entitled to the relief requested in Paragraph 68 including all subparts.

42. This Defendant joins in the request for a jury trial demanded in Paragraph 69 of the Plaintiff's Complaint.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Governmental Immunity/Tort Claims Act)**

43. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 42 above as if fully repeated herein verbatim.

44. The provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq., including all subparts, apply to this action. MUSC is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to South Carolina Code Ann. § 15-78-60. The South Carolina Tort Claims Act constitutes the exclusive remedy for any tort committed by an employee of the governmental entity who is acting within the scope of his or her employment. Further, while this Defendant specifically denies that the Plaintiff is entitled to recover any damages as set out in the preceding paragraphs of this Answer, the limitations on liability provided in South Carolina Code Ann. § 15-78-120 apply to this action. Accordingly, the Plaintiff is not entitled to recover any award for damages that exceeds the limitation of liability set forth in S. C. Code Ann. § 15-78-120. Also, the Plaintiff is not entitled to recover punitive or exemplary damages or pre-judgment interest as set forth in S. C. Code Ann. § 15-78-120.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(§15-78-60 - Tort Claims Act)**

45. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 44 above as if fully repeated herein verbatim.

46. MUSC is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act. The Plaintiff is not entitled to recovery against this Defendant pursuant to South

Carolina Code Ann. § 15-78-60, including but not limited to the following subsections: (4), (5), (17), (20) and (25). This Defendant further reserves the right to plead as a bar to suit any other applicable provision of § 15-78-60.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Deviation from Standard of Care)**

47. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 46 above as if fully repeated herein verbatim.

48. That the care and treatment administered by MUSC and its employees conformed to and was in full compliance with the standard of care. All care and treatment administered by MUSC and its employees was within acceptable medical standards and methods, and, at no time pertinent hereto, did MUSC nor its employees deviate from any medical standard while caring for or tending to the decedent. Consequently, the Plaintiff is barred from recovery against this Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Proximate Cause)**

49. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 48 above as if fully repeated herein verbatim.

50. That, even if this Defendant was negligent as alleged in the Complaint, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Reservation and Non-Waiver)**

51. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 50 above as if fully repeated herein verbatim.

52. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, this Defendant, having answered the Plaintiff's Complaint subject to the above affirmative defenses prays that it be dismissed from this action and be awarded costs, fees and other relief that this Court deems just and proper.

BUYCK & SANDERS, LLC  
305 Wingo Way  
P.O. Box 2424  
Mt. Pleasant, SC 29465-2424  
Telephone: (843) 377-1400  
Facsimile: (843) 284-8105  
Email: dks@buyckfirm.com

s/Darren K. Sanders  
Darren K. Sanders (S.C. Bar # 68296)  
Hugh W. Buyck (S.C. Bar # 66462)  
Attorneys for the Defendant  
Medical University of South Carolina

August 12, 2020  
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

v.

We Are Sharing Hope, SC, Medical  
University of South Carolina, and United  
Network for Organ Sharing,

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2020-CP-10-02902**DEFENDANT UNITED NETWORK  
FOR ORGAN SHARING'S MOTION TO  
DISMISS****TO: JOHN C. MOYLAN, III, ESQUIRE AND LUCY DINKINS, ESQUIRE, COUNSEL  
FOR PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Defendant United Network for Organ Sharing ("UNOS"), by and through its undersigned counsel, hereby moves this Honorable Court for an order dismissing UNOS from this case with prejudice for the following reasons:

1. Under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, the Court lacks personal jurisdiction over UNOS because UNOS, a Virginia not-for-profit charitable organization, has insufficient contacts, if any, with South Carolina such that haling UNOS into South Carolina court would violate due process.
2. Under Rule 12(b)(6), the Complaint fails to state a claim for special damages, which must be plead with particularity as required by Rule 9(g). Accordingly, the Court should dismiss Plaintiff's claim for special damages.
3. Under Rule 12(b)(6), the Complaint fails to state a claim for punitive damages, which cannot be recovered against UNOS, a 501(c)(3) not-for-profit charitable organization, pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code §§ 33-

56-10 to 33-56-200. Accordingly, the Court should dismiss Plaintiff's claim for punitive damages against UNOS.

4. Under Rule 12(b)(6), the Complaint fails to state a claim against UNOS because UNOS is immune from civil liability pursuant to the South Carolina Revised Uniform Anatomical Gift Act, S.C. Code §§ 44-43-300 to 44-43-415.

UNOS respectfully requests a hearing on its motion to dismiss. This motion is supported by the South Carolina Rules of Civil Procedure, applicable case law and statutory law, and any supporting memoranda and other such materials the Court may receive prior to the time of a hearing on this motion.

**HALL BOOTH SMITH, P.C.**

/s/ Jack G. Gresh

Jack G. Gresh, SC Bar No. 75188

Lauren Spears Gresh, SC Bar No. 100994

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

[jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)

[lgresh@hallboothsmith.com](mailto:lgresh@hallboothsmith.com)

*Counsel for Defendant United Network for Organ Sharing*

August 20, 2020

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Case No. 2020-CP-10-02902

**PLAINTIFF'S MOTION FOR AN  
ORDER COMPELLING DEFENDANT  
MEDICAL UNIVERSITY OF SOUTH  
CAROLINA TO SUBMIT DOCUMENTS  
WITHHELD FROM DISCOVERY TO  
THE COURT UNDER SEAL PURSUANT  
TO S.C. CODE § 44-7-394**

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), respectfully moves for an order compelling Defendant Medical University of South Carolina ("MUSC") to submit certain documents to the Court under seal pursuant to S.C. Code § 44-7-394(A) for a judicial determination of whether the documents are subject to discovery.

**BACKGROUND**

This is a wrongful death case arising out of Mr. Holliman's untimely death following a double lung transplant performed by physicians at MUSC during which lungs of the wrong blood type were transplanted into Mr. Holliman. Mr. Holliman suffered lung problems, and his physicians at MUSC determined he was a suitable candidate for a double lung transplant. Mr. Holliman's doctors at MUSC approved him for a transplant with lungs from a donor (the "Donor") and performed a double lung transplant on him with the Donor's lungs on November 27, 2018.

Mr. Holliman began suffering serious complications during his transplant surgery and remained in critical condition afterwards. A few hours after Mr. Holliman's surgery was completed, MUSC was informed that another transplant center had tested the Donor's blood provided with the organ it received, and discovered that the Donor's blood type had been incorrectly reported as type O when it was in fact type A. Shortly thereafter, MUSC tested the Donor's blood sample that it received with the Donor's lungs prior to Mr. Holliman's surgery. MUSC's test results of this blood sample confirmed that the Donor in fact had type A blood. Mr. Holliman had type O blood, which is incompatible with type A blood. Mr. Holliman died the day after his transplant because his body rejected the ABO incompatible Donor lungs that MUSC transplanted into him.

Mrs. Holliman served her first set of discovery requests on MUSC on July 10, 2020. *See* Exhibit A (Plaintiff's first set of interrogatories and requests for production to MUSC). MUSC served responses to Mrs. Holliman's discovery requests on September 22, 2020. *See* Exhibit B (MUSC's responses to Plaintiff's first set of interrogatories and requests for production). MUSC provided a privilege log with its responses indicating that 368 pages of documents were withheld from MUSC's production. *See* Exhibit C (MUSC's privilege log).

MUSC's privilege log states that 368 pages of documents Bates labeled MUSC Privileged 0001-0368 have been withheld on a claim of "Peer Review." *See* Exhibit C. The privilege log contains no information regarding the withheld documents other than a generic description of three categories of documents, the assertion of a "peer review" privilege, and the Bates label of the documents. *See id.* The privilege log does not include any information regarding the author(s), recipient(s), dated created, date modified, document type, or titles of specific documents. *See id.* Likewise, MUSC's discovery responses contain no additional information regarding the nature or

circumstances of the withheld documents, although MUSC objects to numerous interrogatories and requests for production on the ground that they seek information and documents that are confidential and privileged pursuant to S.C. Code § 44-7-392. *See* Exhibit B. With such little information regarding the withheld documents, it is impossible for Mrs. Holliman to evaluate whether the documents are in fact subject to discovery.

On October 15, 2020, counsel for Mrs. Holliman sent a letter to MUSC's attorney outlining several deficiencies with MUSC's discovery responses, including the documents withheld by MUSC on a claim of privilege. *See* Exhibit D (letter from John Moylan to Darren Sanders dated October 15, 2020). In this letter, Mr. Moylan explained that, based on the information (or lack thereof) in MUSC's discovery responses and privilege log, it is unclear whether the withheld materials are in fact protected by S.C. Code § 44-7-392 as MUSC claims. Mr. Moylan further explained that § 44-7-394 provides a mechanism for documents withheld on a claim of confidentiality under § 44-7-392 to be filed under seal with the court for a judicial determination of whether the materials are subject to discovery. *See id.* Mr. Moylan requested for MUSC either to produce the withheld documents or to file them under seal with the court for judicial review. *See id.* On October 21, 2020, Mr. Sanders responded to Mr. Moylan's letter, stating that MUSC maintains the withheld documents are privileged and that MUSC would not file the documents under seal absent a motion. *See* Exhibit E (letter from Mr. Sanders to Mr. Moylan dated October 21, 2020).

### **ANALYSIS**

S.C. Code § 44-7-392(A)(1) protects from discovery documents and information prepared or acquired by hospitals in connection with *certain* types of proceedings. The statute does not, of



course, protect *all* documents and information in a hospital's possession. *See id.* Instead, it enumerates eight specific types of proceedings for which related documents are protected. *Id.*

Moreover, the South Carolina Supreme Court has clearly held that the *outcome* of hospital proceedings is not protected from discovery, even when the documents and information acquired as part of the proceedings are. *Durham v. Vinson*, 360 S.C. 639, 646-47, 602 S.E.2d 760, 763-67 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61-63, 439 S.E.2d 257, 259-61 (1993).<sup>1</sup> The Court in *McGee* explained:

[W]e find that the outcome of the decision-making process is not protected. Permitting discovery of the effect of the committee proceedings does not inhibit open discussion. In our view, the confidentiality statute was intended to protect the review process, but not restrict the disclosure of the result of the process.

*McGee*, 312 S.C. at 63, 439 S.E.2d at 260 (internal citation omitted).

Based on the scant information provided in MUSC's privilege log and discovery responses regarding the 368 pages of withheld documents, it is impossible for Plaintiff to evaluate whether the documents are protected by § 44-7-392(A)(1) or are in fact subject to discovery in this wrongful death case. It appears at a minimum, however, that the document on MUSC's privilege log described as "Performance Analysis and Improvement Subcommittee Report" and Bates labeled MUSC Privileged 0267-0368 is a summary of the outcome of an investigation, which is subject to discovery pursuant to *Durham* and *McGee* and should be produced.

---

<sup>1</sup> Section 44-7-392 was enacted in 2012. Prior to that, the confidentiality of documents and information acquired during hospital proceedings was governed by S.C. Code § 40-71-20, which applies to proceedings of certain appointed professional committees in general (not just hospital proceedings). *Durham* and *McGee* pre-date the enactment of § 44-7-392 and analyze protections for hospital proceedings under § 40-71-20. The reasoning in *Durham* and *McGee* for holding that the outcome of hospital proceedings is not protected applies, however, with equal force to § 44-7-392, and there is nothing in the statute to suggest that the legislature intended to overrule this holding of the Supreme Court in *Durham* and *McGee*. Furthermore, counsel for the Plaintiff is unaware of any case law analyzing § 44-7-392 and holding to the contrary.

S.C. Code § 44-7-394(A) sets forth the procedure for resolving disputes regarding documents withheld on a claim of protection under § 44-7-392. Section 44-7-394(A) provides:

If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44-7-392, and the party seeking the documents objects, then **upon motion to the court having jurisdiction over the pending action the court shall review the documents under seal to determine if any of the documents are subject to discovery.** The court may order production of the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, **the court may assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.**

*Id.* (emphasis added).

As stated above, Plaintiff's counsel has objected to MUSC's withholding of 368 pages of relevant and responsive documents. *See* Exhibit D. In response, MUSC's attorney reiterated that the documents would not be produced and took the position that MUSC was not obligated to submit them to this Court without a motion. *See* Exhibit E. Accordingly, Plaintiff files this motion pursuant to § 44-7-394(A) requesting for the Court to enter an order compelling MUSC to submit its documents withheld from discovery and Bates-labeled MUSC Privileged 0001-0368 to the Court for a judicial determination of whether they are subject to discovery in this action.

### **CONCLUSION**

For the reasons set forth herein, Plaintiff respectfully requests that this Court enter an order:

1. Compelling MUSC to submit its documents Bates labeled MUSC Privileged 0001-0368 to the Court under seal for judicial review;
2. Compelling MUSC to produce to Plaintiff all documents Bates labeled MUSC Privileged 0001-0368 that the Court determines are not privileged; and
3. Awarding Plaintiff her attorney's fees incurred in obtaining any documents ordered to be produced from MUSC that were wrongfully withheld.

Respectfully submitted,

WYCHE, P.A.

*s/John C. Moylan, III*

---

John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

*Attorneys for Plaintiff*

November 4, 2020

## **EXHIBIT A**

### **Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant MUSC**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO DEFENDANT  
MEDICAL UNIVERSITY OF SOUTH  
CAROLINA**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant Medical University of South Carolina ("Defendant") serve upon counsel for Plaintiff answers to the following interrogatories within forty-five days after the date of service of these interrogatories or any earlier date specified by the Court.

The following interrogatories shall be deemed to continue from the time of service until the time of the trial of the case so that information sought which comes to the knowledge of Defendant, its representatives, agents, or attorneys, after answers to these interrogatories have been submitted, shall be transmitted to the undersigned.

**INSTRUCTIONS AND DEFINITIONS**

A. In answering these interrogatories, furnish all information that is available to the Defendant, including information that is in the possession of the Defendant's attorneys, investigators for its attorneys, independent accountants, officers, employees, or agents.

B. If the Defendant cannot answer any of the following interrogatories in full, answer to the extent possible and specify the reasons why the Defendant is unable to answer the remainder, and provide whatever information the Defendant has concerning the unanswered portions.

C. If any document or information is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document containing the information;
- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

D. The term “document” shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including ESI, computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, social media postings and communications, instant messages, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through

detection devices into usable form, or any other tangible thing which records information in any way. The term “document” shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendant if it is within the possession or control of any of the Defendant’s attorneys, investigators for the Defendant’s attorneys, independent accountants, agents, or any person acting on behalf of or in concert with the Defendant or with any of these persons, or otherwise under their possession or control.

E. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; social media postings and communications, cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cell phone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, flash drive, etc.); PDAs, Blackberries and Palm Pilots; cell phones; tablets; IM tools; or USB drives.

G. The term “identify” or “identity” when used with respect to an individual shall mean to state the name and present or last known home and business address and phone numbers of each such person, and, if that individual has ever been employed by the Defendant, affiliated or associated with the Defendant or rendered any service to the Defendant, so indicate and state the nature and time period of such employment, affiliation, association or service. Once a person has been fully identified in your answer, such person may be identified thereafter by name alone.

H. When used with respect to a corporation, “identify” or “identity” shall mean to state the corporation's full name, the address of its principal place of business, the state of incorporation,

and the corporation's principal activity or activities. When used with respect to a person other than an individual or a corporation, “identify” or “identity” means to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities of such entity.

I. “Identify” or “identity”, with reference to documents, means to state the title of the document, if any, the date of the document or the date it was prepared, the identity of the author or authors, the recipients of the document (including copies thereof), the type of document, and a description of the subject matter of the document. If any document that the Defendant is asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in the Defendant’s possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

J. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; governmental body, agency or subdivision; committee, commission or other organization or entity.

K. “Relating to” includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

L. “Communication” or “communications” means transmission and/or receipt of any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings,



interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (e-mail), text messages, instant messaging, memoranda, documents, writings, or other forms of communications, including but not limited to oral, written, and electronic communications.

M. The terms “identify” or “identity” with respect to a communication requires that you state (a) the date of the communication, (b) its type (e.g., letter, phone call, or face-to-face meeting), (c) the identity and role of each participant (see definition of “identify” with respect to persons, above), (d) its place, if a face-to-face meeting, and (e) the identity of each document constituting or reflecting the communication (see definition of “identify” with respect to documents, above), and (f) the substance of the communication in detail.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

P. “Each”, “any”, and “all” are both singular and plural.

Q. The terms “you” “your,” and “Defendant” refer to the Defendant, Medical University of South Carolina, and any of its agents, servants, employees, attorneys, experts, consultants, or representatives who are in possession of or who may have obtained information for or on behalf of the Defendant, and any and all other persons acting under its authority or on its behalf.

R. “Mr. Holliman” refers to Allen B. Holliman.

S. “Donor” refers to the donor whose lungs Mr. Holliman received and who is associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

### **INTERROGATORIES**

1. Identify all persons known to Defendant or its counsel to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from the witnesses and, if so, who has possession of each such statement.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth a summary of the facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiff’s claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

5. Explain in detail Defendant’s policy(ies) in effect in November 2018 relating to the determination or confirmation of the blood type of organ donors whose organs or tissues are used or might be used for transplants performed at Defendant’s facilities.

6. Explain in detail Defendant’s policy(ies) in effect in November 2018 relating to the matching of organ donors and recipients for transplants performed at Defendant’s facilities.

7. State with specificity when and how Defendant first became aware that the Donor’s organs might be available for transplant.

8. State the following for all laboratory or other test results of which Defendant is

aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor before or after the Donor received any blood transfusions;
- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

9. Describe in detail all steps you took to determine and/or confirm the Donor's blood type prior to Mr. Holliman's transplant surgery.

10. Identify all individuals involved in determining or confirming the Donor's blood type and, for each individual identified, state his/her role in determining or confirming the Donor's blood type.

11. Identify all individuals involved in matching Mr. Holliman with the Donor's lungs for transplant and, for each individual identified, state his/her role in matching Mr. Holliman with the Donor's lungs.

12. Identify all documents relating to the Donor's medical condition and care to which you had access prior to Mr. Holliman's transplant surgery.

13. Identify all individuals affiliated with Defendant who reviewed any information on DonorNet relating to the Donor and, for each such individual, describe what information he/she reviewed and when.

14. State when and how you first received the pre-transplant testing report for the Donor issued by VRL Eurofins, which has been Bates-labeled MUSC\_Subpoena 00204-05 and is attached hereto as Exhibit A.

15. Identify and describe the role of all physicians and nurses who participated in Mr. Holliman's transplant surgery.

16. Identify all physicians and nurses affiliated with Defendant who participated in the Donor's organ procurement surgery and, for each such individual, describe his/her role and why he/she participated in the surgery.

17. Describe in detail when and how you first became aware that the Donor's blood might have been mistyped.

18. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

19. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

20. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

21. State what organs or tissues of the Donor you received other than the lungs and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

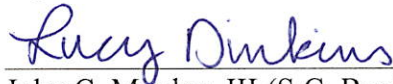
22. State whether you have performed any investigations relating to Mr. Holliman's

death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

- a. Describe the purpose of the investigation;
- b. State when the investigation was commenced and when it was concluded;
- c. Identify all individuals who participated in the investigation; and
- d. State the outcome or conclusion(s) of the investigation.

Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

July 10, 2020

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION TO  
DEFENDANT MEDICAL UNIVERSITY  
OF SOUTH CAROLINA**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant Medical University of South Carolina ("Defendant") produce the documents and things identified below for examination, inspection and copying at the offices of Wyche, P.A., 807 Gervais Street, Suite 301, Columbia, South Carolina, or some other mutually convenient place agreed to by the parties, within forty-five (45) days after the date of service of these requests or any earlier date specified by the court.

These requests are continuing, and Defendant is obliged to produce all documents responsive to these requests, including such documents as become available to Defendant or its counsel after its responses hereto are served.

**INSTRUCTIONS AND DEFINITIONS**

A. In responding to these requests, produce all documents which are in the custody, possession or control of Defendant, including documents which are in the custody, possession or

control of Defendant's attorneys, investigators for Defendant's attorneys, independent accountants, agents or any person acting on behalf of or in concert with Defendant or with any of these persons, and not merely documents from Defendant's own files or records.

B. If Defendant cannot respond to any of the following requests in full, respond to the fullest extent possible, specifying the reasons why Defendant is unable to respond in full, and provide whatever information Defendant has concerning the documents or portions of documents not provided, including the source or sources from which the documents or portions thereof may be obtained.

C. If documents requested are not reasonably available to Defendant in precisely the form requested, or for the particular date or period specified, but could be produced in a modified form and/or for a slightly different date or period, please respond to that request in such modified form or for such different date or period.

D. If any document that is responsive to a request is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in Defendant's possession, custody or control, state the disposition that was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person(s) performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

E. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document;

- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

F. The term “document” shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intra-office communications, social media postings and communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form, or any other tangible thing which records information in any way. The term “document” shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendant if it is within the possession or control of any of Defendant’s attorneys, investigators for Defendant’s attorneys, independent accountants, agents, or any person



acting on behalf of or in concert with Defendant or with any of these persons, or otherwise under their possession or control.

G. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; social media postings and communications, Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cellphone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cellphones; tablets; IM tools; or USB drives.

H. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; trust, governmental body, agency or subdivision; committee, commission or other organization or entity.

I. “Relating to” includes referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

J. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, emails, texts, letters, telegrams, exchanges of written or recorded information of any type, including ESI, face-to-face meetings, and telephone conversations.

K. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

L. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

M. The terms “you,” “your,” and “Defendant” shall refer to the Defendant, Medical University of South Carolina, and any of its agents, servants, employees, attorneys, experts, consultants or representatives who are in possession of or who may have obtained information, documents, or other materials for or on behalf of Defendant, and any and all other persons acting under its authority or on its behalf.

N. “Mr. Holliman” refers to Allen B. Holliman.

T. “Donor” refers to the donor whose lungs Mr. Holliman received and who is associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

### **REQUESTS FOR PRODUCTION**

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff’s claims in this matter.

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

6. All policies of Defendant in effect from 2018 to the present relating to the determination or confirmation of the blood type of organ donors whose organs or tissues are used or might be used for transplants performed at Defendant's facilities.

7. All policies of Defendant in effect from 2018 to the present relating to the matching of organ donors and recipients for transplants performed at Defendant's facilities.

8. All laboratory or other test results relating to the Donor.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

10. All documents and communications relating to the determination or confirmation of the blood type of the Donor.

11. All documents and communications relating to Mr. Holliman or his death.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

13. All communications with Grand Strand Medical Center, We Are Sharing Hope SC, United Network for Organ Sharing, VRL Eurofins, or any other transplant centers relating to the Donor.

14. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for determining or confirming the blood type of organ donors.

15. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

16. All communications with We Are Sharing Hope SC from January 1, 2018, to November 30, 2019, relating to the determination or confirmation of the blood type of organ donors.

17. All communications with We Are Sharing Hope SC from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

18. All documents received from We Are Sharing Hope SC, Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any other transplant centers relating to the Donor.

19. All documents obtained from DonorNet relating to the Donor.

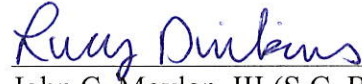
20. All documents provided to We Are Sharing Hope SC, Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any other transplant centers relating to the Donor.

21. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

22. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

Respectfully submitted,

Wyche, P.A.

A handwritten signature in blue ink that reads "Lucy Dinkins". The signature is written in a cursive style and is positioned above a horizontal line.

John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

July 10, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served the foregoing **Plaintiff's First Set of Interrogatories to Defendant Medical University of South Carolina and Plaintiff's First Set of Requests for Production to Defendant Medical University of South Carolina** upon counsel for Defendant by causing a copy of the same to be served by Electronic Mail and First Class U.S. Mail this 10<sup>th</sup> day of July, 2020, addressed as follows:

Darren K. Sanders  
Buyck, Sanders & Simmons, LLC  
PO Box 2424  
Mt. Pleasant, SC 29465-2424  
*DKS@Buyckfirm.com*

July 10, 2020

  
\_\_\_\_\_  
Laura H. Diaz, Paralegal

## **EXHIBIT B**

### **Defendant MUSC's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents**

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)

) NINTH JUDICIAL CIRCUIT

)

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

) C/A No. 2020-CP-10-02902

)

)

Plaintiff,

)

)

**DEFENDANT MEDICAL UNIVERSITY  
OF SOUTH CAROLINA'S ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

Versus

)

)

)

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing

)

)

)

)

)

Defendants.

)

TO: JOHN C. MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE, ATTORNEYS FOR  
THE PLAINTIFF:

The Medical University of South Carolina, by and through its undersigned attorney, hereby  
answers to the Plaintiff's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules  
of Civil Procedure as follows:

1. Identify all persons known to Defendant or its counsel to be witnesses concerning  
the facts of this case and indicate whether written or recorded statements have been taken from the  
witnesses, and, if so, who has possession of each such statement.

**ANSWER:**

**Michelle Cha Holliman  
Emily Holliman  
Lauren Holliman  
Laina Yoswein  
c/o Wyche P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina**

**This Defendant is not aware of any written statements of these witnesses at this time.**



**Chad Denlinger, M.D.**  
**Barry Gibney, D.O.**  
**Sanford Zeigler, M.D.**  
**Luca Paoletti, M.D.**  
**Loren Rae Francis, M.D.**  
**Sarah Funderburk, RN**  
**David Fisher, Jr.**  
**Liberty Irene Tillman**  
**Mark Wilkinson**  
**Thomas Barron, RN**  
**Margaret Barrow, PA**  
**Charles F. Garred, III, RN**  
**Aaron Henderson, RN**  
**Sara Anne Labissoniere, RN**  
**Parisa Ghasemi, RN**  
**Mindy Barron, RN**  
**Jessica Weckbaker, RN**  
**Kathy Lynette Martin, RN**  
**Heather Axelson, RN**  
**Jason Ferro, RN**  
**Jerry Squires, M.D., PhD**  
**Satish Nadig, M.D.**  
**Vinayak Rohan, M.D.**  
**Daniel Stanton, MHA**  
**Jordan Davenport, BSN, BA, CMSRN**  
**Nicole A. Pilch, PharmD**  
**Marc Leslie**  
**Lois Kerr**  
**Julie Anderson**  
**Carrisa Lemerise**  
**Joe Rozier**  
**Michelle Campos, RN**  
**Erin Pfeiffer, MT (ASCP) SBB**  
**All treating providers at MUSC**  
**c/o Buyck & Sanders, LLC**  
**Mount Pleasant, SC**

**Written or recorded statements of these witnesses appear within the records being produced in response to discovery.**

**Darla Welker**  
**Dave DeStefano**  
**Michael Lotts**  
**Janine Bumgarner**  
**Lisa Walkabout**  
**Alyson Clark**

**Tiffany Adams  
Candy St. Marie  
Jovilyn Swifka  
Theresa Ross  
Valerie Boykin  
Taylor Nicolette  
Lacey Fryar  
Erika Veletto  
Byron Harper  
Amber Daniels  
Allison Sullivan  
Nicole Fuller  
Traci Adams  
Tyrish Page**

**All personnel who appear in records produced by We Are Sharing Hope SC  
c/o Hood Law Firm  
172 Meeting Street  
Charleston, SC**

**Written or recorded statements of these witnesses appear within the records being produced in response to discovery. It is unclear at this stage of discovery if the above-referenced individuals are affiliated with We Are Sharing Hope, the donor hospital or some other entity. These names were extracted from records produced by We are Sharing Hope. In the event they are identified with other entities, the Defendant reserves the right to call them as witnesses at trial in that capacity.**

**All involved personnel from United Network for Organ Sharing  
c/o Hall Booth Smith, PC  
111 Coleman Blvd, Suite 301  
Mt. Pleasant, SC**

**Written or recorded statements of these witnesses appear within the records being produced in response to discovery.**

**Samuel D. Baughman, M.D.  
Blood bank and lab representatives involved with ABO determination  
All treating healthcare providers  
Grand Strand Regional Medical Center  
809 82<sup>nd</sup> Parkway  
Myrtle Beach, SC**

**Written or recorded statements of these witnesses appear within the records being produced in response to discovery.**

**Representatives of VRL Eurofins Pre-Transplant Testing**

**Marietta, GA**

**Written or recorded statements of these witnesses appear within the records being produced in response to discovery.**

**The Defendant reserves the right to call as witnesses during the trial of this matter any healthcare providers who treated the decedent. These witnesses include but are not limited to all healthcare providers identified within the medical records produced during discovery and from all other sources. The Defendant reserves the right to call as witnesses all physicians, nurses, technicians and care providers from any hospitals or institutions where the decedent received care related in any way to the allegations or damages claimed within the Complaint. The Defendant further reserves the right to call as witnesses at trial all witnesses named by any other party in Answers to Interrogatories, including all experts. The Defendant knows of no written or recorded statements of these witnesses other than notations contained within the medical records and statements identified. The Defendant additionally reserve the right to elicit expert testimony from all physicians and healthcare providers of any type involved in the care and treatment of the decedent. The Defendant also reserves the right to all as witnesses any individuals named in any records or documents produced by any party during the course of discovery including all individuals named in the documents being produced by this Defendant.**

2. For each person known to Defendant or its counsel to be a witness concerning the facts of the case, set forth a summary of the facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

**ANSWER:**

**Michelle Cha Holliman – This witness is expected to testify regarding the allegations in the Complaint.**

**Emily Holliman – This witness is expected to testify regarding the allegations in the Complaint.**

**Lauren Holliman – This witness is expected to testify regarding the allegations in the Complaint.**

**Laina Yoswein – This witness is expected to testify regarding the allegations in the Complaint.**

**All treating providers at MUSC – These witnesses are expected to testify regarding the care and treatment of the decedent. These witnesses are also expected to testify regarding the allegations in the Complaint. Additionally, these witnesses are expected to testify all of the care and treatment of the decedent met the standard of care. Further, these witnesses are**

expected to testify the injuries alleged in the Complaint were caused by any of their actions or inactions.

All personnel and/or treating providers at We Are Sharing Hope – These witnesses are expected to testify regarding the care and treatment of the decedent and the events alleged in the Complaint.

All personnel at United Network for Organ Sharing – These witnesses are expected to testify regarding the care and treatment of the decedent and the events alleged in the Complaint.

All personnel and/or treating providers at Grand Strand Regional – These witnesses are expected to testify regarding the care and treatment of the decedent and the events alleged in the Complaint.

Representatives of VRL Eurofins Pre-Transplant Testing – These witnesses are expected to testify regarding the care and treatment of the decedent and the events alleged in the Complaint.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiff's claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

**ANSWER:** Coverage is afforded through the South Carolina Insurance Reserve Fund P.O. Box 11066, Columbia, SC 29201 in accordance with the terms and conditions of the South Carolina Tort Claims Act.

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

**ANSWER:** The Defendant has not yet identified the experts it intends to call during the trial of this matter. The Defendant reserves the right to elicit expert testimony from all treating healthcare providers of the decedent, including all healthcare providers from MUSC. They are expected to testify that all of the care and treatment of Allen B. Holliman complied with the appropriate standard of care. It is anticipated the healthcare providers

of the Allen B. Holliman will render expert opinions consistent with their care and treatment as well as their experience, training and background in their respective fields of practice. Upon further information and belief, the only written reports known by the Defendant are contained within the medical records of Allen B. Holliman. The Defendant reserves the right to supplement this answer to this Interrogatory after additional experts, apart from the treating providers of the Allen B. Holliman, are identified who will testify in trial.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination or confirmation of the blood type of organ donors whose organs or tissues are used or might be used for transplants performed at Defendant's facilities.

**ANSWER:** Along with these answers, the Defendant MUSC is producing Tx Policy No. C04 ABO Blood Type Verification in Transplantation (Living and Deceased Donation) and Tx Policy No. C10 Procedure for HLA Review of Potential Recipients of Deceased Donor Organs.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the matching of organ donors and recipients for transplants performed at Defendant's facilities.

**ANSWER:** Upon information and belief, this Defendant does not have a specific policy related to the matching of organ donors and recipients.

7. State with specificity when and how Defendant first became aware that the Donor's organs might be available for transplant.

**ANSWER:** Upon information and belief, an offer for lungs was initially made to MUSC by the OPO on November 26, 2018 at 22:18 through UNET.

8. State the following for all laboratory or other test results of which Defendant is aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor before or after the Donor received any blood transfusions;
- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

**ANSWER:** Based upon records being produced in response to discovery, it appears ABO #1 was performed at Grand Strand Regional Medical Center. The sample for ABO #1 appears to have been collected on November 24, 2018 at 23:09. This test was resulted as Blood Type O with a run time of 19:41 on November 25, 2018.

ABO #2 was performed at Grand Strand Regional Medical Center. The sample for ABO #2 appears to have been collected on November 25, 2018 at 19:50. The test resulted as Blood Type O on November 26, 2018 at 14:20.

In between collection of the samples reported as ABO #1 and ABO #2, a sample was collected on November 25, 2018 at 19:00. This sample appears to have been processed by

**VRL Eurofins Pre-Transplant Testing.** The final report for this sample appears to have been generated on November 26, 2018 at 13:49. The ABO result is reported as Indeterminate.

The donor's blood that accompanied the organs for transplant was collected at 0400 on November 27, 2018 at Grand Strand Regional Medical Center. Dr. Rohan made a request for an ABORh to be run on a sample around 0200 on November 28, 2018. The ABORh typing came back as an A result and was reported to Dr. Rohan around 0400 on November 28, 2018. The lab received a request to test the blood sample for an ABO at 10:07 a.m. on November 28, 2018 which resulted in a blood type of A. The report of this result was timed at 12:11 on November 28, 2018.

At this stage of discovery, it appears all of the blood typing was performed on blood taken at Grand Strand Regional Medical Center following transfusions.

9. Describe in detail all steps you took to determine and/or confirm the Donor's blood type prior to Mr. Holliman's transplant surgery.

**ANSWER:** This Defendant is not responsible for determining the donor's blood type. When the offer for the organs was initially made to MUSC, the ABO testing of the donor from Grand Strand Hospital was verified in UNET. Similarly, the transplant surgeon verified there was paperwork presented to him at the time of organ procurement which showed two ABOs which determined the donor's blood type to be O. When the donor's organs were checked in at MUSC, the organ and match IDs would be compared. As a part of this process, verification of the ABO as reflected in the paperwork as matching those IDs would also be undertaken.

10. Identify all individuals involved in determining or confirming the Donor's blood type and, for each individual identified, state his/her role in determining or confirming the Donors' blood type.

**ANSWER:** This Defendant is not responsible for determining the donor's blood type. When the offer for the organs was initially made to MUSC, the ABO of the donor was verified in UNET. Dr. Timothy Whelan in consultation with Dr. Chad Denlinger accepted the offer made based in part upon the ABO in UNET. Additionally, the ABO #1 and ABO #2 paperwork determining and confirming the ABO as O was presented to the transplant surgeon Dr. Chad Denlinger at the time of procurement. Upon arrival of the organs to MUSC, documentation reflects verification sign in procedures were undertaken by Thomas Barron, RN upon information and belief.

11. Identify all individuals involved in matching Mr. Holliman with the Donor's lungs for transplant and, for each individual identified, state his/her role in matching Mr. Holliman with the Donor's lungs.

**ANSWER:** The offer for the lungs was made to MUSC and accepted by the physician on call for the organ transplant team, Dr. Timothy Whelan. The decision to accept the offer was likely made after discussion with the transplant surgeon, Dr. Denlinger.

12. Identify all documents relating to the Donor's medical condition and care to which you had access prior to Mr. Holliman's transplant surgery.

**ANSWER:** All medical records related to the donor which were uploaded into UNET.

13. Identify all individuals affiliated with Defendant who reviewed any information on DonorNet relating to the Donor and, for each such individual, describe what information he/she reviewed and when.



**ANSWER:** Dr. Whelan accepted the offer for the organs on November 27, 2018 around 0115 following discussions with Dr. Denlinger. These physicians do not remember precisely every document that was reviewed and at what time, but based upon their habits, routines and customs, information in UNET would have been accessed prior to the provisional acceptance. The first inquiry made in reviewing the information in UNET would be focused on whether the organs were expected to be viable. This inquiry would start with review of information about the donor contained in the banner/donor summary. This information about the donor would include demographics, date of accident/event leading to the hospitalization, time and date of brain death declaration, clinical summary information, social history, lab data, serology, lung function data, ventilator settings, lung imaging information and culture results. If the organs appear to be suitable, efforts would be made to review the actual imaging of the lungs that may have been uploaded into UNET. At this point, the decision to place a provisional acceptance into the system would be made.

Assuming the organs have been accepted provisionally, efforts would be undertaken to verify the data with the attachments uploaded into UNET. The DRAI completed by the next of kin would be reviewed. The two ABO documents would be reviewed to verify the blood type determined of the donor. Review of these documents confirm that the blood has been drawn at two separate times and confirm the same blood type. Medical records generated by the hospital where the donor is hospitalized would also be reviewed as uploaded into UNET. At that point, the OPO would place a call to the transplant center deemed to be primary for the organs to discuss expected OR time for procurement.

14. State when and how you first received the pre-transplant testing report for the Donor issued by VRL Eurofins, which has been Bates-labeled MUSC\_Subpoena 00204-05 and is attached hereto as Exhibit A.

**ANSWER:** It is anticipated these pages would have been part of the information uploaded in UNET.

15. Identify and describe the role of all physicians and nurses who participated in Mr. Holliman's transplant surgery.

**ANSWER:** Surgeons:

**Chad Denlinger, M.D. – primary transplant surgeon**

**Barry Gibney, D.O. – transplant surgeon**

**Sanford Zeigler, M.D. – assisting surgeon/cardiothoracic surgeon**

**Bradley Lenoir, M.D – resident**

**Quiana L. Kern, M.D. – resident**

**Loren Rae Francis, M.D. – anesthesiologist**

**Jared Stewart McKinnon, M.D. – anesthesia fellow**

**John M. Green, D.O – anesthesia resident**

**Kanika Shani Parrish – anesthesia technician**

**Sarah Funderburk, RN – Circulator and Relief Scrub**

**David Fisher, Jr. – Perfusionist**

**Liberty Irene Tillman - Relief Circulator**

**Mark Wilkinson – Scrub Person**

**Thomas Barron, RN – Circulator Orienteer**

16. Identify all physicians and nurses affiliated with Defendant who participated in the Donor's organ procurement surgery and, for each such individual, describe his/her role and why he/she participated in the surgery.

**ANSWER:** Dr. Chad Denlinger was involved in the organ procurement surgery as an employee of MUSC because he was going to be the surgeon who transplanted the donor's lungs into Mr. Holliman.

17. Describe in detail when and how your first became aware that the Donor's blood might have been mistyped.

**ANSWER:** Upon information and belief, the OPO contacted Dr. Whelan on behalf of MUSC in the early morning hours of November 28, 2018 to indicate the donor's blood type had been identified in Wisconsin as A instead of O.

18. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

**ANSWER:** Objection. Interrogatory Number 18 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Interrogatory Number 18 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 –

0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS.

Without waiving these objections, along with these answers, this Defendant is producing the following:

Medical records from MUSC labeled MUSC 1 of 5251 through MUSC 5251 of 5251

Documents labeled MUSC RRF 0001-0253 CONFIDENTIAL

Six telephone recordings previously produced (redactions related to information regarding other patients/individuals)

This Defendant is also in possession of documents produced to date by the Defendant We Are Sharing Hope.

19. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

**ANSWER:** Objection. Interrogatory Number 19 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Interrogatory Number 19 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS.

Without waiving these objections, along with these answers, this Defendant is producing the following:

Medical records from MUSC labeled MUSC 1 of 5251 through MUSC 5251 of 5251

Documents labeled MUSC RRFP 0001-0253 CONFIDENTIAL

Six telephone recordings previously produced (redactions related to information regarding other patients/individuals)

This Defendant is also in possession of documents produced to date by the Defendant We Are Sharing Hope.

20. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

**ANSWER:** Objection. Interrogatory Number 20 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Interrogatory Number 20 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS.

Without waiving these objections, along with these answers, this Defendant is producing the following:

**Medical records from MUSC labeled MUSC 1 of 5251 through MUSC 5251 of 5251**

**Documents labeled MUSC RRFP 0001-0253 CONFIDENTIAL**

**Six telephone recordings previously produced (redactions related to information regarding other patients/individuals)**

**This Defendant is also in possession of documents produced to date by the Defendant We Are Sharing Hope.**

21. State what organs or tissues of the Donor you received other than the lungs and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

**ANSWER: Objection. Interrogatory Number 21 seeks information related to patients other than the decedent. Without waiving this objection, documents produced to date have revealed MUSC received two lungs and two kidneys. Only one additional transplant was performed. The only patient who died was the decedent in this lawsuit.**

22. State whether you have performed any investigations relating to Mr. Holliman's death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

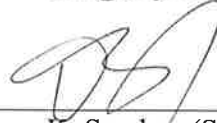
- a. Describe the purpose of the investigation;
- b. State when the investigation was commenced and when it was concluded;
- c. Identify all individuals who participated in the investigation; and
- d. State the outcome or conclusion(s) of the investigation.

**ANSWER: Objection. Interrogatory Number 22 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40 and hospital policy. Additionally, Interrogatory Number 22 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the**

discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies.

BUYCK & SANDERS, LLC

305 Wingo Way  
P.O. Box 2424  
Mt. Pleasant, SC 29465-2424  
Telephone: (843) 377-1400  
Facsimile: (843) 284-8105  
Email: dks@buyckfirm.com



Darren K. Sanders (S.C. Bar # 68296)  
Hugh W. Buyck (S.C. Bar # 66462)  
Attorneys for the Defendant  
Medical University of South Carolina

9/22, 2020  
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)

) NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

)

) C/A No. 2020-CP-10-02902

)

)

Plaintiff,

)

) **DEFENDANT MEDICAL UNIVERSITY**

)

) **OF SOUTH CAROLINA'S RESPONSES**

)

) **TO PLAINTIFF'S FIRST SET OF**

)

)

)

)

)

Versus

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing

Defendants.

TO: JOHN C. MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE, ATTORNEYS FOR  
THE PLAINTIFF:

The Defendant, Medical University of South Carolina, by and through its undersigned attorney, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby responds the Plaintiff's First Request for Production as follows:

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

**RESPONSE: Statements of witnesses appear within the documents identified in response to Request Number 5.**

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

**RESPONSE: Please see the Defendant's answer to Interrogatory Number 3.**

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony



and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

**RESPONSE:** Please see this Defendant's Answer to Interrogatory Number 4.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

**RESPONSE:** Please see this Defendant's Answer to Interrogatory Number 4.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

**RESPONSE:** Along with these responses, this Defendant is producing the following:

Medical records from MUSC labeled MUSC 1 of 5251 through MUSC 5251 of 5251

Two CDs of radiology imaging from MUSC

Documents labeled MUSC RRFP 0001-0253 CONFIDENTIAL

Documents produced by We Are Sharing Hope labeled WASH 0001-0371  
CONFIDENTIAL

6. All policies of Defendant in effect from 2018 to the present relating to the determination or confirmation of the blood type of organ donors whose organs or tissues are used or might be used for transplants performed at Defendant's facilities.

**RESPONSE:** Along with these responses, this Defendant is producing Tx Policy No. C04

ABO Blood Type Verification in Transplantation (Living and Deceased Donation) and Tx

Policy No. C10 Procedure for HLA Review of Potential Recipients of Deceased Donor

Organs.

7. All policies of Defendant in effect from 2018 to the present relating to the matching of organ donors and recipients for transplants performed at Defendant's facilities.

**RESPONSE:** Upon information and belief, this Defendant does not have a specific policy related to the matching of organ donors and recipients.

8. All laboratory or other test results relating to the Donor.

**RESPONSE:** Upon information and belief, the documents responsive to Request Number 8 currently in the custody of this Defendant are included in the documents that have been identified in response to Request Number 5.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

**RESPONSE:** Upon information and belief, the documents responsive to Request Number 9 currently in the custody of this Defendant are included in the documents that have been identified in response to Request Number 5.

10. All documents and communications relating to the determination or confirmation of the blood type of the Donor.

**RESPONSE:** Documents responsive to Request Number 10 have been identified in response to Request Number 5.

11. All documents and communications relating to Mr. Holliman or his death.

**RESPONSE:** Objection. Request Number 11 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 11 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in

connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 11 have been identified in response to Request Number 5.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

**RESPONSE:** Objection. Request Number 12 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 12 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 12 have been identified in response to Request Number 5.

13. All communications with Grand Strand Medical Center, We Are Sharing Hope SC, United Network for Organ Sharing, VRL Eurofins, or any other transplant centers relating to the Donor.

**RESPONSE:** Documents responsive to Request Number 13 have been identified in response to Request Number 5.

14. All communications with United Network for Organ Sharing from January, 2018, to November 30, 2019, relating to the procedures or protocols for determining or confirming the blood type of organ donors.

**RESPONSE:** Objection. Request Number 14 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 14 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 14 have been identified in response to Request Number 5.

15. All communications with United Network for Organ Sharing from January 1, 2018 to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

**RESPONSE:** Objection. Request Number 15 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 15 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 15 have been identified in response to Request Number 5.

16. All communications with We Are Sharing Hope SC from January 1, 2018, to November 30, 2019, relating to the determination or confirmation of the blood type of organ donors.

**RESPONSE:** Objection. Request Number 16 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and

guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 16 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 16 have been identified in response to Request Number 5.

17. All communications with We Are Sharing hope SC from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

**RESPONSE:** Objection. Request Number 17 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 17 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance

Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 17 have been identified in response to Request Number 5.

18. All documents received from We Are Sharing Hope SC, Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any other transplant centers relating to the Donor.

**RESPONSE:** Documents responsive to Request Number 18 have been identified in response to Request Number 5.

19. All documents obtained from DonorNet relating to the Donor.

**RESPONSE:** DonorNet is a program within UNET. These documents would be in the control of UNOS. Physical copies of documents from DonorNet are not typically maintained by this Defendant because they would be accessible within UNET. This Defendant would defer to UNOS to produce any responsive documents. Upon information and belief, UNET documents have been produced by We Are Sharing Hope. Those documents are identified in response to Request Number 5.

20. All documents provided to We Are Sharing Hope SC, Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any other transplant centers relating to the Donor.

**RESPONSE:** Documents responsive to Request Number 20 have been identified in response to Request Number 5.



21. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

**RESPONSE: Objection.** Request Number 21 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 21 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 21 have been identified in response to Request Number 5.

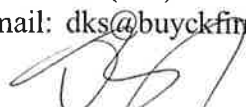
22. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

**RESPONSE: Objection.** Request Number 22 seeks information that is privileged and confidential pursuant to S.C. Code Sections 44-7-392 and 40-71-20 to 40, UNOS policies and guidelines, OPTN Bylaws including but not limited to Appendix L and hospital policy. Additionally, Request Number 22 seeks information related to other patients not parties to this litigation, is vague, ambiguous and not reasonably calculated to lead to the discovery of



admissible evidence. Pursuant to this Defendant's Privilege Log, this Defendant is in possession of (1) documents labeled MUSC Privileged 0001 – 0138 which were generated in connection with a Root Cause Analysis, Quality Review Process and Quality Assurance Performance Improvement which are related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies; (2) documents labeled MUSC Privileged 0139 – 0266 related to OPTN/UNOS On Site Survey; and (3) documents labeled MUSC Privileged 0267 – 0368 related to OPTN/UNOS PAIS. Without waiving these objections, non-privileged documents responsive to Request Number 22 have been identified in response to Request Number 5.

BUYCK & SANDERS, LLC  
 305 Wingo Way  
 P.O. Box 2424  
 Mt. Pleasant, SC 29465-2424  
 Telephone: (843) 377-1400  
 Facsimile: (843) 284-8105  
 Email: dks@buyckfirm.com

  
 Darren K. Sanders (S.C. Bar # 68296)  
 Hugh W. Buyck (S.C. Bar # 66462)  
 Attorneys for the Defendant  
 Medical University of South Carolina

9/22, 2020  
 Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)

) NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

)

) C/A No. 2020-CP-10-002902

)

)

Plaintiff, )

)

Versus )

**CERTIFICATE OF SERVICE**We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing

)

)

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)

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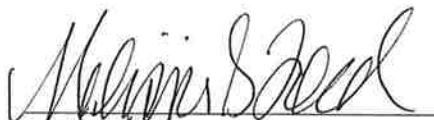
Defendants. )

This is to certify that I, Melissia G. Ford, paralegal with Buyck & Sanders, LLC attorneys for the Defendant Medical University of South Carolina have on this 22nd day of September, 2020 served a copy of the **Defendant Medical University of South Carolina's Answers to Plaintiff's First Set of Interrogatories and Defendant Medical University of South Carolina's Responses to Plaintiff's First Set of Requests for Production** on all parties or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, and/or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

John C. Moylan, III, Esquire  
Lucy Dinkins, Esquire  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Attorneys for Plaintiff

Molly H. Craig, Esquire  
Hood Law Firm, LLC  
172 Meeting Street  
P.O. Box 1508  
Charleston, SC 29402  
Attorneys for We Are Sharing Hope

Jack G. Gresh, Esquire  
Lauren Spears Gresh, Esquire  
Hall Booth Smith, PC  
111 Coleman Blvd, Suite 301  
Mount Pleasant, SC 29464  
Attorneys for United Network for Organ  
Sharing



Melissia G. Ford

Paralegal to Darren K. Sanders, Esquire

## **EXHIBIT C**

### **Defendant MUSC's Privilege Log**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen B.  
Holliman,

Plaintiff,

Versus

We Are Sharing Hope SC, Medical University of  
South Carolina, and United Network for Organ  
Sharing

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 2020-CP-10-002902

**DEFENDANT MEDICAL UNIVERSITY  
OF SOUTH CAROLINA'S  
PRIVILEGE LOG**TO: JOHN C. MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE, ATTORNEYS FOR THE  
PLAINTIFF:

The Defendant Medical University of South Carolina (hereinafter "this Defendant"), hereby  
submits the following log of privileged documents withheld from production:

| Document Description                                                                                                                                                                             | Privilege Asserted | Bates Label Nos.          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------------|
| Root Cause Analysis, Quality Review and<br>Quality Assurance Performance<br>Improvement documents related to the<br>Event Investigation & Analysis and<br>Transplant ICCE Adverse Event Policies | Peer Review        | MUSC Privileged 0001-0138 |
| OPTN On-Site Survey Documents                                                                                                                                                                    | Peer Review        | MUSC Privileged 0139-0266 |
| Performance Analysis and Improvement<br>Subcommittee Report                                                                                                                                      | Peer Review        | MUSC Privileged 0267-0368 |

BUYCK &amp; SANDERS, LLC

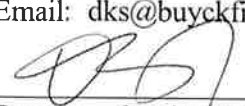
305 Wingo Way

P.O. Box 2424

Mt. Pleasant, SC 29465-2424

Telephone: (843) 377-1400

Email: dks@buyckfirm.com

  
 Darren K. Sanders (S.C. Bar # 68296)

Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendant

Medical University of South Carolina

9/22, 2020  
Mt. Pleasant, South Carolina

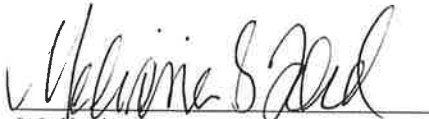
STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON )  
Michelle Cha Holliman, individually and as ) NINTH JUDICIAL CIRCUIT  
personal representative of the Estate of Allen )  
B. Holliman, ) C/A No. 2020-CP-10-002902  
) )  
Plaintiff, )  
) )  
Versus ) **CERTIFICATE OF SERVICE**  
) )  
We Are Sharing Hope SC, Medical University )  
of South Carolina, and United Network for )  
Organ Sharing )  
) )  
Defendants. )

This is to certify that I, Melissia G. Ford, paralegal with Buyck & Sanders, LLC, attorneys for the Defendant Medical University of South Carolina have on this 22nd day of September, 2020 served a copy of the **Defendant Medical University of South Carolina's Privilege Log** on all parties or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, and/or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

John C. Moylan, III, Esquire  
Lucy Dinkins, Esquire  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Attorneys for Plaintiff

Molly H. Craig, Esquire  
Hood Law Firm, LLC  
172 Meeting Street  
P.O. Box 1508  
Charleston, SC 29402  
Attorneys for We Are Sharing Hope

Jack G. Gresh, Esquire  
Lauren Spears Gresh, Esquire  
Hall Booth Smith, PC  
111 Coleman Blvd, Suite 301  
Mount Pleasant, SC 29464  
Attorneys for United Network for Organ Sharing

  
Melissia G. Ford  
Paralegal to Darren K. Sanders, Esquire

## **EXHIBIT D**

**Letter dated October 15, 2020 from  
John Moylan to Darren Sanders**

## W Y C H E

Attorneys at Law

October 15, 2020

Via Email

Darren Sanders  
 Buyck & Sanders, LLC  
 dks@buyckfirm.com

Re: Holliman vs. Medical University of South Carolina, *et al.*  
 Case No. 2020-CP-10-2902  
 MUSC's responses to Plaintiff's first set of discovery requests

Dear Darren,

I am writing regarding the deficiencies with MUSC's responses to Plaintiff's first set of interrogatories ("Interrogatories") and requests for production ("Requests") outlined below.

**Documents withheld Based on Claim of Peer Review Privilege**

MUSC objected to Interrogatories 18-21 and Requests 11, 12, 14-17, 21, and 22 on the ground that they seek confidential peer review documents and information protected by S.C. Code §§ 40-71-20 and 44-7-392. Based on the privilege log provided by MUSC, it appears that 368 pages of responsive documents have been withheld on a claim of peer review privilege.

It is unclear based on the information provided in MUSC's responses and the privilege log whether the withheld materials are in fact protected by § 40-71-20 or § 44-7-392. Because that is often the case, §§ 40-71-30 and 44-7-394 both call for documents withheld to be filed under seal with the court for judicial review of whether the materials are subject to discovery when the party seeking the documents objects to the privilege claim. Accordingly, we request that MUSC either produce the documents withheld from its production and listed on its privilege log (MUSC Privileged 0001-0138) or file them under seal with the court for judicial review by October 22, 2020.

**Interrogatory 22 and Request 21**

These requests seek information and documents regarding the outcomes or conclusions of any investigations relating to Mr. Holliman's death or the Donor at issue in this case. MUSC objects to these requests on the ground that they seek confidential peer review documents and information protected by §§ 40-71-20 and 44-7-392. The South Carolina Supreme Court, however, has clearly held that the outcome of peer review proceedings is not protected from discovery, even when the data and information acquired in the course of the proceedings is. *Durham v. Vinson*, 360 S.C. 639, 647 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 63 (1993). Please provide full and complete responses to Interrogatory 22 and Request 21 by October 22, 2020.

W Y C H E

PROFESSIONAL ASSOCIATION

Post Office Box 12247 Columbia, SC 29211

p: 803.254.6542 f: 803.254.6544

www.wyche.com

Darren Sanders  
October 15, 2020  
Page 2

Furthermore, MUSC's privilege log states that the withheld documents labeled MUSC Privileged 0267-368 are a "performance analysis and improvement subcommittee report." Based on its title, it appears that this report would constitute a summary of the outcome of an investigation, which is not privileged pursuant to *Durham* and *McGee*. Therefore, we request that you produce this report by October 22.

**Missing Email Attachments**

The documents Bates-labeled MUSC RRFP 219, 229, 237, and 241 are emails that appear to have attachments, but the attachments were not produced with the emails. Please produce the attachments to these emails by October 22, 2020.

**Missing Verification**

South Carolina Civil Procedure Rule 33(a) requires interrogatories to be answered under oath by the party, but we did not receive a verification for MUSC's interrogatory responses. Please provide a verification signed by a representative of MUSC.

Please do not hesitate to let me know if you have any questions or would like to discuss this matter further.

Sincerely,



John C. Moylan, III



## **EXHIBIT E**

**Letter dated October 21, 2020 from  
Darren Sanders to John Moylan**

# BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

305 WINGO WAY  
P.O. BOX 2424  
MT. PLEASANT, SC 29465-2424

TELEPHONE: (843) 377-1400  
FAX (843) 284-8105  
E-MAIL: DKS@BUYCKFIRM.COM

Hugh W. Buyck  
Darren K. Sanders

G. Wade Cooper  
George B. Smythe, Jr.

October 21, 2020

**Via Email Only**

John C. Moylan, III, Esquire  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201

Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman vs. We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing  
Civil Action No.: 2020-CP-10-02902  
BSLF File No. 16.28

Dear John:

I am in receipt of your letter dated October 15, 2020. Please allow this letter to serve as my response to the issues raised therein. I would also respectfully request some clarity based upon your responses to Requests for Admissions previously served.

First, the documents withheld on the basis of privilege are valid as set forth within the privilege log included with discovery responses. The first set of documents withheld relate to in hospital investigations as allowed by applicable South Carolina statutes and hospital policy. If these documents become the subject of a motion before the Court, a judge will see numerous pages which state: "This information is privileged and confidential under SC statutes Section 44-7-392 et seq., and therefore not subject to discovery, subpoena, or introduction into evidence in any civil action." Additionally, hospital quality review policies protect the documents in this section from being the subject of discovery. Next, should the documents withheld on the claim of privilege concerning the OPTN On-Site Survey and the Performance Analysis and Improvement Subcommittee Report become the subject of a motion, the Court will be able to see the designation of "Confidential Medical Peer Review" at applicable parts of these documents. Finally, there is no requirement under the law for these documents to be filed under seal unless the documents become subject of a motion.

You have also requested outcomes of the reviews cited in answers to Interrogatory Number 22 and Request for Production Number 21. The authorities you rely upon pre-date the passage of S.C. Code Section 44-7-392. Accordingly, no part of the proceedings, including the outcomes, are subject to discovery. Given the law and the documents being withheld, I trust the Court will not

# BUYCK & SANDERS, LLC

OCTOBER 21, 2020

order production. Should production be ordered, it will be necessary for all rights available pursuant to S.C. Code Section 44-7-394(C) to be pursued. Our intent is to consistently assert the applicable privileges because that is the law. We take this claim of privilege very seriously and believe it is our obligation to assert it even when the outcomes would help our defense in a civil case.

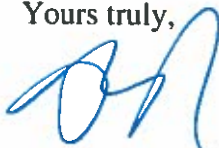
Along with this letter, I am providing documents labeled MUSC RRFP 0254 through MUSC RRFP 0257. These are the attachments you requested in your letter.

On September 30, 2020, you responded to Requests for Admissions. In response to Request Number 1, you have denied that all subparts of the Tort Claims Act apply to this action related to MUSC. I would ask you either supplement this response or fully respond to Interrogatory Number 22 to provide the complete basis for this response in light of South Carolina law that makes MUSC subject to a lawsuit like this pursuant only to the Tort Claims Act. Additionally, I would ask you to respond to Request for Admission Number 2 as it is my position this Request seeks an admission of the application of law to the facts of this case. If we are going to have a dispute about whether or not the Tort Claims Act applies to MUSC, I would like to understand your position as it would be unique to me. I also would like to evaluate how such a position might impact the proof moving forward. Alternatively, if you let me know we are in agreement the Tort Claims Act applies, I think that will suffice to resolve these issues. In light of the hurdles we have cleared in the second Notice of Intent to File Suit that was filed, I thought we were on the same page in this regard.

If you have any questions, please do not hesitate to contact me.

With kind regards,

Yours truly,



Darren K. Sanders

DKS:mgp

Enclosure

cc: Molly H. Craig, Esquire (Via Email Only)  
Jack G. Gresh, Esquire (Via Email Only)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Case No. 2020-CP-10-02902

Plaintiff,

vs.

**PLAINTIFF'S MOTION FOR AN  
ORDER COMPELLING DEFENDANT  
WE ARE SHARING HOPE SC TO FILE  
DOCUMENTS WITHHELD FROM  
DISCOVERY UNDER SEAL PURSUANT  
TO S.C. CODE § 40-71-30 AND TO  
PROVIDE COMPLETE DISCOVERY  
RESPONSES**

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), respectfully moves for an order (1) compelling Defendant We Are Sharing Hope SC ("WASH") to file certain documents with the Court under seal pursuant to S.C. Code § 40-71-30 for a judicial determination of whether the documents are subject to discovery; (2) compelling WASH to produce all documents that the Court determines have been improperly withheld on a claim of privilege; (3) awarding Mrs. Holliman's attorneys' fees and costs incurred in obtaining documents unreasonably withheld on a claim of privilege; and (4) compelling WASH to provide complete responses to Mrs. Holliman's first set of interrogatories and requests for production.

### **FACTUAL BACKGROUND**

This wrongful death case arises out of Mr. Holliman's untimely death following a double lung transplant performed by physicians at Defendant Medical University of South Carolina ("MUSC") during which lungs of the wrong blood type were transplanted into Mr. Holliman. WASH was the organ procurement organization ("OPO") that procured and distributed the donor lungs that Mr. Holliman received. As the OPO, WASH was responsible for accurately determining and reporting the blood type of Mr. Holliman's donor (the "Donor").

WASH ordered pre-transplant blood testing for the Donor from VRL Eurofins ("VRL"). VRL issued two testing reports for the Donor to WASH, both of which stated that the Donor's blood type could not be determined. Two other blood typing tests from the hospital where the Donor was admitted just prior to her death indicated that the Donor had type O blood, but these tests were performed using blood samples collected after the Donor received a massive amount of un-crossmatched emergency blood transfusions. Despite the VRL results stating that the Donor's blood type was indeterminate, and despite the lack of any reliable blood typing results performed using a blood sample collected prior to the Donor's receipt of massive emergency blood transfusions, WASH reported the Donor's blood type as type O. Mr. Holliman was matched with the Donor's lungs, and his physicians at MUSC performed a double lung transplant on him with the Donor's lungs on November 27, 2018.

Mr. Holliman began suffering serious complications during his transplant surgery and remained in critical condition afterwards. A few hours after Mr. Holliman's surgery was completed, another transplant center that received a different organ from the Donor informed WASH that it had tested the blood sample from the Donor that it received with its organ, and it discovered that the Donor's blood type had been incorrectly reported as type O when it was in fact

type A. WASH relayed this information to MUSC, and, shortly thereafter, MUSC tested the Donor's blood sample it received with the Donor's lungs. MUSC's test results from this blood sample confirmed that the Donor in fact had type A blood. Upon information and belief, neither WASH nor MUSC tested this blood sample prior to Mr. Holliman's transplant.

Mr. Holliman had type O blood, which is incompatible with type A blood. Mr. Holliman died the day after his transplant because his body rejected the ABO incompatible Donor lungs that WASH wrongfully procured, distributed, and reported as being blood type O.

### **RELEVANT DISCOVERY HISTORY**

Shortly after filing her notice of intent to sue WASH, Mrs. Holliman issued a subpoena to WASH on July 30, 2019, pursuant to S.C. Code § 15-79-125(B). Mrs. Holliman's subpoena called for the production of certain documents and communications relating to Mr. Holliman and the Donor. In communications between counsel for WASH and Mrs. Holliman, WASH indicated that it would not produce the subpoenaed documents absent a court order because of concerns regarding privacy and confidentiality. WASH, however, also refused to consent to the entry of *any* protective order, and it filed a motion to quash the subpoena in its entirety on August 30, 2019. In an attempt to alleviate any confidentiality concerns, Mrs. Holliman filed a motion, without WASH's consent, for a protective order on September 27, 2019, which the Court granted on June 23, 2020. Nevertheless, WASH still did not respond to Mrs. Holliman's subpoena.

On July 23, 2020, the Court entered a Form 4 Order denying WASH's motion to quash. As a result, WASH finally responded to its subpoena on August 7, 2020—over a year after it was issued. WASH provided a privilege log with its response indicating that 186 pages of documents were withheld from its production on a claim of “Peer Review, Quality Assurance/Quality Assessment.” *See* Exhibit A (WASH's privilege log dated August 7, 2020).

Following the filing of her complaint, Mrs. Holliman served her first set of interrogatories and requests for production on WASH on July 10, 2020. *See* Exhibit B (Plaintiff's first set of interrogatories and requests for production to WASH). WASH served responses to Mrs. Holliman's discovery requests on August 28, 2020. *See* Exhibit C (WASH's responses to Plaintiff's first set of interrogatories and requests for production). In its responses, WASH objects to numerous interrogatories and requests for production "to the extent" that they seek confidential peer review materials. *See* Exhibit C. Along with the discovery responses, WASH also provided an amended privilege log indicating that 195 pages of responsive documents were withheld on a claim of "Peer Review, Quality Assurance/Quality Assessment." *See* Exhibit D (WASH's amended privilege log dated August 28, 2020).

On October 7, 2020, Mrs. Holliman's attorney, John Moylan, sent a letter to WASH's attorneys, Jean Marie Jennings and Molly Craig, outlining a number of deficiencies with WASH's discovery responses, including WASH's withholding of documents and objections based on a claim of peer review privilege. *See* Exhibit E (letter from John Moylan to Jean Marie Jennings and Molly Craig dated October 7, 2020). Mr. Moylan also outlined specific deficiencies with multiple discovery responses and noted that WASH failed to produce *any* communications or a verification for its interrogatory responses. *See id.*

On October 27, 2020, WASH provided a supplemental document production consisting of 16 pages of text message screenshots. On November 6, 2020, Ms. Jennings responded to Mr. Moylan's October 7, 2020, letter and reiterated that WASH maintains the documents it withheld are privileged. *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). WASH also provided supplemental responses to some of Mrs. Holliman's discovery requests, a supplemental document production, and a second amended privilege log indicating that 226 pages

of responsive documents were withheld on a claim of a “Peer Review, Quality Assurance/Quality Assessment” privilege. *See* Exhibit G (WASH’s supplemental responses to Plaintiff’s first set of interrogatories and requests for production); Exhibit H (WASH’s second amended privilege log dated November 6, 2020). Like WASH’s first two privilege logs, the second amended privilege log contains only the Bates range of the withheld documents, a generic document description for a few large subsets of documents, and an assertion of a peer review privilege for all of the documents. *See* Exhibit H. The privilege log does not include any information regarding the author(s), recipient(s), dated created, date modified, document type, or titles of specific documents. *See id.*

Although WASH’s supplemental discovery responses have resolved some of the issues outlined in Mr. Moylan’s October 7, 2020, letter, several significant deficiencies with WASH’s discovery responses remain, including but not limited to WASH’s withholding of 226 pages of responsive documents on an improper claim of privilege.

## **ANALYSIS**

### **I. WASH Has Improperly Withheld Documents on a Claim of Peer Review Privilege.**

As stated above, WASH has withheld 226 pages of responsive documents on a claim of peer review privilege. *See* Exhibit H (WASH’s second amended privilege log). WASH asserts the following objection to numerous requests for production of Mrs. Holliman:

This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contain in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted.



*See* Exhibit C (WASH’s responses to Plaintiff’s first set of interrogatories and requests for production), at response to Requests 1, 10-13, 15-16, 21, 24- 26; Exhibit G (WASH’s supplemental responses to Plaintiff’s first set of interrogatories and requests for production), at response to Requests 19, 20. In her November 6, 2020, letter, Ms. Jennings makes it clear that WASH stands by this objection and assertion of peer review privilege for the withheld documents. *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). This objection, however, is improper for the reasons set forth below. Moreover, it is a continuation of WASH’s pattern in this case of unreasonably withholding documents—a pattern which dates back to WASH’s refusal to produce lawfully subpoenaed documents for *a year* until it was ordered to do so by the Court, and its refusal even to consent to a protective order to facilitate the exchange of documents in this case.

#### A. S.C. Code § 40-71-40

WASH’s objection purports to reference S.C. Code § 40-71-40, but there is no such provision in the South Carolina Code.

#### B. S.C. Code § 40-71-20

S.C. Code § 40-71-20(A) protects from discovery “data and information **acquired by the committee referred to in Section 40-71-10** in the exercise of its duties . . . .” (emphasis added). The committee to which § 40-71-10 refers is “**an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section** or a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death . . . .” § 40-71-10(B) (emphasis added). That section defines “professional society” as “legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutic, and engineering organizations having as

members at least a majority of the eligible licentiates in the area served by the particular society.” § 40-71-10(A).

Thus, § 40-71-20(A) protects data and information acquired by only *certain* appointed committees, which are outlined in § 40-71-10(B). It does *not* protect all data and information acquired by *any* committee having a peer review purpose. WASH asserts that § 40-71-20 protects its withheld documents because “WASH was involved in a confidential peer review process involving the Membership and Professional Standards Committee of UNOS.” *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). It appears, therefore, that WASH takes the position that its documents are privileged because they were acquired by the first type of committee listed in §40-71-10(B)—“an appointed committee which is formed to maintain professional standards of a state or local professional society.”

UNOS, however, is not a state or local professional society as required by § 40-71-10(B). UNOS, which is another defendant in this case, is the Organ Procurement and Transplantation Network (“OPTN”) for the United States. *See* Compl. ¶ 9. As the OPTN for the United States, UNOS is responsible for managing the national transplant waiting list, matching donors to recipients, maintaining the database that contains the data for every transplant in the United States, and monitoring every organ match in the country to ensure that policies are followed. *Id.* ¶ 10. UNOS is headquartered in Richmond, Virginia, and it is the one and *only* OPTN for the entire country. *Id.* ¶ 9. Because UNOS serves as the OPTN for the whole country, it is not a state or local professional society as required by § 40-71-10(B). Moreover, UNOS does not even meet the definition of “professional society” set forth in § 40-71-10(A) because it is not a medical organization “having as members at least a majority of the eligible licentiates in the area” served by it, which is the entire United States. *See* § 40-71-10(A). Therefore, the UNOS committee

referenced by WASH does not fall within the purview of S.C. Code § 40-71-20, and WASH's unspecified "involvement" with the UNOS committee does not protect relevant and responsive documents in WASH's possession from discovery in this case.

Furthermore, even if WASH were in possession of some documents that were presented to some other committee that *is* covered by § 40-71-20 (no evidence of which has been provided to Mrs. Holliman), then WASH is still required to produce such documents in this case because § 40-71-20(A) expressly provides that "[i]nformation, documents, or records **which are otherwise available from original sources** [in this case WASH] are **not** immune from discovery or use in a civil action merely because they were presented during the committee proceedings." (emphasis added); *see also McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993) ("We interpret the 'otherwise available' language to mean that information that is available from a source other than the committee does not become privileged simply by being acquired by the review committee. Accordingly, the statute does not protect information if obtained from alternative sources.").

### C. S.C. Code § 44-7-392

WASH also claims that some of its withheld documents are privileged under S.C. Code § 44-7-392 because they "involve a Root Cause analysis with Grand Strand Medical Center in January of 2019." *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). Section 44-7-392, however, applies to certain documents prepared or acquired by hospitals. S.C. Code § 44-7-392(A)(1) ("All proceedings of, and all data, documents, records, and information prepared or acquired by, **a hospital licensed under this article . . .** relating to the following are confidential . . . ." (emphasis added)). Like § 40-71-20, § 44-7-392(A)(3) explicitly states that documents and information that are "otherwise available from original sources are not

confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.”

WASH is not a hospital, and, therefore, § 44-7-392 does not protect documents in its possession from discovery. Even if some of the documents withheld by WASH were given to Grand Strand Medical Center, which is the hospital where Mr. Holliman’s donor died, and are not subject to discovery directly from Grand Strand, such documents are nevertheless subject to discovery from WASH pursuant to the plain language of § 44-7-392(A)(3). *See also IntegraMed Am., Inc. v. Patton*, 298 F.R.D. 326, 331-32 (D.S.C. 2014) (“[B]oth statutes [S.C. Code §§ 40-71-20(A) and 44-7-392(A)] explicitly state that documents available from original sources are not confidential and are not immune from discovery.”).

#### **D. UNOS Policies and Guidelines and OPTN Bylaws**

WASH further posits that Mrs. Holliman’s discovery requests seek documents protected by UNOS policies and guidelines and OPTN bylaws. There is, however, no privilege recognized by the South Carolina courts for UNOS policies and guidelines or OPTN bylaws, and this is, therefore, not a proper basis for withholding documents in this case. *See State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980) (“In general, the burden of establishing the privilege rests upon the party asserting it.” (citation omitted)).

#### **E. Case Law Cited by WASH**

WASH incorrectly asserts that the withheld documents are privileged pursuant to *McGee v. Bruce Hospital System*, 312 S.C. 58, 439 S.E.2d 257 (1993) and *Sibley v. Lutheran Hosp. of Md.*, 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989).

*McGee* involved discovery requests for credentialing files from the executive committee of a hospital, which the court held were privileged under §§ 40-71-10 and 20. *McGee*, 312 S.C.

at 60-61, 439 S.E.2d at 259. Unlike the executive committee of the hospital in *McGee*, WASH is not part of any committee subject to § 40-71-20. The court in *McGee* further held that, even though the documents sought were not subject to discovery directly from the hospital, the plaintiff could nevertheless obtain them from other sources because the “statute provides that documents otherwise available from the original source do not become privileged merely because they are presented to the committee.” *Id.* at 62, 439 S.E.2d at 260. Thus, pursuant to *McGee* (and the plain language of § 40-71-20(A)), WASH’s documents are subject to discovery regardless of whether they might have been presented to other committees governed by §§ 40-71-20 or 44-7-392.

The other case relied upon by WASH, *Sibley v. Lutheran Hosp. of Md.*, 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989), does not discuss peer review privilege for documents and is inapposite to this discovery dispute.

**F. WASH Must Produce the Withheld Documents or File Them under Seal for Judicial Review.**

For the reasons set forth above, the 226 pages of responsive documents withheld by WASH are not privileged and must be produced in this wrongful death case. S.C. Code §§ 40-71-30 and 44-7-394 set forth the procedure for disputes regarding claims of peer review privilege. Section 40-71-30 states in its entirety:

When a party asserts a claim of confidentiality over documents pursuant to Section 40-71-20 and the party seeking the documents objects, **the documents must be filed under seal with the circuit court** having jurisdiction over the pending action **and are subject to judicial review** by the circuit court judge. If the court determines that any of the documents are not subject to confidentiality pursuant to Section 40-71-20 and are otherwise discoverable, the court shall provide the documents to the requesting party. **In the event the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney’s fees against that party for any fees incurred by the requesting party in obtaining the documents.**

(emphasis added). Similarly, § 44-7-394(A) states in relevant part:

If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44-7-392, and the party seeking the documents objects, then upon motion to the court having jurisdiction over the pending action **the court shall review the documents under seal to determine if any of the documents are subject to discovery**. The court may order production of the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court may assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.

(emphasis added).

Pursuant to these statutes, WASH must either produce the documents it has withheld, or file them under seal for a judicial determination of whether they are subject to discovery. If the Court determines that WASH acted unreasonably in withholding any of the documents, then Mrs. Holliman is entitled to recover her attorneys' fees and costs incurred in obtaining the documents.

## **II. WASH Has Withheld Requested Communications.**

Mrs. Holliman propounded multiple requests for production on WASH calling for the production of certain communications relating to this case, including those relating to Mr. Holliman, his death, and his Donor. *See* Exhibit B at Requests 9-13, 15-20, 23, 25, 26, 28. WASH initially failed to produce *any* emails, text messages, or voice recordings in response to Mrs. Holliman's requests, although notes relating to the Donor that WASH did produce indicate numerous communications took place among WASH personnel working on the Donor's case. Mrs. Holliman's attorney pointed out WASH's failure to produce any communications in his deficiency letter to WASH. *See* Exhibit E (letter from Mr. Moylan to Ms. Jennings and Ms. Craig dated October 7, 2020). WASH subsequently provided a supplemental production of sixteen pages of text message screenshots and only four individual emails.

Counsel for Mrs. Holliman is aware of several emails sent to or from WASH personnel that are responsive to Mrs. Holliman's discovery requests and that WASH has failed to produce.

These missing emails were produced by other parties or subpoena recipients in this case. Given that WASH's mistyping of the Donor's blood type resulted in Mr. Holliman's death and serious injuries requiring a second transplant for at least two other people, one would certainly expect WASH to have more than four individual emails relating to this case. Case notes produced by WASH also reference several text messages among WASH personnel relating to the Donor that do not appear to be included in the texts recently produced by WASH. Thus, Mrs. Holliman believes that there are communications responsive to her discovery requests that have not been produced, and she requests that the Court order WASH to produce all communications responsive to her requests.

Additionally, it is impossible to determine from the text message screenshots that WASH did produce who sent and received each of the messages and when. This is crucial information that is just as important as the content of the messages. Mrs. Holliman asks for the Court to require WASH to produce its responsive text messages in native format, or any other format that will clearly show the sender, recipient, and date and time of each message.

### **III. Deficiencies with Specific Discovery Responses.**

WASH's supplemental discovery responses resolve some issues, but several of WASH's responses to Mrs. Holliman's first set of discovery requests remain deficient.

#### **A. Interrogatory 13**

This interrogatory asks WASH to identify all documents relating to the Donor that it provided to Defendant UNOS and to state when it provided each document identified. *See* Exhibit B at Interrogatory 13. WASH's initial response stated that "portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS . . . ." Exhibit C at response to Interrogatory 13. In his deficiency letter to WASH, Mr.

Moylan explained that this response fails to identify which specific documents relating to the Donor were provided to UNOS, at any point, and to state when they were provided. *See* Exhibit E (letter from Mr. Moylan dated October 7, 2020). WASH's supplemental response simply states that "the case notes and call notes contained in the donor medical record are not uploaded to DonorNet" and that WASH communicated with UNOS regarding a confidential peer review process. Exhibit G at supplemental response to Interrogatory 13.

WASH has still failed to identify which documents relating to the Donor it provided to UNOS and when. This interrogatory seeks only basic information regarding documents relating to the Donor that one defendant shared with another, and Mrs. Holliman is entitled to a full and complete response.

**B. Interrogatory 14**

This interrogatory asks WASH to identify all documents relating to the Donor that it provided to Defendant MUSC and to state when it provided each document identified. *See* Exhibit B at Interrogatory 14. WASH's response simply states that it "uploaded relevant portions from the Donor medical record labeled for production as *WASH 0003-0332 CONFIDENTIAL* to Donor Net" and that "medical records are uploaded as the records become available . . . ." Exhibit C at response to Interrogatory 14. Mr. Moylan explained in his deficiency letter that this answer is not responsible to the interrogatory. *See* Exhibit E (letter from Mr. Moylan dated October 7, 2020). The request asks WASH to identify *all* documents relating to the Donor it provided to MUSC, not just those uploaded to DonorNet, and when such documents were provided. *See* Exhibit B. Furthermore, the documents referred to by WASH in its response consist of over 300 pages, including many that are not part of the Donor's medical record, so it is unclear from WASH's response which documents it even provided to MUSC through DonorNet. *See* Exhibit C at



response to Interrogatory 14. Like Interrogatory 13, Mrs. Holliman is entitled to know which documents WASH shared with codefendant MUSC and when.

### C. Interrogatory 24

This Interrogatory asks WASH to state whether it has performed any investigations relating to Mr. Holliman's death or the Donor and, if so, to describe the purpose of such investigations, the dates, the participating individuals, and the outcome or conclusions. *See* Exhibit B at Interrogatory 24. WASH objects to this Interrogatory "to the extent it seeks confidential peer review materials" and simply refers to its privilege log. *See* Exhibit C at response to Interrogatory 24.

As explained above, it does not appear that WASH participated in any peer review committees that are protected by South Carolina law, and WASH is therefore required to fully answer this Interrogatory. Moreover, the South Carolina Supreme Court has clearly held that the *outcome* of review proceedings is not protected from discovery, *even when* the documents and information acquired as part of the proceedings are. *Durham v. Vinson*, 360 S.C. 639, 646-47, 602 S.E.2d 760, 763-67 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61-63, 439 S.E.2d 257, 259-61 (1993). The Court in *McGee* explained:

[W]e find that the outcome of the decision-making process is not protected. Permitting discovery of the effect of the committee proceedings does not inhibit open discussion. In our view, the confidentiality statute was intended to protect the review process, but not restrict the disclosure of the result of the process.

*McGee*, 312 S.C. at 63, 439 S.E.2d at 260 (internal citation omitted). Thus, even if WASH did participate in any investigations protected under South Carolina law, which Mrs. Holliman disputes, the outcome and other basic information requested by this Interrogatory are not privileged and must be disclosed.

#### **D. Request 14**

This request calls for the production of all documents relating to the Donor's blood type that WASH sent to any transplant centers that received any organs or tissues of the Donor. *See* Exhibit B at Request for Production 14. In WASH's initial response, it simply referred to the documents Bates-labeled *WASH 0006-0332 CONFIDENTIAL*, many of which were clearly not documents sent to transplant centers. *See* Exhibit C at response to Request for Production 14. In its supplemental response, WASH states that "medical records of the Donor contained in *WASH 0006-0332 CONFIDENTIAL* regarding the Donor's blood testing are uploaded to DonorNet for viewing by transplant centers," but this still fails to identify which specific documents relating to the Donor's blood typing WASH sent to transplant centers and when. *See* Exhibit G at supplemental response to Request for Production 14. This request is narrowly tailored to seek crucial documents that are expected to shed light on how the mistyping of the Donor's blood occurred.

#### **IV. Verification**

WASH has not provided a verification for its interrogatory responses as required by Rule 33(a) of the South Carolina Rules of Civil Procedure. Mr. Moylan specifically requested a verification in his deficiency letter, *see* Exhibit E, but Mrs. Holliman has not yet received one.

#### **CONCLUSION**

For the reasons set forth above, Mrs. Holliman respectfully requests that the Court enter an Order:

1. Compelling WASH to file the documents listed on its Second Amended Privilege Log and Bates-labeled Privileged 0001-0226 with the Court under seal for a judicial determination of whether they are subject to discovery;

2. Compelling WASH to produce to Mrs. Holliman all documents that the Court determines have been improperly withheld on a claim of privilege;

3. Awarding Mrs. Holliman's attorneys' fees and costs incurred in connection with obtaining any documents that the Court determines WASH unreasonably withheld on a claim of privilege; and

4. Compelling WASH to provide full and complete responses to Mrs. Holliman's first set of discovery requests, including producing all requested communications; producing text messages in native format or some other format that reveals the sender, recipient, and date and time of each message; providing full and complete responses to Mrs. Holliman's Interrogatories 13, 14, 24 and Request for Production 14; and providing a verification for WASH's interrogatory responses.

As evidenced by Exhibits E and F, counsel for Mrs. Holliman communicated with counsel for WASH and attempted in good faith to resolve the issues in this motion, but the parties were unable to do so.

Respectfully submitted,

WYCHE, P.A.

*s/John C. Moylan, III*

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John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

*Attorneys for Plaintiff*

November 18, 2020

## **EXHIBIT A**

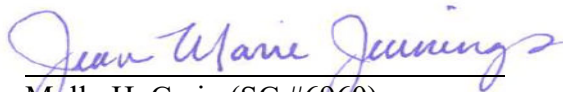
|                                                   |   |                                 |
|---------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS    |
|                                                   | ) | NINTH JUDICIAL CIRCUIT          |
| COUNTY OF CHARLESTON                              | ) |                                 |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902        |
| personal representative of the Estate of Allen B. | ) |                                 |
| Holliman,                                         | ) |                                 |
|                                                   | ) |                                 |
| <i>Plaintiff,</i>                                 | ) |                                 |
|                                                   | ) |                                 |
| Versus                                            | ) | <b>DEFENDANT</b>                |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b>PRIVILEGE LOG</b>            |
| of South Carolina, and United Network for         | ) |                                 |
| Organ Sharing,                                    | ) |                                 |
|                                                   | ) |                                 |
| <i>Defendants.</i>                                | ) |                                 |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter “this Defendant”), hereby submits the following log of privileged documents withheld from production:

| Bates Label Nos.     | Document Description | Privilege Asserted                                     |
|----------------------|----------------------|--------------------------------------------------------|
| Privileged 0001-0186 | Peer Review          | Peer Review<br>Quality Assurance/Quality<br>Assessment |

HOOD LAW FIRM, LLC  
172 Meeting Street  
Post Office Box 1508  
Charleston, SC 29402  
Ph: (843) 577-4435 / Fax: (843) 722-1630  
Email: [Info@hoodlaw.com](mailto:Info@hoodlaw.com)



Molly H. Craig (SC #6960)  
Jean Marie Jennings (SC #100651)

*Attorneys for the Defendant  
We Are Sharing Hope*

**August 7, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of the **DEFENDANT WE ARE SHARING HOPE SC's PRIVILEGE LOG** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 7<sup>th</sup> day of August, 2020.



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## **EXHIBIT B**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO DEFENDANT  
WE ARE SHARING HOPE SC**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant We Are Sharing Hope SC ("Defendant") serve upon counsel for Plaintiff answers to the following interrogatories within forty-five days after the date of service of these interrogatories or any earlier date specified by the Court.

The following interrogatories shall be deemed to continue from the time of service until the time of the trial of the case so that information sought which comes to the knowledge of Defendant, its representatives, agents, or attorneys, after answers to these interrogatories have been submitted, shall be transmitted to the undersigned.

**INSTRUCTIONS AND DEFINITIONS**

A. In answering these interrogatories, furnish all information that is available to the Defendant, including information that is in the possession of the Defendant's attorneys, investigators for its attorneys, independent accountants, officers, employees, or agents.



B. If the Defendant cannot answer any of the following interrogatories in full, answer to the extent possible and specify the reasons why the Defendant is unable to answer the remainder, and provide whatever information the Defendant has concerning the unanswered portions.

C. If any document or information is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document containing the information;
- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

D. The term “document” shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including ESI, computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, social media postings and communications, instant messages, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through

detection devices into usable form, or any other tangible thing which records information in any way. The term “document” shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendant if it is within the possession or control of any of the Defendant’s attorneys, investigators for the Defendant’s attorneys, independent accountants, agents, or any person acting on behalf of or in concert with the Defendant or with any of these persons, or otherwise under their possession or control.

E. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; social media postings and communications, cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cell phone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, flash drive, etc.); PDAs, Blackberries and Palm Pilots; cell phones; tablets; IM tools; or USB drives.

G. The term “identify” or “identity” when used with respect to an individual shall mean to state the name and present or last known home and business address and phone numbers of each such person, and, if that individual has ever been employed by the Defendant, affiliated or associated with the Defendant or rendered any service to the Defendant, so indicate and state the nature and time period of such employment, affiliation, association or service. Once a person has been fully identified in your answer, such person may be identified thereafter by name alone.

H. When used with respect to a corporation, “identify” or “identity” shall mean to state the corporation's full name, the address of its principal place of business, the state of incorporation,

and the corporation's principal activity or activities. When used with respect to a person other than an individual or a corporation, “identify” or “identity” means to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities of such entity.

I. “Identify” or “identity”, with reference to documents, means to state the title of the document, if any, the date of the document or the date it was prepared, the identity of the author or authors, the recipients of the document (including copies thereof), the type of document, and a description of the subject matter of the document. If any document that the Defendant is asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in the Defendant’s possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

J. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; governmental body, agency or subdivision; committee, commission or other organization or entity.

K. “Relating to” includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

L. “Communication” or “communications” means transmission and/or receipt of any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings,

interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (e-mail), text messages, instant messaging, memoranda, documents, writings, or other forms of communications, including but not limited to oral, written, and electronic communications.

M. The terms “identify” or “identity” with respect to a communication requires that you state (a) the date of the communication, (b) its type (e.g., letter, phone call, or face-to-face meeting), (c) the identity and role of each participant (see definition of “identify” with respect to persons, above), (d) its place, if a face-to-face meeting, and (e) the identity of each document constituting or reflecting the communication (see definition of “identify” with respect to documents, above), and (f) the substance of the communication in detail.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

P. “Each”, “any”, and “all” are both singular and plural.

Q. The terms “you” “your,” and “Defendant” refer to the Defendant, We Are Sharing Hope SC, and any of its agents, servants, employees, attorneys, experts, consultants, or representatives who are in possession of or who may have obtained information for or on behalf of the Defendant, and any and all other persons acting under its authority or on its behalf.

R. “Mr. Holliman” refers to Allen B. Holliman.

S. “Donor” refers to the donor whose lungs Mr. Holliman received and who is

associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

### **INTERROGATORIES**

1. Identify all persons known to Defendant or its counsel to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from the witnesses and, if so, who has possession of each such statement.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth a summary of the facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiff's claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

7. State when and how you first became aware that the Donor might be a candidate for organ donation.

8. Describe all steps you took to evaluate the suitability of the Donor and her organs for organ donation.

9. State the following for all laboratory or other test results of which Defendant is

aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor before or after the Donor received any blood transfusions;
- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

10. State what blood type you reported to United Network for Organ Sharing for the Donor and set forth the basis for reporting that blood type.

11. Identify all individuals involved in determining the blood type of the Donor and, for each individual identified, explain in detail his/her role in determining the Donor's blood type.

12. Identify all individuals involved in reporting the Donor's blood type to United Network for Organ Sharing and, for each individual identified, explain in detail his/her role in reporting the Donor's blood type.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

14. Identify all documents relating to the Donor you provided to Medical University of South Carolina and state when you provided each document identified.

15. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

16. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

17. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

18. State when and explain in detail how you first learned that the Donor might not or did not have type O blood.

19. Describe all steps you took to notify transplant centers, United Network for Organ Sharing, and/or recipients of organs or tissues from the Donor that the Donor might not or did not have type O blood.

20. Identify all transplant centers or hospitals who received any organ(s) or tissue(s) from the Donor.

21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

22. Identify all licensed physicians who are employed by you, either as a regular employee or an independent contractor, on your Board of Directors, on your Advisory Board, or with whom you are otherwise affiliated, and explain in detail each such physician's role in your operations.

23. Identify all individuals who participated in the procurement or distribution of the Donor's organs and describe each such individual's role in the procurement or distribution of the Donor's organs.

24. State whether you have performed any investigations relating to Mr. Holliman's death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

- a. Describe the purpose of the investigation;
- b. State when the investigation was commenced and when it was concluded;
- c. Identify all individuals who participated in the investigation; and
- d. State the outcome or conclusion(s) of the investigation.

Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

July 10, 2020



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION TO  
DEFENDANT WE ARE SHARING  
HOPE SC**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant We Are Sharing Hope SC ("Defendant") produce the documents and things identified below for examination, inspection and copying at the offices of Wyche, P.A., 807 Gervais Street, Suite 301, Columbia, South Carolina, or some other mutually convenient place agreed to by the parties, within forty-five (45) days after the date of service of these requests or any earlier date specified by the court.

These requests are continuing, and Defendant is obliged to produce all documents responsive to these requests, including such documents as become available to Defendant or its counsel after its responses hereto are served.

**INSTRUCTIONS AND DEFINITIONS**

A. In responding to these requests, produce all documents which are in the custody, possession or control of Defendant, including documents which are in the custody, possession or

control of Defendant's attorneys, investigators for Defendant's attorneys, independent accountants, agents or any person acting on behalf of or in concert with Defendant or with any of these persons, and not merely documents from Defendant's own files or records.

B. If Defendant cannot respond to any of the following requests in full, respond to the fullest extent possible, specifying the reasons why Defendant is unable to respond in full, and provide whatever information Defendant has concerning the documents or portions of documents not provided, including the source or sources from which the documents or portions thereof may be obtained.

C. If documents requested are not reasonably available to Defendant in precisely the form requested, or for the particular date or period specified, but could be produced in a modified form and/or for a slightly different date or period, please respond to that request in such modified form or for such different date or period.

D. If any document that is responsive to a request is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in Defendant's possession, custody or control, state the disposition that was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person(s) performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

E. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document;

- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

F. The term “document” shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intra-office communications, social media postings and communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form, or any other tangible thing which records information in any way. The term “document” shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendant if it is within the possession or control of any of Defendant’s attorneys, investigators for Defendant’s attorneys, independent accountants, agents, or any person

acting on behalf of or in concert with Defendant or with any of these persons, or otherwise under their possession or control.

G. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; social media postings and communications, Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cellphone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cellphones; tablets; IM tools; or USB drives.

H. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; trust, governmental body, agency or subdivision; committee, commission or other organization or entity.

I. “Relating to” includes referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

J. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, emails, texts, letters, telegrams, exchanges of written or recorded information of any type, including ESI, face-to-face meetings, and telephone conversations.

K. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

L. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

M. The terms “you,” “your,” and “Defendant” shall refer to the Defendant, We Are Sharing Hope SC, and any of its agents, servants, employees, attorneys, experts, consultants or representatives who are in possession of or who may have obtained information, documents, or other materials for or on behalf of Defendant, and any and all other persons acting under its authority or on its behalf.

N. “Mr. Holliman” refers to Allen B. Holliman.

T. “Donor” refers to the donor whose lungs Mr. Holliman received and who is associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

### **REQUESTS FOR PRODUCTION**

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff’s claims in this matter.

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

8. All laboratory or other test results relating to the Donor.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

10. All documents and communications relating to the determination of the blood type of the Donor.

11. All documents and communications relating to Mr. Holliman or his death.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

13. All communications with Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any transplant centers relating to the Donor.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

15. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for determining the blood type of potential organ donors.

16. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

17. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood or tissue samples of potential organ donors.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

22. All documents relating to the Donor provided to Medical University of South Carolina.

23. All communications relating to the suitability of the Donor for organ donation.

24. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

25. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

26. All communications relating to complications experienced by recipients of any of the Donor's organs or tissues.

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

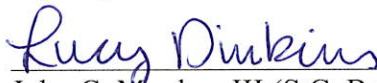
28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

29. Job descriptions for all licensed physicians who are employed by you either as a regular employee or an independent contractor or with whom you are otherwise affiliated.

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

July 10, 2020



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

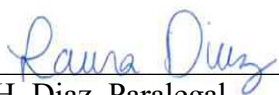
Civil Action No: 2020-CP-10-02902

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served the foregoing **Plaintiff's First Set of Interrogatories to Defendant We Are Sharing Hope SC and Plaintiff's First Set of Requests for Production to Defendant We Are Sharing Hope SC** upon counsel for Defendant by causing a copy of the same to be served by Electronic Mail and First Class U.S. Mail this 10<sup>th</sup> day of July, 2020, addressed as follows:

Molly H. Craig, Esq.  
Hood Law Firm, LLC  
P.O. Box 1508  
Charleston, SC 29402-1508  
*molly.craig@hoodlaw.com*

July 10, 2020

  
\_\_\_\_\_  
Laura H. Diaz, Paralegal

## **EXHIBIT C**

|                                                   |   |                                     |
|---------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS        |
|                                                   | ) | NINTH JUDICIAL CIRCUIT              |
| COUNTY OF CHARLESTON                              | ) |                                     |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902            |
| personal representative of the Estate of Allen B. | ) |                                     |
| Holliman,                                         | ) |                                     |
|                                                   | ) |                                     |
| <i>Plaintiff,</i>                                 | ) |                                     |
|                                                   | ) |                                     |
| Versus                                            | ) | <b>DEFENDANT</b>                    |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's</b>     |
| We Are Sharing Hope SC, Medical University        | ) | <b>ANSWERS TO PLAINTIFF'S</b>       |
| of South Carolina, and United Network for         | ) | <b>FIRST SET OF INTERROGATORIES</b> |
| Organ Sharing,                                    | ) |                                     |
|                                                   | ) |                                     |
| <i>Defendants.</i>                                | ) |                                     |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, This Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), answers the Plaintiff's First Set of Interrogatories, as follows:

1. Identify all persons known to Defendant or its counsel to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from the witnesses and, if so, who has possession of each such statement.

**ANSWER:** This Defendant may utilize any and all witnesses named by the Plaintiff or Co-Defendant, those persons listed in the medical records (including all treating physicians), and those persons who may in the future be listed or deposed. In addition, this Defendant identifies the following:

**Michelle Cha Holliman**

**Ms. Holliman is the Plaintiff in this case and will testify as to the facts and circumstances alleged in the Complaint.**

The individuals listed below provided care and/or were involved with organ procurement services. They are expected to testify regarding all relevant areas of the care and treatment provided to the Donor, the organ procurement process, and the allegations contained in the Complaint, including expert opinions.

**Employees and Representatives of We Are Sharing Hope**

|                  |                    |
|------------------|--------------------|
| Darla Welker     | Erika Veletto      |
| Dave DeStefano   | Adrianne Armstrong |
| Michael Lotts    | Bryon Harper       |
| Janine Burgarner | Amber Daniels      |
| Lisa Walkabout   | Allison Sullivan   |
| Alyson Clark     | Nicole Fuller      |
| Candy St. Marie  | Traci Adams        |
| Jovilyn Swifka   | Candy St. Marie    |
| Theresa Ross     | Tiffany Adams      |
| Valerie Boykin   | Tyrish Page        |
| Taylor Nicolette |                    |
| Lacy Fryar       |                    |

**Employees and Representatives of Grand Strand Regional Medical Center**

**Employees and Representatives of MUSC**

This Defendant reserves the right to call at trial any unanticipated witnesses, of whom timely notice will be given. This Defendant will supplement this response.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth a summary of the facts known to or observed by such witness

and provide a copy of any written or recorded statements taken from such witness.

**ANSWER:** See Answer to Interrogatory No. 1.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiffs claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

**ANSWER:** Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

**ANSWER:** This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

**ANSWER:** This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0333-0338 CONFIDENTIAL*.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

**ANSWER:** This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0359-0363 CONFIDENTIAL*.

7. State when and how you first became aware that the Donor might be a candidate for organ donation.

**ANSWER:** This Defendant received an initial referral of the donor patient on November 24, 2018 which is documented in *WASH 006-0332 CONFIDENTIAL*, specifically *WASH 0042, 0124, 0137, 0167 and 0188 CONFIDENTIAL*.

8. Describe all steps you took to evaluate the suitability of the Donor and her organs for organ donation.

**ANSWER:** This Defendant refers the Plaintiff to the documents related to Donor medical record bates labeled for production as *WASH 006-0332 CONFIDENTIAL* for details regarding the information sought.

9. State the following for all laboratory or other test results of which Defendant is aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor

before or after the Donor received any blood transfusions;

- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

**ANSWER:** This Defendant refers the Plaintiff to the documents related to laboratory tests bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. This Defendant specifically refers to *WASH 0322, 0299, 0229 (ABO Verification), 0218, 0217, 0216, 0215, 0214 CONFIDENTIAL*. The two ABO results which were used to report the blood type of the Donor in this case were determined by the blood bank at Grand Strand Medical Center and are labeled *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL* which were collected respectfully on November 24, 2018 at 23:09 and on November 25, 2018 at 19:50.

10. State what blood type you reported to United Network for Organ Sharing for the Donor and set forth the basis for reporting that blood type.

**ANSWER:** This Defendant reported ABO Type O Neg based on the blood bank results from November 24, 2018 at 23:09 and November 25, 2018 at 19:50 which are labeled for production as *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL*.

11. Identify all individuals involved in determining the blood type of the Donor and, for each individual identified, explain in detail his/her role in determining the Donor's blood type.

**ANSWER:** This Defendant refers the Plaintiff to the documents pertaining to determining the Donor's blood type bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

12. Identify all individuals involved in reporting the Donor's blood type to United

Network for Organ Sharing and, for each individual identified, explain in detail his/her role in reporting the Donor's blood type.

**ANSWER:** This Defendant refers the Plaintiff to the documents related to blood typing and reporting bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. Further responding, the clinical allocation technician completes the document labeled as *WASH 0229 CONFIDENTIAL* and uploads the document to DonorNet along with reporting the donor blood type to DonorNet.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

**ANSWER:** This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

Further responding and without waiving the above objections, portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS allowing Organ Procurement Organizations to Communicate with Transplant Centers.

14. Identify all documents relating to the Donor you provided to Medical University of South Carolina and state when you provided each document identified.



**ANSWER:** This Defendant uploaded relevant portions from the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* to DonorNet. The medical records are uploaded as the records become available during the organ procurement process.

15. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

**ANSWER:** This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. This Defendant further objects as overly broad and unduly burdensome. Further answering and without waiving these objections, this Defendant refers the Plaintiff to the Donor medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the Privilege Log.

16. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

**ANSWER:** This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Without waiving these objections, the Donor medical record

labeled for production as *WASH 0006-0332 CONFIDENTIAL* contains documents stating Mr. Holliman's status as deceased. This Defendant also refers to the Privilege Log and reserves the right to supplement this information during discovery.

17. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

**ANSWER:** This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted and refer the Plaintiff to the Privilege Log.

Further answering and without waiving the objection, this Defendant obtained from Grand Strand Medical Hospital's blood bank two separate donor blood samples from two separate draw times which were over twenty-four hours apart finding the blood type was O negative. These blood bank results are found at *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL*.

18. State when and explain in detail how you first learned that the Donor might not or did not have type O blood.

**ANSWER:** This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and specifically refers the Plaintiff to *WASH 0173 CONFIDENTIAL* wherein this Defendant received a call from another transplant center which tested the Donor blood resulting in blood Type A.

19. Describe all steps you took to notify transplant centers, United Network for Organ

Sharing, and/or recipients of organs or tissues from the Donor that the Donor might not or did not have type O blood.

**ANSWER:** This Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* including *WASH 0173 CONFIDENTIAL*.

20. Identify all transplant centers or hospitals who received any organ(s) or tissue(s) from the Donor.

**ANSWER:** This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information and also notes the following:

**Heart: NCCM**

**Lungs: SCMU**

**Liver: TNVU**

**Kidneys: SCMU**

**Pancreas: WIUW**

21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

**ANSWER:** This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information. Further responding, this Defendant attempts to place all organs which are able to be transplanted, namely the right and left kidneys, liver, pancreas, intestines, heart and lungs in order to save as many lives as possible and all of the organs listed above were listed as

available for transplant with regard to the Donor in this case. Tissue recovery occurs after organ recovery and is not relevant to the allegations of this lawsuit.

22. Identify all licensed physicians who are employed by you, either as a regular employee or an independent contractor, on your Board of Directors, on your Advisory Board, or with whom you are otherwise affiliated, and explain in detail each such physician's role in your operations.

**ANSWER:** This Defendant objects to this Interrogatory as overly broad and unduly burdensome. Without waiving these objections, in 2018, Dr. Honig was the medical director and Dr. Whelan was the associate medical director. Dr. Honig and Dr. Whelan currently hold these positions. Further responding, the responsibilities of the medical director during the organ procurement at issue in this case are labeled for production as *WASH 0369-0371 CONFIDENTIAL*.

23. Identify all individuals who participated in the procurement or distribution of the Donor's organs and describe each such individual's role in the procurement or distribution of the Donor's organs.

**ANSWER:** This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for the individuals participating in the procurement of the Donor's organs as well as answer to Interrogatory No. 1.

24. State whether you have performed any investigations relating to Mr. Holliman's death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

a. Describe the purpose of the investigation;

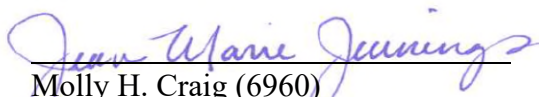
b. State when the investigation was commenced and when it was concluded;

c. Identity all individuals who participated in the investigation; and

State the outcome or conclusion(s) of the investigation.

**ANSWER:** This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)

[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)

Brian E. Johnson (76103)

[brian.johnson@hoodlaw.com](mailto:brian.johnson@hoodlaw.com)

Jean Marie Jennings (100651)

[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

*Attorneys for the Defendant  
We Are Sharing Hope SC*

**August 28, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28<sup>th</sup> day of August, 2020.

A handwritten signature in blue ink, appearing to read "Jay Kelly", is written over a horizontal line.

|                                                   |   |                                 |
|---------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS    |
|                                                   | ) | NINTH JUDICIAL CIRCUIT          |
| COUNTY OF CHARLESTON                              | ) |                                 |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902        |
| personal representative of the Estate of Allen B. | ) |                                 |
| Holliman,                                         | ) |                                 |
|                                                   | ) |                                 |
| <i>Plaintiff,</i>                                 | ) |                                 |
|                                                   | ) |                                 |
| Versus                                            | ) | <b>DEFENDANT</b>                |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b>RESPONSES TO PLAINTIFF'S</b> |
| of South Carolina, and United Network for         | ) | <b>FIRST SET OF REQUESTS</b>    |
| Organ Sharing,                                    | ) | <b>FOR PRODUCTION</b>           |
|                                                   | ) |                                 |
| <i>Defendants.</i>                                | ) |                                 |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), responds to the Plaintiff's First Set of Requests for Production, as follows:

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

**RESPONSE:** This Defendant objects to this Request to the extent it calls for attorney-client and/or work product related documents and to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Without waiving these objections, other than what is contained in

the medical records of the Donor and Plaintiff, this Defendant is not aware of any non-privileged written or recorded statements at this time.

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

**RESPONSE:** Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

**RESPONSE:** This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the Donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

**RESPONSE:** This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the Donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it



intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

**RESPONSE:** The Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*, *WASH 0359-0363 CONFIDENTIAL* and *WASH 0369-0371 CONFIDENTIAL*.

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

**RESPONSE:** This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November 2018 to present bates labeled for production as *WASH 0333-0359 CONFIDENTIAL*.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

**RESPONSE:** This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November of 2018 to present bates labeled for production as *WASH 0359-0368 CONFIDENTIAL*.

8. All laboratory or other test results relating to the Donor.

**RESPONSE:** This Defendant refers the Plaintiff to the Donor medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for laboratory and other tests relating to the Donor.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

**RESPONSE:** This Defendant refers the Plaintiff to the Donor's Organ Medical Record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* which contains the blood products received by the Donor.

10. All documents and communications relating to the determination of the blood type of the Donor.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

11. All documents and communications relating to Mr. Holliman or his death.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993)

and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

13. All communications with Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any transplant centers relating to the Donor.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted.

Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Privilege Log as well as Donor's organ medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. The relevant portions of the Donor organ medical record are uploaded to DonorNet which is the platform allowing this Defendant to upload the Donor medical records to be viewed by transplant hospitals. This Defendant further refers to documents labeled for production as *WASH 0003-0005 CONFIDENTIAL* (Revised). This Defendant reserves the right to supplement this information during discovery.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

**RESPONSE:** This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding and without waiving the objection, this Defendant refers the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

15. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for determining the blood type of potential organ donors.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer

review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

16. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

**RESPONSE:** This Defendant objects to this Request as overly broad and unduly burdensome as seeking communications with UNOS which are not related to this lawsuit. This Defendant further objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the Privilege Log.

17. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. In addition, this Defendant further objects to the extent this Request is overly broad and unduly burdensome. Without waiving these objections, this Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

**RESPONSE:** This Defendant objects to this Request as overly broad and unduly burdensome and to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. Further responding, this Defendant's procedures and policies as an OPO are developed independently are typically not shared with the Medical University of South Carolina. Further responding, this Defendant will supplement if any applicable communications exist with regard to this case.

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

**RESPONSE:** This Defendant objects to this Request to the extent it calls for protected medical information from other Donors unrelated to this case.

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood and tissue samples of potential organ donors.

**RESPONSE:** This Defendant objects to this Request to the extent it calls for information from other Donors unrelated to this case. Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for documents and communications with VRL Eurofins Laboratories related to the Donor involved in this case. Further responding, upon information and belief, following the organ procurement and transplant process in this case this Defendant discussed the process of blood typing with VRL Eurofins via telephone call.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, the Defendant refers the Plaintiff to the Privilege Log and the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. UNOS operates the DonorNet platform by which OPOs and Transplant centers communicate with each other during the organ procurement and transplant process. The information uploaded to DonorNet by this Defendant is contained in the Donor organ medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the privilege log.

22. All documents relating to the Donor provided to Medical University of South Carolina.

**RESPONSE:** Portions of the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* uploaded to DonorNet as they were available for viewing by transplant centers such as the Medical University of South Carolina.

23. All communications relating to the suitability of the Donor for organ donation.

**RESPONSE:** The Defendant refers the Plaintiff to the documents labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

24. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

25. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

26. All communications relating to complications experienced by recipients of any of the Donor's organs or tissues.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive



case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents labeled for production as *WASH 0006-0332 CONFIDENTIAL* related to recipients of the Donor's organs. Further responding, ABO typing does not affect tissue recovery.

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

**RESPONSE:** Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

**RESPONSE:** Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

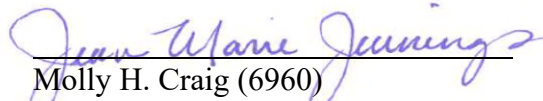
29. Job descriptions for all licensed physicians who are employed by you either as a regular employee or an independent contractor or with whom you are otherwise affiliated.

**RESPONSE:** This Defendant refers to documents labeled for production as *WASH 0369-0371 CONFIDENTIAL*.

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

**RESPONSE:** This Defendant responds that any licensed physicians sitting on the Board of Directors do not have any responsibilities regarding the operations of this Defendant.

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)

[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)

Brian E. Johnson (76103)

[brian.johnson@hoodlaw.com](mailto:brian.johnson@hoodlaw.com)

Jean Marie Jennings (100651)

[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

*Attorneys for the Defendant  
We Are Sharing Hope SC*

**August 28, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This **28<sup>th</sup>** day of **August**, 2020.



## **EXHIBIT D**

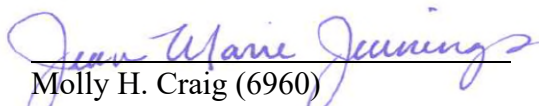
|                                                   |   |                                 |
|---------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS    |
|                                                   | ) | NINTH JUDICIAL CIRCUIT          |
| COUNTY OF CHARLESTON                              | ) |                                 |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902        |
| personal representative of the Estate of Allen B. | ) |                                 |
| Holliman,                                         | ) |                                 |
|                                                   | ) |                                 |
| <i>Plaintiff,</i>                                 | ) |                                 |
|                                                   | ) |                                 |
| Versus                                            | ) | <b>DEFENDANT</b>                |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b>AMENDED</b>                  |
| of South Carolina, and United Network for         | ) | <b>PRIVILEGE LOG</b>            |
| Organ Sharing,                                    | ) |                                 |
|                                                   | ) |                                 |
| <i>Defendants.</i>                                | ) |                                 |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter “this Defendant”), hereby submits the following log of privileged documents withheld from production:

| Bates Label Nos.     | Document Description | Privilege Asserted                                     |
|----------------------|----------------------|--------------------------------------------------------|
| Privileged 0001-0186 | Peer Review          | Peer Review<br>Quality Assurance/Quality<br>Assessment |
| Privileged 0187-0195 | Root Cause Analysis  | Peer Review<br>Quality Assurance/Quality<br>Assessment |

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)

[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)

Brian E. Johnson (76103)

[brian.johnson@hoodlaw.com](mailto:brian.johnson@hoodlaw.com)

Jean Marie Jennings (100651)

[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

*Attorneys for the Defendant  
We Are Sharing Hope SC*

**August 28, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of the ***DEFENDANT WE ARE SHARING HOPE SC's AMENDED PRIVILEGE LOG*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This **28<sup>th</sup>** day of **August**, 2020.



## **EXHIBIT E**

## W Y C H E

Attorneys at Law

October 7, 2020

Via Email

Jean Marie Jennings

Molly Craig

Hood Law Firm, LLC

[Jeanmarie.jennings@hoodlaw.com](mailto:Jeanmarie.jennings@hoodlaw.com)[Molly.craig@hoodlaw.com](mailto:Molly.craig@hoodlaw.com)

Re: Holliman vs. We Are Sharing Hope SC, *et al.*  
Case No. 2020-CP-10-2902  
We Are Sharing Hope SC's responses to Plaintiff's first discovery requests

Dear Jean Marie and Molly,

I am writing regarding substantial deficiencies with We Are Sharing Hope SC's ("WASH") responses to Plaintiff's first set of interrogatories ("Interrogatories") and requests for production ("Requests"). These deficiencies are outlined below.

**Claims of Peer Review Privilege**

WASH objects to Interrogatories 13, 15, 16, 17, and 24 and Requests 1, 10, 11, 12, 13, 15, 16, 21, 24, 25, and 26 on the ground that they seek "confidential peer review materials protected by S.C. Code Ann. § 40-71-20 to 40 and § 44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 527 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) . . . ." This objection is improper for several reasons.

First, the objection purports to reference S.C. Code § 40-71-40, but there is no such provision in the South Carolina Code.

Second, S.C. Code § 40-71-20 protects from discovery "data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties . . . ." (emphasis added). The committee to which § 40-71-10 refers is "an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death . . . ." § 40-71-10(B) (emphasis added). That section defines "professional society" as "legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society." § 40-71-10(A).

Thus, according to its plain terms, § 40-71-20 protects certain documents of (1) certain committees appointed by a professional society to maintain professional standards of the professional society;

W Y C H E

PROFESSIONAL ASSOCIATION

Post Office Box 12247 Columbia, SC 29211

p: 803.254.6542 f: 803.254.6544

www.wyche.com

October 7, 2020

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(2) certain committees appointed by the Department of Mental Health; and (3) certain committees appointed by the Department of Health and Environmental Control. Section 40-71-20(A) clarifies, however, that “[i]nformation, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings.” Thus, information and documents that are presented to a committee covered by § 40-71-20 are not subject to discovery from the appointed committee, but they are subject to discovery from other sources.

There is no information in WASH’s discovery responses indicating that WASH is part of a committee appointed by a professional society, as defined by § 40-71-10(A), to maintain professional standards of the society, a committee appointed by the Department of Mental Health, or a committee appointed by DHEC. Furthermore, WASH is an organ procurement organization (“OPO”), and Plaintiff is not aware of the existence of any society of OPOs in South Carolina that would meet the definition of a “professional society” under § 40-71-10(A). In the event that WASH is in possession of documents that were ultimately presented to some other committee that is covered by the protections in § 40-71-20, such documents must still be produced by WASH as an original source and are not immune from discovery simply because they were presented to a protected committee. *See* § 40-71-20(A). Accordingly, WASH is not expected to be in possession of any materials protected by § 40-71-20.

Third, WASH claims that documents responsive to Plaintiff’s request are protected by S.C. Code § 44-7-392, but that provision applies to certain documents and information acquired by hospitals. Because WASH is not a hospital, § 44-7-392 is inapplicable to documents in its possession. Furthermore, like § 40-71-20, any information or documents in WASH’s possession that might have been presented in the course of hospital proceedings protected by § 44-7-392 are subject to discovery from WASH and may not be withheld simply because they were presented in the course of the hospital proceedings. *See* § 44-7-392(A)(3).

Fourth, the cases cited by WASH in its objection do not support the contention that the materials requested from WASH are privileged. *McGee* involves discovery requests for credentialing files from the executive committee of a hospital, which the court held was a committee protected by § 40-71-20. As explained above, however, it does not appear that WASH is part of any committee protected by the statute. Moreover, the court in *McGee* held that the plaintiff could obtain the documents at issue from sources other than the appointed hospital committee, and it also held that the outcome of the hospital committee’s decision-making process was not protected even though the documents and information the committee acquired were. *McGee*, 312 S.C. at 62-63. The other case cited in WASH’s objection, *Sibley v. Lutheran Hosp. of Md., Inc.*, 871 F.2d 479 (4th Cir. 1989), does not discuss peer review privilege and provides is inapposite.

Lastly, UNOS policies and guidelines and OPTN Bylaws do not serve as a basis for withholding documents and materials responsive to Plaintiff’s discovery requests because there is no privilege recognized by the South Carolina courts for UNOS policies and guidelines or OPTN Bylaws.



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Accordingly, Plaintiff's objection to numerous Interrogatories and Requests on the basis of a peer review privilege is improper. Plaintiff requests that WASH provide full and complete responses to Interrogatories 13, 15, 16, 17, and 24 and Requests 1, 10, 11, 12, 13, 15, 16, 21, 24, 25, and 26 and that WASH produce all documents and other materials withheld on a claim of peer review privilege.

### **Lack of Communications Produced**

Multiple Requests seek the production of certain communications. Definition J to the Requests provides that, for purposes of the Requests, "communication" includes "any written or oral communication of all kinds including, but not limited to, emails, texts, letters . . . and telephone conversations." There were no emails, text messages, or voice recordings produced in response to Plaintiff's Requests. It is expected that WASH would have responsive emails, text messages, or voice recordings in its possession, particularly given the case notes and call notes included in WASH's production that make reference to numerous communications relating to this case. Please produce all non-privileged, responsive communications of any type, including but not limited to emails, text messages, and voice recordings.

### **Date Generated for Documents**

The documents Bates-labeled WASH 0006-189 have a "Date Generated" stamp at the bottom that says August 5, 2020. This appears to be the date these documents were accessed to be produced in this case, not the actual date the documents were generated. Please produce an audit trail for the documents showing when they were created and modified.

### **Verification**

South Carolina Civil Procedure Rule 33(a) requires interrogatories to be answered under oath by the party. No verification was provided with WASH's interrogatory responses. Please provide a verification signed by a representative of WASH.

### **Deficiencies with Specific Interrogatories and Requests**

#### **1) Interrogatory 3 and Request 2**

These requests ask for insurance information and copies of insurance policies that might provide coverage for Plaintiff's claims. WASH identified Allied World Surplus Line Insurance Company as an insurer that might have coverage, but it has not produced any insurance policies as requested. Rule 26(b)(1) specifically provides for the discovery of insurance policies that might have coverage for the claims in a case. Please provide copies of all insurance policies that might provide coverage, in whole or in part, for Plaintiff's claims in this case.

#### **2) Interrogatories 5 and 6 and Requests 6 and 7**

October 7, 2020

Page 4

Interrogatories 5 and 6 ask for WASH to explain in detail its policies in effect in November 2018 relating to the determination of the blood type of potential organ donors and the reporting of organs as available for transplant. Requests 6 and 7 ask for copies of all such policies in effect from 2018 to the present. WASH responds to these requests by referring to the policies Bates-labeled WASH 0333-68. The policies in WASH 0333-68 state at the end that they have attachments, and they reference additional procedures, standards, and regulations. None of these attachments or other references have been produced. Please produce the attachment and other references listed at the end of the policies Bates-labeled WASH 0333-68.

### **3) Interrogatory 13 and Request 21**

Interrogatory 13 calls for WASH to identify all documents relating to the Donor that it provided to Defendant United Network for Organ Sharing (“UNOS”) and to state when each document identified was provided. WASH states in response that portions of the Donor’s medical record were uploaded to DonorNet, but WASH fails to identify with specificity which documents relating to the Donor were provided to UNOS (at any point) and to state when they were provided.

Request 21 asks for the production of all documents relating to the Donor that were provided to UNOS. WASH responds to this Request by simply stating that information uploaded to DonorNet is contained in the documents Bates-labeled WASH 0006-332, but it is unclear which documents within WASH 0006-332 are the documents uploaded to DonorNet. Furthermore, this Request asks for the production of all documents relating to the Donor that were provided to UNOS—not just the documents uploaded to DonorNet.

Please provide full and complete responses to Interrogatory 13 and Request 21.

### **4) Interrogatory 14 and Request 22**

Interrogatory 14 asks for WASH to identify all documents relating to the Donor that it provided to Defendant Medical University of South Carolina (“MUSC”) and to state when it provided each document identified. WASH responds that it “uploaded relevant portions from the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* to DonorNet. The medical records are uploaded as the records become available . . . .” This answer is not responsive to the interrogatory. The Interrogatory asks for all documents relating to the Donor that WASH provided to MUSC—not just those that were uploaded to DonorNet—and it asks when each document was given to MUSC. Furthermore, the documents labeled WASH 0006-332 contain many documents that are not part of the Donor’s medical record, so it is unclear which documents were even uploaded to DonorNet by WASH.

Request 22 calls for the production of all documents relating to the Donor that WASH provided to MUSC. WASH responds to this Request by stating that information that was uploaded to DonorNet is contained in WASH 0006-332, but, again, it is unclear which documents within

October 7, 2020

Page 5

WASH 0006-332 were uploaded to DonorNet. Furthermore, this Request asks for the production of all documents relating to the Donor provided to MUSC by WASH—not just the documents uploaded to DonorNet.

Please provide full and complete responses to Interrogatory 14 and Request 22.

#### **5) Interrogatory 21**

This Interrogatory requires WASH to identify all organs or tissues from the Donor that were reported as available for transplant, and for each organ or tissue identified, to state whether it was transplanted and, if so, to state the outcome of the transplant. WASH provides no information regarding the Donor's tissues and asserts that tissue recovery is not relevant to this case. Whether tissues from the Donor were transplanted and, if so, the outcome of such transplants is relevant to this case arising out of the incorrect blood typing of the Donor and certainly falls within the broad scope of discovery permitted by Rule 26(b)(1). Please provide the requested information regarding the Donor's tissues.

#### **6) Request 14**

This Request calls for the production of all documents relating to the Donor's blood type that WASH sent to any transplant centers that received any organs or tissues of the Donor. WASH objects that the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and then refers Plaintiff to the set of documents Bates-labeled WASH 0006-332. This Request is narrowly targeted to seek key documents in this wrongful death case: documents relating to the Donor that were sent to transplant centers receiving the Donor's organs or tissues. The documents Bates-labeled WASH 0006-332 appear to include many documents that were not sent to transplant centers, so it is impossible to determine which of these documents WASH sent to transplant centers. Additionally, it is unclear whether documents have been withheld on the basis of WASH's objection. Please specify which documents within WASH 0006-332 were sent to transplant centers, and produce all documents in WASH's possession that are responsive to this Request.

#### **7) Requests 18, 19, and 20**

These Requests seek certain communications with MUSC and VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients, determining the blood type of potential donors, and the testing of blood and tissue samples of potential donors. WASH objects to these Requests "to the extent" they seek protected medical information regarding other donors or recipients. Although Plaintiff does not believe these Requests are objectionable, please allow this to serve as clarification that these Requests seek communications with MUSC and VRL during the specified time period regarding procedures and protocols for matching organ donors and recipients, determining the blood type of potential donors, and the testing of blood and tissue samples of potential donors in general, or as related specifically

October 7, 2020

Page 6

to the Donor at issue in this case. The Requests do not seek communications relating to the matching of other identified donors and recipients, the determination of the blood type of other specific donors, or the testing of samples of other specific donors. Please produce all communications responsive to this Request as clarified herein.

**8) Requests 27 and 28**

These Requests seek the production of all HIPAA authorizations for the Donor and all communications relating to HIPAA authorizations for the Donor. WASH's responses assert that WASH is not required to obtain HIPAA authorizations "to perform its organ procurement functions and communicate with donor hospitals and transplant centers." This assertion is non-responsive to the Requests. Please produce all HIPAA authorizations for the Donor at issue in this case and all communications relating to such authorizations.

**9) Request 30**

This Request asks for descriptions of duties and responsibilities for all licensed physicians on WASH's Board of Directors or Advisory Board. In response, WASH states that "any licensed physicians sitting on the Board of Directors do not have any responsibilities *regarding the operations* of this Defendant." This is non-responsive. The Request asks for descriptions of duties and responsibilities for all licensed physicians on WASH's Board of Directors or Advisory Board—not simply responsibilities "regarding the operations" of WASH and not only physicians on the Board of Directors. Please provide descriptions of the duties and responsibilities, regardless of whether they relate to "operations," for all licensed physicians on WASH's Board of Directors or Advisory Board.

Please correct the deficiencies outlined above and provide full and complete responses to Plaintiff's Interrogatories and Requests by October 21, 2020. Please do not hesitate to let me know if you have any questions or would like to discuss this matter further.

Sincerely,

s/JCM

John C. Moylan, III

## **EXHIBIT F**



JEAN MARIE JENNINGS  
Partner  
DIRECT DIAL: (843) 577-1217  
E-MAIL: [jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

November 6, 2020

**Via E-Mail/Sharefile**

John C. Moylan, III, Esquire  
Mary Lucille Dinkins, Esquire  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, SC 29201

Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman v. We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing  
C/A No. and Jurisdiction: 2020-CP-10-02902, Charleston CP  
HLF File No. 269.009

Dear Counselors:

We are writing in response to your letter dated October 7, 2020 regarding We Are Sharing Hope SC's discovery responses to the Plaintiff. While we do not believe our responses were deficient, we are supplementing our responses with additional information pursuant to your letter. The documents referenced may be found via the following Sharefile link: <https://hoodlaw.sharefile.com/d-s51baf933f69743e>. This link will expire in 30 days. This Defendant is supplementing discovery responses with the insurance policy, email communications, audit detail, and additional policies and procedures. In addition, please see the supplemental discovery responses and privilege log. We previously supplemented with text messaging communications on October 27, 2020.

In regards to documents withheld on the basis of privilege, We Are Sharing Hope SC was involved in a confidential peer review process involving the Membership and Professional Standards Committee of UNOS which serves as the Organ Procurement and Transplantation Network under contract with the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Thus, we believe our citations to S.C. Code § 40-71-10 *et seq.* and other objections are proper.

The second set of documents withheld on the privilege log are withheld because they involve a Root Cause Analysis with Grand Strand Medical Center in January of 2019. Thus, protection under S.C. Code § 44-7-392 is applicable to these documents.

We Are Sharing Hope will supplement their Interrogatories with a verification pursuant to Rule 33(a) of the South Carolina Rules of Civil Procedure as requested.

If you should have any questions, please feel free to contact me, or my paralegal, Tammy Villanueva.

# HOOD LAW FIRM, LLC

John C. Moylan, III, Esquire  
Mary Lucille Dinkins, Esquire  
Page Two  
November 6, 2020

Kind regards,

Yours truly,



Jean Marie Jennings

JMJ/jku

Enclosures

cc: Darren K. Sanders, Esquire [*Via E-Mail/Sharefile*]  
Jack G. Gresh, Esquire/Lauren Spears Gresh, Esquire [*Via E-Mail/Sharefile*]

ELECTRONICALLY FILED - 2020 Nov 18 2:25 PM - CHARLESTON - COMMON PLEAS - CASE#2020CPI1002902

## EXHIBIT G



|                                                   |   |                                      |
|---------------------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS         |
|                                                   | ) | NINTH JUDICIAL CIRCUIT               |
| COUNTY OF CHARLESTON                              | ) |                                      |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902             |
| personal representative of the Estate of Allen B. | ) |                                      |
| Holliman,                                         | ) |                                      |
|                                                   | ) |                                      |
| <i>Plaintiff,</i>                                 | ) | <b>DEFENDANT</b>                     |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's</b>      |
| Versus                                            | ) | <b>FIRST SUPPLEMENTAL ANSWERS TO</b> |
|                                                   | ) | <b>PLAINTIFF'S</b>                   |
| We Are Sharing Hope SC, Medical University        | ) | <b>FIRST SET OF INTERROGATORIES</b>  |
| of South Carolina, and United Network for         | ) |                                      |
| Organ Sharing,                                    | ) |                                      |
|                                                   | ) |                                      |
| <i>Defendants.</i>                                | ) |                                      |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, This Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), answers the Plaintiff's First Set of Interrogatories, as follows:

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiffs claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

ANSWER: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

**SUPPLEMENTAL ANSWER: This Defendant refers the Plaintiff to documents labeled for production as *WASH 0389-0440*.**

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0333-0338 CONFIDENTIAL*.

**SUPPLEMENTAL ANSWER:** This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to *WASH 0611-0690 CONFIDENTIAL* which contains the attachments and referenced and related procedures listed from the original production.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0359-0363 CONFIDENTIAL*.

**SUPPLEMENTAL ANSWER:** This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, some of the referenced and related procedures listed in the policies labeled for production as *WASH 0359-0368 CONFIDENTIAL* have previously been produced and are labeled *WASH 333-350 CONFIDENTIAL* and the additional policy referenced is labeled for production as *WASH 0663-0666 CONFIDENTIAL*. Further responding, the attachment regarding post-recovery kidney reallocation is not relevant to the allegations contained in this case regarding lung donation.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

Further responding and without waiving the above objections, portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS allowing Organ Procurement Organizations to Communicate with Transplant Centers.

**SUPPLEMENTAL ANSWER: Without waiving the above objections, this Defendant responds the case notes and call notes contained in the donor medical record are not uploaded to DonorNet. Further responding and without waiving the above objections, this Defendant communicated with UNOS regarding the confidential peer review process as labeled on the privilege log.**

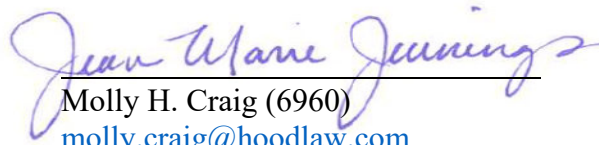
21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information. Further responding, this Defendant attempts to place all organs which are able to be transplanted, namely the right and left kidneys, liver, pancreas, intestines, heart and lungs in order to save as many lives as possible and all of the organs listed above were listed as available for transplant with regard to

the Donor in this case. Tissue recovery occurs after organ recovery and is not relevant to the allegations of this lawsuit.

**SUPPLEMENTAL ANSWER:** Further responding, tissues from the donor are recovered and accepted by a tissue processing center. The tissues are processed and/or stored unprocessed and may be used for transplantation up to five years later. Thus, the recipients of tissue are generally not known to this Defendant. Further responding, at this time this Defendant is not aware of any issues regarding tissues transplanted from the Donor in this case if tissue transplantation has occurred.

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

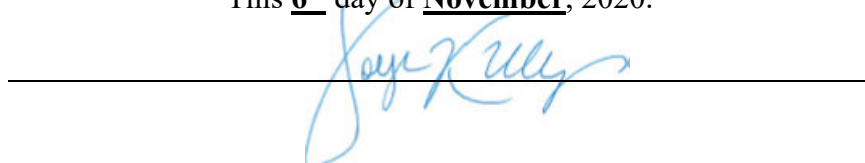
*Attorneys for the Defendant  
We Are Sharing Hope SC*

**November 6, 2020**  
Charleston, South Carolina

### **CERTIFICATE OF SERVICE**

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's FIRST SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6<sup>th</sup> day of November, 2020.



|                                                   |   |                                       |
|---------------------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS          |
|                                                   | ) | NINTH JUDICIAL CIRCUIT                |
| COUNTY OF CHARLESTON                              | ) |                                       |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902              |
| personal representative of the Estate of Allen B. | ) |                                       |
| Holliman,                                         | ) |                                       |
|                                                   | ) |                                       |
| <i>Plaintiff,</i>                                 | ) | <b>DEFENDANT</b>                      |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's FIRST</b> |
| Versus                                            | ) | <b>SUPPLEMENTAL</b>                   |
|                                                   | ) | <b>RESPONSES TO PLAINTIFF'S</b>       |
| We Are Sharing Hope SC, Medical University        | ) | <b>FIRST SET OF REQUESTS</b>          |
| of South Carolina, and United Network for         | ) | <b>FOR PRODUCTION</b>                 |
| Organ Sharing,                                    | ) |                                       |
|                                                   | ) |                                       |
| <i>Defendants.</i>                                | ) |                                       |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), responds to the Plaintiff's First Set of Requests for Production, as follows:

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

RESPONSE: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

**SUPPLEMENTAL RESPONSE: This Defendant refers to documents labeled for production as *WASH 0389-0440*.**

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff

to the documents related to this Defendant's policies in effect from November 2018 to present bates labeled for production as *WASH 0333-0359 CONFIDENTIAL*.

**SUPPLEMENTAL RESPONSE:** This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to *WASH 0611-0690 CONFIDENTIAL* which contains the attachments and referenced and related procedures listed from the original production.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

**RESPONSE:** This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November of 2018 to present bates labeled for production as *WASH 0359-0368 CONFIDENTIAL*.

**SUPPLEMENTAL RESPONSE:** This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, some the referenced and related procedures listed in the policies labeled for production as *WASH 0359-0368 CONFIDENTIAL* have previously been produced and are labeled *WASH 333-350 CONFIDENTIAL* and the additional policy referenced is labeled for production as *WASH 0663-0666 CONFIDENTIAL*. Further responding, the attachment regarding post-recovery kidney reallocation is not relevant to the allegations contained in this case regarding lung donation.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

RESPONSE: This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding and without waiving the objection, this Defendant refers the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

**SUPPLEMENTAL RESPONSE: The medical records of the Donor contained in *WASH 0006-0332 CONFIDENTIAL* regarding the Donor's blood testing are uploaded to DonorNet for viewing by transplant centers. Upon information and belief, the results from the blood type testing at Grand Strand Medical Center as well as the VRL Eurofins results were uploaded to DonorNet. Further responding, tissue recovery occurs following organ procurement and the tissue is provided to an accepting tissue repository or processing center for use. Tissues may be used up to five years following recovery.**

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

RESPONSE: This Defendant objects to this Request as overly broad and unduly burdensome and to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. Further responding, this Defendant's procedures and policies as an OPO are developed independently are typically not shared with the Medical University of South Carolina. Further responding, this Defendant will supplement if any applicable communications exist with regard to this case.

**SUPPLEMENTAL RESPONSE: This Defendant refers to documents labeled for production as *WASH 0441-0445*.**

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for protected medical information from other Donors unrelated to this case.

**SUPPLEMENTAL RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-10 et seq. and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law. Without waiving these objections, this Defendant has identified emails with VRL Eurofins which were part of this Defendant's quality improvement/peer review process with UNOS regarding ABO typing generally and also as related to this Donor which are labeled on the privilege log.**

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood and tissue samples of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for information from other Donors unrelated to this case. Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for documents and communications with VRL Eurofins Laboratories related to the Donor involved in this case. Further responding, upon information and belief, following the organ procurement and transplant process in this case this Defendant discussed the process of blood typing with VRL Eurofins via telephone call.



**SUPPLEMENTAL RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-10 et seq. and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law. This Defendant has identified emails with VRL Eurofins which were part of this Defendant's quality improvement/peer review process with UNOS regarding ABO typing generally and also as related to this Donor which are labeled on the privilege log.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

**RESPONSE:** This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4<sup>th</sup> Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, the Defendant refers the Plaintiff to the Privilege Log and the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. UNOS operates the DonorNet platform by which OPOs and Transplant centers communicate with each other during the organ procurement and transplant process. The information uploaded to DonorNet by this Defendant is contained in the Donor organ medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the privilege log.

**SUPPLEMENTAL RESPONSE:** Other than the materials withheld as privileged involving the peer review process occurring after the incident alleged in the Complaint and

**the donor medical records which are uploaded to DonorNet which is operated by UNOS, this Defendant is not in possession of any responsive documents.**

22. All documents relating to the Donor provided to Medical University of South Carolina.

RESPONSE: Portions of the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* uploaded to DonorNet as they were available for viewing by transplant centers such as the Medical University of South Carolina.

**SUPPLEMENTAL RESPONSE: Other than the documents uploaded to DonorNet, upon information and belief, this Defendant did not provide additional documentation to MUSC.**

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

**SUPPLEMENTAL RESPONSE: This Defendant is not in possession of any HIPAA authorizations for the Donor as it has not sent any subpoenas with regard to seeking protected health information of the Donor. During the organ recovery and transplant process pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant performs its functions without the need for HIPAA authorizations pursuant to the provisions cited above.**

28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

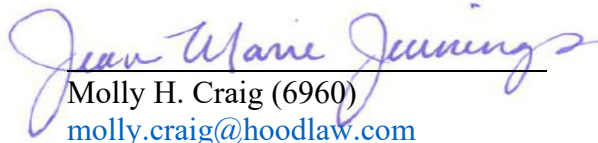
**SUPPLEMENTAL RESPONSE: See response to Request No. 27 above.**

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

RESPONSE: This Defendant responds that any licensed physicians sitting on the Board of Directors do not have any responsibilities regarding the operations of this Defendant.

**SUPPLEMENTAL RESPONSE: This Defendant is not in possession of a description of the duties and responsibilities of licensed physicians.**

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

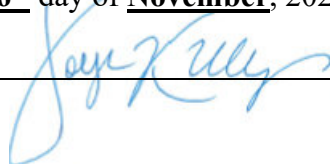
*Attorneys for the Defendant  
We Are Sharing Hope SC*

**November 6, 2020**  
Charleston, South Carolina

### **CERTIFICATE OF SERVICE**

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6<sup>th</sup> day of **November**, 2020.



## **EXHIBIT H**

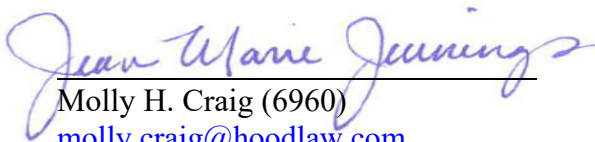
|                                                   |   |                                        |
|---------------------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS           |
|                                                   | ) | NINTH JUDICIAL CIRCUIT                 |
| COUNTY OF CHARLESTON                              | ) |                                        |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902               |
| personal representative of the Estate of Allen B. | ) |                                        |
| Holliman,                                         | ) |                                        |
|                                                   | ) |                                        |
| <i>Plaintiff,</i>                                 | ) |                                        |
|                                                   | ) |                                        |
| Versus                                            | ) | <b>DEFENDANT</b>                       |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's SECOND</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b>AMENDED</b>                         |
| of South Carolina, and United Network for         | ) | <b>PRIVILEGE LOG</b>                   |
| Organ Sharing,                                    | ) |                                        |
|                                                   | ) |                                        |
| <i>Defendants.</i>                                | ) |                                        |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter “this Defendant”), hereby submits the following log of privileged documents withheld from production:

| Bates Label Nos.               | Document Description                                                                                                                                                                                     | Privilege Asserted                                |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Privileged 0001-0186           | Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS                                                                                   | Peer Review Quality Assurance/Quality Assessment. |
| Privileged 0187-0195           | Root Cause Analysis involving We Are Sharing Hope SC and Grand Strand Medical Center                                                                                                                     | Peer Review Quality Assurance/Quality Assessment  |
| Privileged 0196-210, 0224-0226 | Emails between We Are Sharing Hope and VRL-Eurofins involving ABO testing/part of peer review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS | Peer Review Quality Assurance/Quality Assessment. |
| Privileged 0211-0223           | Emails re: Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS                                                                        | Peer Review Quality Assurance/Quality Assessment. |

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

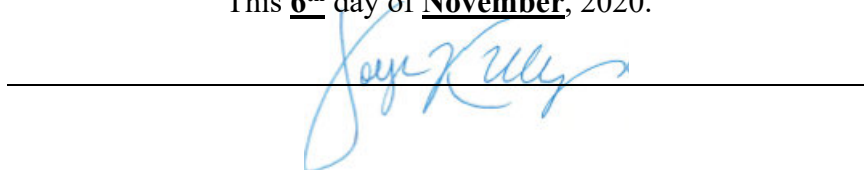
*Attorneys for the Defendant*  
*We Are Sharing Hope SC*

**November 6, 2020**  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of the ***DEFENDANT WE ARE SHARING HOPE SC's SECOND AMENDED PRIVILEGE LOG*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6<sup>th</sup> day of November, 2020.



|                                                   |   |                                         |
|---------------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS            |
|                                                   | ) |                                         |
| COUNTY OF CHARLESTON                              | ) |                                         |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902                |
| personal representative of the Estate of Allen B. | ) |                                         |
| Holliman,                                         | ) |                                         |
|                                                   | ) |                                         |
| <i>Plaintiff,</i>                                 | ) | <b>DEFENDANT WE ARE SHARING HOPE</b>    |
|                                                   | ) | <b>SC'S NOTICE OF MOTION AND MOTION</b> |
| Versus                                            | ) | <b>FOR A PROTECTIVE ORDER</b>           |
|                                                   | ) |                                         |
| We Are Sharing Hope SC, Medical University        | ) |                                         |
| of South Carolina, and United Network for         | ) |                                         |
| Organ Sharing,                                    | ) |                                         |
|                                                   | ) |                                         |
| <i>Defendants.</i>                                | ) |                                         |

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), by and through its undersigned attorneys, will move as soon as may be heard, pursuant to Rules 26 and 30 of the South Carolina Rules of Civil Procedure, for a Protective Order from the Court.

During the deposition of Darla Welker, which was held on December 14, 2020, the Plaintiff's attorney asked questions related to information protected by the peer review privilege, S.C. Code Ann § 44-7-392. Ms. Welker was instructed not to answer these questions on the basis that the information falls under the peer review privilege and is protected from discovery.

The undersigned hereby moves this Court for an Order protecting this Defendant from having to divulge information that is protected from discovery on the basis that the information sought is protected by the peer-review privilege. This Motion is supported by statutory and common law of the State of South Carolina and other applicable authority and may be supported by a memorandum of law or other supporting material as permitted under the South Carolina Rules

of Civil Procedure. Pursuant to Rule 11, SCRPC, the undersigned certifies further consultation regarding the subject matter of this Motion would serve no useful purpose.

HOOD LAW FIRM, LLC  
172 Meeting Street  
Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630

**s/ Molly H. Craig**

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Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)  
Julia A. Bradshaw (103767)  
[julia.bradshaw@hoodlaw.com](mailto:julia.bradshaw@hoodlaw.com)

*Attorneys for Defendant  
We Are Sharing Hope SC*

**December 15, 2020**  
Charleston, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as  
personal representative of the Estate of  
Allen B. Holliman,

Plaintiff,

v.

We Are Sharing Hope, SC, Medical  
University of South Carolina, and United  
Network for Organ Sharing,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2020-CP-10-02902  
)) **DEFENDANT UNITED NETWORK**  
) **FOR ORGAN SHARING'S ANSWER TO**  
) **PLAINTIFF'S COMPLAINT**  
)) **(Jury Trial Demanded)**  
)  
)**TO: JOHN C. MOYLAN, III, ESQUIRE AND LUCY DINKINS, ESQUIRE, COUNSEL  
FOR PLAINTIFF**

COMES NOW Defendant United Network for Organ Sharing, by and through its undersigned counsel (hereinafter referred to as "Defendant"), and in response to the Complaint of Plaintiff, Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman (hereinafter referred to as "Plaintiff"), would allege unto this Honorable Court as follows:

**AS TO THE PARTIES**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore can neither admit nor deny the same.

2. The allegations set forth in Paragraph 2 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, upon information and belief this Defendant believes the information contained in Paragraph 2 is accurate.

3. The allegations set forth in Paragraph 3 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, upon information and belief, this Defendant believes the information contained in Paragraph 3 is accurate.

4. The allegations set forth in Paragraph 4 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

5. The allegations set forth in Paragraph 5 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

6. The allegations set forth in Paragraph 6 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, upon information and belief this Defendant believes the information contained in Paragraph 6 is accurate.

7. The allegations set forth in Paragraph 7 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

8. The allegations set forth in Paragraph 8 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a

response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

9. As to the allegations set forth in Paragraph 9 of Plaintiff's Complaint, it is admitted that Defendant United Network for Organ Sharing ("UNOS") is a not for profit, 501(C)(3) charitable organization with headquarters in Richmond, Virginia that serves as the organ transplant system in the United States, which is known as the Organ Procurement and Transplantation Network ("OPTN"), under a contract with the federal government. Any and all remaining allegations are denied.

10. As to the allegations set forth in Paragraph 10 of Plaintiff's Complaint, it is admitted that the UNOS's website states Defendant is involved in many aspects of the organ transplant and donation process, including but not limited to, "managing the national transplant waiting list," "matching donors to recipients....," "maintaining the database that contains all organ transplant data for every transplant event that occurs in the U.S.", as well as "monitoring every organ match to ensure organ allocation policies are followed." Any and all remaining allegations are denied.

11. As to the allegations set forth in Paragraph 11 of Plaintiff's Complaint, it is admitted that the UNOS website states "United Network for Organ Sharing provides a vital link in the organ transplant policies. Its policies and computerized network match donated organs with transplant candidates in ways that save as many lives as possible and provide transplant recipients with the best possible chance of long-term survival." It is further admitted that the UNOS website states, "every lifesaving organ transplant is managed through UNOS' computer system, which matches donors with potential transplant recipients 24 hours a day, 365 days a year." Any and all remaining allegations are denied.

12. As to the allegations set forth in Paragraph 12 of Plaintiff's Complaint, it is admitted that UNOS is a competent and qualified manager of the organ transplant system in the United States and provider of services related to the organ transplant and donation system and process in the United States.

13. The allegations set forth in Paragraph 13 of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the same and demands strict proof thereof.

**AS TO JURISDICTION, VENUE, AND PROCEDURAL BACKGROUND**

14. Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

15. Defendant admits the allegations contained in Paragraph 15 of Plaintiff's Complaint and demands strict proof thereof.

16. In response to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, this Defendant admits the Notice of Intent to File Suit and expert affidavit were filed on July 17, 2019. This Defendant denies the content of the expert affidavit and its allegations against this Defendant.

17. In response to the allegations contained in Paragraph 17 of the Plaintiff's Complaint, this Defendant admits an Amended Notice of Intent to File Suit and expert affidavit were filed on April 7, 2020. This Defendant denies the content of the expert affidavit and its allegations against this Defendant.

18. Admitted.

**AS TO STATEMENT OF THE FACTS**

19. Upon information and belief, the allegations contained in Paragraph 19 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 19 are denied.

20. Upon information and belief, the allegations contained in Paragraph 20 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 20 are denied.

21. Upon information and belief, the allegations contained in Paragraph 21 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are

consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 21 are denied.

22. Upon information and belief, the allegations contained in Paragraph 22 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 22 are denied.

23. Admitted.

24. Upon information and belief, the allegations contained in Paragraph 24 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 24 are denied.

25. It is admitted that We Are Sharing Hope entered information into the UNOS computer system confirming a Type O donor which allowed the UNOS system to display Mr. Holliman as potentially compatible with Donor's lungs. All other allegations and averments contained in Paragraph 25 of Plaintiff's Complaint are denied

26. Upon information and belief, the allegations contained in Paragraph 26 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 26 are denied.

27. The allegations set forth in Paragraph 27 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

28. Upon information and belief, the allegations contained in Paragraph 28 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 28 are denied

29. Upon information and belief, the allegations contained in Paragraph 29 appear to refer to the care and findings contained in medical records and those records speak for

themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 29 are denied.

30. Upon information and belief, the allegations contained in Paragraph 30 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 30 are denied.

31. Upon information and belief, the allegations contained in Paragraph 31 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 31 are denied.



32. Paragraph 32 of Plaintiff's Complaint makes reference to OPTN Policy 2.6.A which speaks for itself; however, generally, this Defendant admits the statements within Paragraph 32 of the Complaint generally sets forth the OPTN policy at issue. To the extent the allegations contained in this paragraph are inconsistent with the written documents and future discovery, the same are denied.

33. Upon information and belief, the allegations contained in Paragraph 33 appear to refer to the care and findings contained in medical records and those records speak for themselves. Further reference is made to the anticipated specific deposition testimony of healthcare providers and others involved in providing Plaintiff treatment for a complete description of the care and treatment rendered and an appropriate interpretation of the details contained in the medical records. To the extent the allegations contained in this paragraph are consistent with the written documents and future discovery, the same are admitted; otherwise, the allegations contained Paragraph 33 are denied.

34. The allegations set forth in Paragraph 34 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

35. The allegations set forth in Paragraph 35 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

36. The allegations set forth in Paragraph 36 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a

response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

37. Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof.

38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint and demands strict proof thereof.

39. The allegations set forth in Paragraph 39 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

40. The allegations set forth in Paragraph 40 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

41. Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint and demands strict proof thereof.

42. Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint and demands strict proof thereof.

43. The allegations set forth in Paragraph 43 of Plaintiff's Complaint, including all subparts, are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

44. Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

45. The allegations set forth in Paragraph 45 of Plaintiff's Complaint, including all subparts, are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

46. Defendant denies the allegations contained in Paragraph 46 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

47. Defendant denies the allegations contained in Paragraph 47 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

48. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiff's Complaint and therefore can neither admit nor deny the same.

**AS TO FIRST CAUSE OF ACTION**

(Negligence/Gross Negligence/Recklessness by  
We Are Sharing Hope SC Resulting in Wrongful Death)

49. In response to the allegations contained in Paragraph 49 of Plaintiff's Complaint, Defendant reaffirms and realleges all prior responses above as if fully set forth herein verbatim.

50. The allegations set forth in Paragraph 50 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

51. The allegations set forth in Paragraph 51 of Plaintiff's Complaint, including all subparts, are directed towards parties other than this Defendant, and therefore no response is

required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

52. The allegations set forth in Paragraph 52 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

53. The allegations set forth in Paragraph 53 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

**AS TO SECOND CAUSE OF ACTION**  
(Negligence/Gross Negligence/Recklessness by  
UNOS Resulting in Wrongful Death)

54. In response to the allegations contained in Paragraph 54 of Plaintiff's Complaint, Defendant reaffirms and realleges all prior responses above as if fully set forth herein verbatim.

55. The allegations contained in Paragraph 55 of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Defendant would deny the same and demands strict proof thereof.

56. Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

57. Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Complaint and demands strict proof thereof.

58. Defendant denies the allegations contained in Paragraph 58 of Plaintiff's Complaint and demands strict proof thereof.

**AS TO THIRD CAUSE OF ACTION**  
(Negligence/Gross Negligence/Recklessness by  
MUSC Resulting in Wrongful Death)

59. In response to the allegations contained in Paragraph 59 of Plaintiff's Complaint, Defendant reaffirms and realleges all prior responses above as if fully set forth herein verbatim.

60. The allegations set forth in Paragraph 60 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

61. The allegations set forth in Paragraph 61 of Plaintiff's Complaint, including all subparts, are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

62. The allegations set forth in Paragraph 62 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

63. The allegations set forth in Paragraph 63 of Plaintiff's Complaint are directed towards parties other than this Defendant, and therefore no response is required. To the extent a response is required, this Defendant is without sufficient knowledge and information to respond and therefore can neither admit nor deny the same.

**AS TO FOURTH CAUSE OF ACTION**  
(Loss of Consortium against All Defendants)

64. In response to the allegations contained in Paragraph 64 of Plaintiff's Complaint, Defendant reaffirms and realleges all prior responses above as if fully set forth herein verbatim.

65. Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Complaint and demands strict proof thereof.

66. Defendant denies the allegations contained in Paragraph 66 of Plaintiff's Complaint and demands strict proof thereof.

#### **REQUEST FOR RELIEF**

67. In response to the allegations contained in Paragraph 67 of Plaintiff's Complaint, Defendant reaffirms and realleges all prior responses above as if fully set forth herein verbatim.

68. Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Complaint, including all subparts, and demands strict proof thereof.

#### **JURY TRIAL DEMAND**

69. In response to the allegations contained in Paragraph 69, this Defendant also demands a jury trial.

70. To the extent Plaintiff's "WHEREFORE" paragraph demands a response, the same hereby is denied.

71. All other allegations and averments contained in Plaintiff's Complaint not specifically admitted above are hereby denied.

#### **FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE** **(Failure to State a Claim)**

72. One or more of Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against Defendant and should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Lack of Proximate Cause)**

73. That, even if Defendant was negligent, as alleged in Plaintiff's Complaint, which is specifically denied, the negligence of or attributable to Defendant is not a direct or proximate cause of any injury alleged by Plaintiff, and, therefore, Defendant is not liable for any damages allegedly sustained by Decedent.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Charitable Limitation of Damages)**

74. Defendant is, and at all times applicable to this matter was, a 501(c)(3) charitable organization. Therefore, pursuant to S.C. Code Ann. §33-56-170 and §33-56-180, and any potential recovery against this Defendant is limited to limitations on liability imposed by the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-120.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Compliance with the Standard of Care)**

75. At all times relevant to the matters set forth in Plaintiff's Complaint, Defendant complied with the generally accepted standard(s) of care applicable to it under the same or similar circumstances at that time, and as a result thereof, Defendant is in no way liable for the matters set forth in Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Natural Disease Process)**

76. Defendant asserts, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to, caused, and occasioned by the natural process of the medical problem and/or condition with which Allen B. Holliman presented and over which Defendant had no control. As such, Defendant pleads such as a natural process and a complete bar to this action.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Negligent Acts and Omissions of Others)**

77. Any injury or damages as alleged in Plaintiff's Complaint were due to and caused solely by negligent actions and omissions of other entities over whom Defendant has no control, and were not due to or caused by any negligence or act attributable to Defendant. As a result thereof, Defendant is in no way liable to Plaintiff for the matters set forth in the Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Informed Consent)**

78. Plaintiff and Plaintiff's Decedent, with knowledge and understanding, consented to the treatment and therefore understood all risks associated with the same. As such, Plaintiff's claims are barred in accordance with the principles of informed consent.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate)**

79. Defendant alleges, upon information and belief, that Plaintiff failed to mitigate their damages, and therefore, any recovery by Plaintiff should be barred or limited.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Intervening/Superseding Negligence of Others)**

80. That the injury or damage allegedly suffered by Plaintiff, if any, was due to, and caused by, and was the proximate result of, the intervening and superseding negligence, willfulness, wantonness, and reckless of others, and as such constitutes a complete defense to Plaintiff's claims.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Punitive Damages Not Applicable)**

81. Defendant is not subject to a claim for punitive damages as a charitable organization pursuant to S.C. Code Ann. §33-56-170 and §15-78-120(b). Therefore, Plaintiff's claims for punitive damages must be dismissed.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Punitive Damages Unconstitutional)**

82. An award or assessment of punitive or exemplary damages against Defendant as prayed for by Plaintiff in the Complaint would not only be violative of S.C. Code Ann. §33-56-170 and §15-78-120(b), but would also violate Defendant's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the Fifth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendant pleads such constitutional provisions as a complete defense to any claim for punitive damages.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Punitive Damages Unconstitutional)**

83. An award of punitive damages under South Carolina law against Defendant would not only violate S.C. Code Ann. §33-56-170 and §15-78-120(b), but would also violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c) Any award of punitive damages based upon the wealth of Defendant violates due process guarantees;
- d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

f) Plaintiff's claim for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Non-Applicability and Limitation of Punitive Damages)**

84. Defendant avers that it is a charitable organization existing under the laws of South Carolina and as such, punitive damages are not applicable to this Defendant. Plaintiff's claims seeking punitive damages should be dismissed. Should those claims not be dismissed, Defendant pleads the protections and limitations set forth in S.C. Code Ann. §§ 15-32-520 & - 530, including the procedures and caps set forth therein.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Bifurcation)**

85. Pursuant to South Carolina law, Defendant demands that any claim for punitive damages be dismissed; however, if they are not dismissed, claims for punitive damages must be bifurcated/separated for the liability and actual damages evidence at the trial of this case.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Set-Off)**

86. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, Defendant is entitled to a set-off of that amount for any damages that may or may not be assessed to Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Incorporation)**

87. Defendant hereby incorporates and asserts all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Reservation and Non-Waiver)**

88. Defendant reserves and does not waive any additional or further defenses as may be revealed or become available to it during the course of investigation and/or discovery in this case as allowed by the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Charitable Organization)**

89. This Defendant is a charitable organization as defined by S.C. Code Ann. § 33-56-170(1) and, as such is entitled to the benefits and protections of S.C. Code Ann. § 33-56-180(A).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(S.C. Code Ann. § 44-43-385; Immunity)**

90. This Defendant alleges that it acted in good faith pursuant to the terms of the Uniform Anatomical Gift Act, S.C. Code Ann. § 44-43-300, et. seq.

WHEREFORE, having fully responded to Plaintiff's Complaint herein, Defendant requests of the Court as follows:

1. That the Plaintiff recover nothing from Defendant by means of this action;

2. That Defendant recover its costs for this action, said costs to include attorney's fees and expenses;
3. For such other and further relief as the Court may deem just and proper;
4. For a trial by jury on all issues so triable herein.

**HALL BOOTH SMITH, P.C.**

*s/Jack G. Gresh, Esq.*

Jack G. Gresh, SC Bar No. 75188

Lauren Spears Gresh, SC Bar No. 100994

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

jgresh@hallboothsmith.com

lgresh@hallboothsmith.com

***Counsel for Defendant United Network for Organ Sharing***

Dated: December 22, 2020  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, United Network for Organ  
Sharing, Jacqueline Honig, M.D., and Darla  
Welker,

Defendants.

Civil Action No: 2020-CP-10-2902

**NOTICE OF INTENT TO FILE SUIT  
AGAINST JACQUELINE HONIG, M.D.,  
AND DARLA WELKER**

PLEASE TAKE NOTICE that the Plaintiff in the above-captioned matter, pursuant to South Carolina Code § 15-79-125, intends to file suit against the additional above-named defendants, Jacqueline Honig, MD and Darla Welker. The parties must participate in a mediation conference within one hundred twenty (120) days of service of this Notice of Intent to File Suit.

**THE PARTIES**

1. The plaintiff is Michelle Cha Holliman (“Mrs. Holliman”), acting individually and as personal representative of the Estate of Allen B. Holliman (“Mr. Holliman”). Mrs. Holliman is a citizen and resident of Aiken County, South Carolina, and she is the widow of Mr. Holliman.

2. Defendant Jacqueline Honig, M.D. (“Dr. Honig”) is, and was during all relevant times, the Medical Director of Defendant We Are Sharing Hope SC (“WASH”), which is the designated organ procurement organization (“OPO”) for organ recovery services in South Carolina.

3. Upon information and belief, Dr. Honig is a citizen and resident of Maryland.

4. Defendant Darla Welker (“Ms. Welker”) is, and was during all relevant times, an employee of WASH. Ms. Welker is an administrator on call at WASH, and her duties and responsibilities in that capacity include overseeing, verifying, and approving the determination and reporting of donor blood types.

5. Ms. Welker is a citizen and resident of South Carolina.

### **STATEMENT OF THE FACTS**

6. Mr. Holliman suffered from lung problems, and physicians at Defendant Medical University of South Carolina (“MUSC”) determined that he was in need of a double-lung transplant. The physicians at MUSC further determined that Mr. Holliman was a suitable candidate for such a transplant, and he was placed on the transplant list.

7. On or about November 27, 2018, Mr. Holliman was informed by physicians at MUSC that there was an available pair of ABO compatible donor lungs that was a match for him. Mr. Holliman’s physicians approved him for a double-lung transplant with the available donor lungs, finding that there were no contraindications to pursuing transplant and that Mr. Holliman was in a suitable condition for the surgery.

8. That same day, November 27, 2018, Mr. Holliman underwent a double-lung transplant at MUSC.

9. The lungs transplanted into Mr. Holliman were from the donor associated with donor identification numbers AFKY198, 2018-0516, and 18-15828 (“the Donor”).

10. WASH was the OPO that recovered and distributed the Donor’s organs, including the Donor’s lungs. WASH was the source of the donor lungs that were transplanted into Mr. Holliman.

11. WASH requested pre-transplant testing of the Donor's blood from VRL Eurofins ("VRL"). VRL tested two samples of the Donor's blood and transmitted reports of the test results to WASH. Both reports listed the Donor's blood type as "indeterminate" and stated that the Donor's sample used for testing was collected post-transfusion. The reports stated that the forward and reverse blood types for the Donor were discrepant. Specifically, the reports stated: "forward type is O negative and reverse is A."

12. WASH obtained two other blood test results from the hospital where the Donor died. Those blood test results were run on blood samples collected after the Donor, who was a trauma patient, received a massive amount of emergency blood transfusions. They showed results of type O blood—the same blood type transfused into the Donor through a massive emergency blood transfusion protocol given as part of the Donor's treatment as a trauma patient.

13. Despite the fact that the Donor's pre-transplant laboratory testing results from VRL reported that the Donor's blood type was indeterminate and discrepant, and despite the absence of any reliable ABO blood typing results for the Donor performed with samples collected before the Donor received massive emergency blood transfusions, WASH labeled the Donor as having type O blood.

14. Mr. Holliman experienced significant complications during his lung transplant. The procedure was completed technically, but it was complicated by hyperacute transplant rejection.

15. Mr. Holliman had type O blood. It was determined shortly after his lung transplant that the Donor whose lungs Mr. Holliman received had type A blood. Type A blood is incompatible with type O blood. Therefore, Mr. Holliman received ABO incompatible donor lungs, which resulted in acute organ rejection.

16. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. According to Mr. Holliman's relevant medical records, the undisputed cause of his death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs.

17. As WASH's Medical Director, Dr. Honig is, and was during all relevant times, responsible for implementation of WASH's protocols for donor evaluation and management and for oversight of the clinical management of potential donors pursuant to 42 C.F.R. § 486.326(d). Dr. Honig also is, and was during all relevant times, responsible for ensuring that potential donors are thoroughly assessed for medical suitability for organ donation pursuant to 42 C.F.R. § 486.344(a)(1).

18. WASH's written policies further required Dr. Honig, as the Medical Director of WASH during all relevant times, to ensure that potential donor evaluation and management protocols were implemented correctly, that potential donors were thoroughly assessed for medical suitability for organ donation, and to assist in the medical management of potential donors.

19. The United States Department of Health and Human Services Centers for Medicare & Medicaid Services ("CMS") issued a Statement of Deficiencies and Plan of Correction regarding WASH following a complaint survey conducted at WASH on May 8-9, 2019. A copy of the Statement of Deficiencies and Plan of Correction is attached as Exhibit B to the attached Affidavit of Dr. Anthony Panos.

20. CMS determined that WASH was out of compliance with 42 C.F.R. § 486.326(d) because it failed to have a policy, procedure, or protocol regarding discrepancies in donor blood type test results. CMS also determined that Sharing Hope was out of compliance with 42 C.F.R. § 486.344(a)(1) because it failed to ensure that all donor records were reviewed by the Medical Director, and the Medical Director admitted in an interview with CMS that she had not been



reviewing all donor records.

21. Dr. Honig wrongfully failed to ensure that donor evaluation and management protocols for the Donor were implemented correctly; to provide adequate oversight of the clinical management of the Donor; to ensure that the Donor was thoroughly and appropriately assessed for medical suitability for organ donation; to review the Donor's records; and to adequately assist in the management of the Donor.

22. Attached to this Notice of Intent to Sue is the affidavit of Anthony L. Panos, M.D. Dr. Panos is a licensed physician and is board certified in surgery and thoracic surgery. Dr. Panos is an expert in the field of transplant surgery and, as such, is familiar with the practices and procedures involved in the organ donation and transplant process.

23. As Dr. Panos testifies in his affidavit, Dr. Honig deviated from the recognized and generally accepted standards of care in connection with her involvement, or lack thereof, in the Donor's evaluation and management, in the following ways:

- a. By failing to ensure that WASH had a policy, procedure, or protocol regarding discrepancies in donor blood type test results;
- b. By failing to review the Donor's records or to ensure that they were reviewed by WASH's Associate Medical Director;
- c. By failing to recognize or ignoring the fact that the samples used to perform ABO blood typing for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing results unreliable;
- d. By failing to recognize or ignoring the fact that pre-transplant laboratory testing results from VRL reported that the Donor's blood type was indeterminate and discrepant;

- e. By permitting the Donor to be reported as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and despite the absence of reliable ABO blood typing results for the Donor performed with samples collected before the Donor received massive emergency blood transfusions; and
- f. By permitting the Donor's lungs to be reported as available for transplant and to be distributed despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and despite the absence of reliable ABO blood typing results for the Donor performed with samples collected before the Donor received massive emergency blood transfusions.

24. Dr. Honig's deviations from the standard of care outlined above constitute negligence, gross negligence, and recklessness and were a proximate cause of Mr. Holliman's death.

25. Ms. Welker served as WASH's administrator on call for the Donor's case. In her role as administrator on call for the Donor's case, Ms. Welker participated in and oversaw the determination and reporting of the Donor's blood type, including verifying and approving the Donor's ABO blood typing results and the labeling of the Donor as having type O blood despite the pre-transplant laboratory results from VRL reporting the Donor's blood type as indeterminate and despite the absence of any reliable ABO blood typing results for the Donor performed with samples collected before the Donor received massive emergency blood transfusions.

26. Ms. Welker was negligent, grossly negligent, and reckless in connection with her involvement with the determination and reporting of the Donor's blood type in the following ways:

- a. By verifying and approving the determination of the Donor's blood type based on

ABO blood testing results of samples collected from the Donor after the Donor received massive emergency blood transfusions, which made the Donor's ABO blood typing results unreliable;

- b. By ignoring the fact that pre-transplant laboratory testing results from VRL reported that the Donor's blood type was indeterminate and discrepant;
- c. By failing to investigate and to determine the cause of the indeterminate and discrepant blood typing results issued for the Donor by VRL;
- d. By verifying and approving the labeling of the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and despite the absence of reliable ABO blood typing results for the Donor performed with samples collected before the Donor received massive emergency blood transfusions; and
- e. Other such ways as might be proven at trial.

27. Ms. Welker's negligence, gross negligence, and recklessness set forth above was a proximate cause of Mr. Holliman's death.

28. As a direct and proximate result of the negligence, gross negligence, and recklessness of Dr. Honig and Ms. Welker, Mr. Holliman wrongfully and prematurely lost his life; Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband; and Mrs. Holliman incurred substantial damages and expenses as a result of Mr. Holliman's wrongful death and loss of consortium.

29. If Mr. Holliman had received donor lungs of a blood type compatible with his blood type, he most likely would have successfully recovered from a double lung transplant, and Mrs. Holliman would not have been deprived Mr. Holliman's services, care, comfort, and

companionship or have suffered substantial damages and expenses from his wrongful death.

30. Therefore, Mrs. Holliman, both individually and as personal representative of the Estate of Mr. Holliman, is entitled to judgment for full direct, consequential, special, and punitive damages against Dr. Honig and Ms. Welker in an amount to be determined by a jury, unless the parties can reach a resolution through mediation.

### **AFFIDAVIT OF ANTHONY L. PANOS, M.D.**

The affidavit of expert Anthony L. Panos, M.D., specifying the negligent acts and omissions of Defendant Jacqueline Honig, M.D., and the factual basis for each based upon the available evidence at this time, is attached pursuant to S.C. Code § 15-36-100.

### **ANSWERS TO STANDARD INTERROGATORIES**

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

#### **Response:**

- a. Michelle Holliman  
Emily Holliman  
Lauren Holliman  
Laina Yoswein  
Laura Burrow  
Diane Campbell  
These individuals may be contacted through the undersigned attorneys.
- b. Cat Deegan  
Concierge Real Estate Team  
118 Laurens Street SW  
Aiken, SC 29801
- c. Catherine Stevens  
Concierge Real Estate Team  
118 Laurens Street SW  
Aiken, SC 29801

- d. The staff and employees of the Medical University of South Carolina who treated and cared for Mr. Holliman, including but not limited to Dr. Timothy Whelan, Dr. Barry Gibney, Dr. Jonathan Angotti, Dr. Luca Paoletti, Dr. Chadrick Denlinger, Dr. Sanford Zeigler, and Dr. Zipporah Krishnasami.
- e. The staff and employees of We Are Sharing Hope SC, including but not limited to Janine Bumgarner, Michael Lotts, Defendant Darla Welker, and Defendant Jacqueline Honig, MD.
- f. The staff and employees of United Network for Organ Sharing.
- g. Alexander Duncan, M.B., Ch.B.  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322
- h. Anthony L. Panos, M.D.  
University of Iowa Hospitals and Clinics  
Division of Cardiothoracic Surgery  
200 Hawkins Drive, SE518 GH  
Iowa City, IA 52242-1062

Plaintiff is in possession of the attached expert affidavit of Dr. Anthony Panos and expert affidavits of Dr. Alexander Duncan dated March 30, 2020, and June 12, 2019, which were previously filed in this case.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the parties that relate to the claim or defense in the case.

**Response:** Mr. Holliman's medical records from MUSC dated 2017-2018; records from VRL Eurofins for the Donor; records produced by MUSC in response to a subpoena and discovery requests; records produced by UNOS in response to a subpoena dated August 22, 2019; records produced by WASH in response to a subpoena and discovery requests; records produced by Grand Strand Regional Medical Center in response to a subpoena; records produced by Vanderbilt University Medical Center in response to a subpoena; records produced by Atrium Health in

response to a subpoena; records produced by the Horry County Coroner's Office in response to a subpoena; records produced by University of Wisconsin Hospital and Clinics in response to a subpoena; records produced by the South Carolina Department of Health and Environmental Control in response to a subpoena; Centers for Medicare & Medicaid Services Statement of Deficiencies and Plan of Correction. For additional information, see Exhibit A to Dr. Panos' expert affidavit.

3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

**Response:** Mr. Holliman received treatment from physicians at the Medical University of South Carolina in Charleston, South Carolina in connection with his double lung transplant. For further information, see response to Interrogatory Number 1. Mr. Holliman's medical costs exceed \$600,000.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

**Response:** Unknown at this time.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**Response:** In addition to Mr. Holliman's pain and suffering, Mr. Holliman sustained damages for his wrongful death, including but not limited to medical costs, and Mrs. Holliman has sustained damages for emotional distress, loss of consortium, funeral expenses, and other such damages as will be supplemented during discovery as further damages are identified and

quantified.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

**Response:**

Alexander Duncan,  
Emory University Hospital  
Clinical Laboratories, Room F145  
1364 Clifton Road, N.E.  
Atlanta, GA 30322

Dr. Duncan will provide testimony in this case regarding deviations from the standards of care by WASH, UNOS, and MUSC.

Anthony L. Panos, M.D.  
University of Iowa Hospitals and Clinics  
Division of Cardiothoracic Surgery  
200 Hawkins Drive, SE518 GH  
Iowa City, IA 52242-1062

Dr. Panos will provide testimony in this case regarding deviations from the standard of care by Dr. Honig.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

**Response:**

Mrs. Holliman, Emily Holliman (Mr. Holliman's daughter), Lauren Holliman (Mr. Holliman's daughter), Laina Yoswein (Mrs. Holliman's daughter), Laura Burrow (Mr. Holliman's sister), Diane Campbell (Mr. Holliman's sister), Cat Deegan (Mr. Holliman's friend and boss), and Catherine Stevens (Mr. and Mrs. Holliman's friend) will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and wrongful death. They will

also testify regarding the damages incurred as a result of Mr. Holliman's wrongful death and Mrs. Holliman's loss of consortium.

It is anticipated that the staff and employees of the MUSC who treated and cared for Mr. Holliman, including but not limited to the individuals identified in response to Interrogatory Number 1, will testify regarding the facts and circumstances surrounding Mr. Holliman's double lung transplant and death.

It is anticipated that the staff and employees of WASH will testify regarding the testing, evaluation, reporting the availability of, and distribution of the donor lungs for transplant that Mr. Holliman received.

It is anticipated that the staff and employees of UNOS will testify regarding the reporting the availability of the Donor's lungs for transplant and the matching of the Donor's lungs with Mr. Holliman.

Dr. Duncan and Dr. Panos will testify about the opinions in their affidavits filed in this case.

Respectfully submitted,

s/ John C. Moylan  
John C. Moylan, III (S.C. Bar 11227)  
Lucy Dinkins (S.C. Bar 101177)  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: 803-254-6542  
Facsimile: 803-254-6544  
Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)  
[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

December 28, 2020



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Case No. 2020-CP-10-02902

**PLAINTIFF'S MOTION TO COMPEL  
DEFENDANT WE ARE SHARING  
HOPE SC TO PROVIDE COMPLETE  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF SUPPLEMENTAL REQUESTS  
FOR PRODUCTION**

Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), respectfully moves for an order compelling Defendant We Are Sharing Hope SC ("WASH") to (1) produce the documents listed on its third amended privilege log, or, alternatively, to file them with the Court under seal pursuant to S.C. Code §§ 40-71-30 and/or 44-7-394(A) for a judicial determination of whether they are subject to discovery, and (2) to conduct a thorough search for and to produce all communications responsive to Plaintiff's Request for Production Number 44.

**BACKGROUND**

This is a wrongful death case arising out of Mr. Holliman's untimely death following a double lung transplant during which donor lungs procured and distributed by WASH, the organ procurement organization for South Carolina, were transplanted into Mr. Holliman. *See* Compl. The blood type of the donor lungs placed into Mr. Holliman was incorrectly determined and reported by WASH. *See id.* As a result, Mr. Holliman died the day after his transplant surgery because his body rejected the ABO incompatible donor lungs he received. *See id.*

Plaintiff has had considerable difficulty obtaining relevant and responsive documents from WASH throughout this litigation, beginning with WASH's refusal for a year to provide lawfully subpoenaed documents following the filing of Plaintiff's initial notice of intent to sue. WASH unreasonably refused to provide the subpoenaed documents until it was ordered to do so by the Court, and it even refused during that time to consent to the entry of any protective order to facilitate the exchange of documents and information necessary for this case. For the sake of efficiency, Plaintiff will not set forth the lengthy factual and procedural history or the details of the tortured course of discovery here, but will instead refer the Court to Plaintiff's Motion for an Order Compelling WASH to File Documents Withheld from Discovery under Seal Pursuant to S.C. Code § 40-71-30 and to Provide Complete Discovery Responses ("Plaintiff's First Motion to Compel against WASH"), which was filed on November 18, 2020, and is currently pending.

Plaintiff's First Motion to Compel against WASH concerns deficiencies with WASH's responses to Plaintiff's first set of interrogatories and requests for production served on July 10, 2020. *See* Plaintiff's First Motion to Compel against WASH. The instant motion involves the same issues regarding documents withheld by WASH on a claim of peer review privilege, but it concerns deficiencies with WASH's responses to Plaintiff's first set of supplemental requests for production served on October 16, 2020 ("Plaintiff's Supplemental Requests"). A copy of Plaintiff's First Supplemental Requests is attached as Exhibit A.

After requesting two extensions, which Plaintiff granted, WASH responded to Plaintiff's Supplemental Requests on December 1, 2020. A copy of WASH's responses to Plaintiff's Supplemental Requests is attached as Exhibit B. WASH has improperly withheld documents responsive to Plaintiff's Supplemental Requests on the basis of a purported peer review privilege and has also failed to meaningfully respond to Request Number 44, which calls for the production

of certain crucial communications. Plaintiff's attorneys have communicated with WASH's attorneys regarding these deficiencies, but the parties have been unable to reach a resolution of this discovery dispute. *See* emails between John Moylan and Jean Marie Jennings, attached as Exhibit C; emails between Lucy Dinkins and Jean Marie Jennings, attached as Exhibit D.

**I. WASH Has Improperly Withheld Documents on a Claim of Peer Review Privilege.**

WASH provided a third amended privilege log with its responses to Plaintiff's Supplemental Requests, which indicates that WASH has withheld a total of 235 pages of responsive documents, including documents responsive to the Supplemental Requests, on a claim of "peer review, quality assurance/quality assessment" privilege. Exhibit B at 8-9. WASH specifically refers to its privilege log in its responses to Requests 33, 35, and 36. *Id.* at 3-4.

Requests 33, 35, and 36 seek WASH's non-conformance reports from the time surrounding Mr. Holliman's death; communications between WASH and the Centers for Medicare & Medicaid Services ("CMS") relating to a complaint survey performed by CMS at WASH in May 2019, which resulted in a Statement of Deficiencies issued by CMS to WASH; and communications between WASH and CMS relating to Mr. Holliman or the donor whose mistyped lungs he received. *See* Exhibit A. It cannot be disputed that these documents and communications are all directly related to this wrongful death case arising out of WASH's mistyping of the blood type of Mr. Holliman's organ donor, and WASH should not be permitted to conceal this crucial evidence.

Plaintiff maintains that the documents listed on WASH's third amended privilege log, which have been Bates-labeled Privileged 0001-235, are not privileged for the reasons set forth on pages 5-10 of Plaintiff's First Motion to Compel against WASH and must be produced. In the interest of judicial economy, Plaintiff incorporates the arguments set forth in her First Motion to Compel against WASH and will refrain from restating them here.

Furthermore, WASH's third amended privilege log fails to include information sufficient to "enable [Plaintiff] to assess the applicability of the privilege or protection" as required by South Carolina Civil Procedure Rule 26(b)(5)(A). *See* Exhibit B at 8-9. The log contains only the Bates range of the withheld documents, a generic description of categories of withheld documents, and an assertion that the documents are protected by a "peer review, quality assurance/quality assessment" privilege. *See id.* The log fails to include any information regarding the author(s), recipient(s), dates created, dates modified, subject lines of emails, dates emails were sent and received, or other similar information that is customarily provided in privilege logs and is necessary to enable the requesting party to meaningfully assess the claim of privilege. *See id.*

Likewise, WASH has refused to provide information in any other manner that would permit Plaintiff to assess the applicability of the asserted peer review privilege. WASH objected to Plaintiff's interrogatory requesting basic, non-privileged information regarding any investigations it has conducted. *See* Plaintiff's First Motion to Compel against WASH at 14; *see also McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61-63, 439 S.E.2d 257, 259-61 (1993) (holding that the outcome of review proceedings are not protected *even when* the documents and information acquired as part of the proceedings are). During the deposition of Darla Welker, a key WASH employee, WASH's counsel instructed Ms. Welker not to answer questions relevant to the existence of the purported peer review privilege, such as the participants of allegedly privileged meetings and whether WASH even has conducted any investigations into the fatal blood typing error at issue in this case. *See* WASH's Notice of Motion and Motion for a Protective Order filed on December 15, 2020.

Because the documents withheld by WASH and listed on its third amended privilege log are not privileged, they must be produced in this wrongful death case. Plaintiff respectfully

requests for the Court to compel WASH to produce its withheld documents. Alternatively, WASH should be compelled to file the documents under seal with the Court for a judicial determination of whether they are subject to discovery pursuant to S.C. Code § 40-71-30 and/or § 44-7-394(A).<sup>1</sup> For further explanation of the judicial review procedure set forth in these statutes, please see pages 10-11 of Plaintiff's First Motion to Compel against WASH.

## **II. Plaintiff Should be Compelled to Conduct a Thorough Search and to Produce All Communications Responsive to Request Number 44.**

Plaintiff's Request Number 44 calls for the production of all text messages and emails sent or received by five individuals—Dr. Jacqueline Honig, Daniel Stanton, Dr. Omar Moussa, Dr. Satish Nadig, and David DeStefano—from November 27, 2018, to the present relating to Mr. Holliman or his donor. Exhibit A at 8. Dr. Honig is WASH's medical director; Mr. DeStefano is WASH's Chief Executive Officer; and Dr. Moussa, Dr. Nadig, and Mr. Stanton are members of WASH's Board of Directors and Advisory Board. See <https://sharinghopesc.org/about-us/>, last accessed February 3, 2021. Given the tragic circumstances surrounding the mistyping of Mr. Holliman's donor, which resulted not only in Mr. Holliman's death but also in serious and life-threatening injuries to the recipients of the donor's liver and heart, it is reasonable to expect that these key members of WASH's leadership team would have some emails and text messages relating to Mr. Holliman and his donor. Such communications constitute crucial evidence in this case.

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<sup>1</sup> Neither WASH's responses to Plaintiff's Supplemental Requests nor its third amended privilege log specifies the statutory basis for its claimed peer review privilege, and it is therefore unclear which statutory scheme WASH maintains applies. However, both South Carolina statutes regarding peer review privilege contain provisions requiring documents withheld to be filed under seal for judicial review when the party seeking the documents objects to the claim of privilege. See S.C. Code §§ 40-71-30 and 44-7-394(A).

WASH objected to Plaintiff's Request Number 44 on the ground that it "does not have the ability to search text messages and emails from persons [WASH] does not represent." *See* Exhibit B at 6. WASH further responded that "David DeStefano's emails have been checked using the names Daniel Stanton, Omar Moussa, Satish Nadig, and Jacqueline Honig," and referred to five pages of emails produced and the privilege log (which, as stated above, fails to indicate the senders, recipients, or any detailed information whatsoever about withheld emails). *Id.*

On January 4, 2021, Plaintiff's attorney emailed WASH's attorney regarding the inadequate nature of WASH's response to Request Number 44. *See* emails between Lucy Dinkins and Jean Marie Jennings (Exhibit D). Plaintiff's counsel explained that WASH's purported search of Mr. DeStefano's emails using the names of Daniel Stanton, Omar Moussa, Satish Nadig, and Jacqueline Honig was non-responsive to the Request because the Request does not ask for Mr. DeStefano's emails relating to Mr. Stanton, Dr. Moussa, Dr. Nadig, or Dr. Honig. *See id.*; *see also* Exhibit A at 6. Rather, the Request asks for all emails and text messages sent or received by Mr. DeStefano, Dr. Honig, Mr. Stanton, Dr. Moussa, or Dr. Nadig relating to Mr. Holliman or his donor during the specified time period. *See* Exhibit A at 6. Plaintiff's counsel also pointed out the absence of any indication that any text messages were searched in connection with this Request, and asked for clarification on whether WASH's objection that it cannot search text messages and emails of individuals it does not represent meant that counsel for WASH does not represent Dr. Honig (WASH's medical director), so that Plaintiff could proceed with issuing a subpoena to Dr. Honig for her responsive communications. *See* Exhibit D.

In response, WASH's counsel stated that she does represent both Dr. Honig and Mr. DeStefano, but she does not represent Mr. Stanton, Dr. Moussa, or Dr. Nadig and cannot search their text messages or emails. *See id.* She further stated that she and her team were searching for

any additional communications that might exist and would provide a supplemental response. *See id.* To date, Plaintiff has received no supplemental response or further communication from WASH's counsel regarding the search for Dr. Honig's and Mr. DeStefano's emails and text messages responsive to Request Number 44.

Accordingly, WASH should be compelled to conduct a thorough search and to produce all text messages and emails sent or received by its CEO, Mr. DeStefano, or its medical director, Dr. Honig—both of whom WASH's counsel has stated she represents in this matter—that are responsive to Plaintiff's Request Number 44.

### **CONCLUSION**

For the reasons set forth above, Mrs. Holliman respectfully requests that the Court enter an Order:

1. Compelling WASH to produce all withheld documents listed in its third amended privilege log (Bates-labeled Privileged 0001-235), or, alternatively, to file the documents under seal with the Court for a judicial determination of whether they are subject to discovery;
2. Compelling WASH to conduct a thorough search of all emails and text messages of Mr. David DeStefano and Dr. Jacqueline Honig for communications responsive to Plaintiff's Request Number 44 and to produce all such communications; and
3. Awarding Plaintiff's attorneys' fees and costs incurred in obtaining any documents that the Court determines WASH unreasonably withheld on a claim of privilege pursuant to S.C. Code § 40-71-30 or § 44-7-394(A).

Counsel for Plaintiff has communicated with counsel for WASH and attempted in good faith to resolve the issues in this motion, but the parties were unable to do so. *See* Exhibits C and D.

Respectfully submitted,

WYCHE, P.A.

*s/John C. Moylan, III*

John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

*Attorneys for Plaintiff*

February 5, 2021



## EXHIBIT A

# W Y C H E

Attorneys at Law

October 16, 2020

Via E-Mail and U.S. MAIL

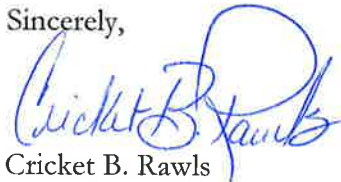
Molly H. Craig, Esquire  
Jean Marie Jennings, Esquire  
Hood Law Firm, LLC  
P.O. Box 1508  
Charleston, SC 29402-1508

Re: *Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman vs. We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing*  
Civil Action No. 2020-CP-10-2902

Dear Counsel:

Enclosed for service upon you is Plaintiff's First Set of Supplemental Requests for Production to Defendant We Are Sharing Hope SC.

Sincerely,



Cricket B. Rawls  
Litigation Paralegal  
[crawls@wyche.com](mailto:crawls@wyche.com)

Enclosures

cc: Darren K. Sanders, Esquire  
Jack G. Gresh, Esquire  
Lauren Spears Gresh, Esquire

W Y C H E  
PROFESSIONAL ASSOCIATION

PO Box 12247, Columbia, SC 29211-2247  
p: 803.254.6542 | f: 803.254.6544  
[www.wyche.com](http://www.wyche.com)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF  
SUPPLEMENTAL REQUESTS FOR  
PRODUCTION TO DEFENDANT WE  
ARE SHARING HOPE SC**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant We Are Sharing Hope SC ("Defendant") produce the documents and things identified below for examination, inspection and copying at the offices of Wyche, P.A., 807 Gervais Street, Suite 301, Columbia, South Carolina, or some other mutually convenient place agreed to by the parties, within thirty (30) days after the date of service of these requests or any earlier date specified by the court.

These requests are continuing, and Defendant is obliged to produce all documents responsive to these requests, including such documents as become available to Defendant or its counsel after its responses hereto are served.

**INSTRUCTIONS AND DEFINITIONS**

A. In responding to these requests, produce all documents which are in the custody, possession or control of Defendant, including documents which are in the custody, possession or

control of Defendant's attorneys, investigators for Defendant's attorneys, independent accountants, agents or any person acting on behalf of or in concert with Defendant or with any of these persons, and not merely documents from Defendant's own files or records.

B. If Defendant cannot respond to any of the following requests in full, respond to the fullest extent possible, specifying the reasons why Defendant is unable to respond in full, and provide whatever information Defendant has concerning the documents or portions of documents not provided, including the source or sources from which the documents or portions thereof may be obtained.

C. If documents requested are not reasonably available to Defendant in precisely the form requested, or for the particular date or period specified, but could be produced in a modified form and/or for a slightly different date or period, please respond to that request in such modified form or for such different date or period.

D. If any document that is responsive to a request is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in Defendant's possession, custody or control, state the disposition that was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person(s) performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

E. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document;

- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

F. The term “document” shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intra-office communications, social media postings and communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form, or any other tangible thing which records information in any way. The term “document” shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendant if it is within the possession or control of any of Defendant’s attorneys, investigators for Defendant’s attorneys, independent accountants, agents, or any person

acting on behalf of or in concert with Defendant or with any of these persons, or otherwise under their possession or control.

G. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; social media postings and communications, Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cellphone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cellphones; tablets; IM tools; or USB drives.

H. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; trust, governmental body, agency or subdivision; committee, commission or other organization or entity.

I. “Relating to” includes referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

J. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, emails, texts, letters, telegrams, exchanges of written or recorded information of any type, including ESI, face-to-face meetings, and telephone conversations.

K. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

L. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

M. The terms “You,” “Your,” and “Defendant” shall refer to the Defendant, We Are Sharing Hope SC, and any of its agents, servants, employees, attorneys, experts, consultants or representatives who are in possession of or who may have obtained information, documents, or other materials for or on behalf of Defendant, and any and all other persons acting under its authority or on its behalf.

N. “Mr. Holliman” refers to Allen B. Holliman.

O. “Donor” refers to the donor whose lungs Mr. Holliman received and who is associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

P. “CMS” refers to the Department of Health and Human Services Centers for Medicare & Medicaid Services.

### **REQUESTS FOR PRODUCTION**

31. All versions of Your standard operating procedure entitled “Medical Director Responsibilities” in effect from November 1, 2018, to the present.

32. All versions of Your procedure entitled “Adverse Events” in effect from November 1, 2018, to the present.

33. Your Non-Conformance Report(s) from November 27, 2018, to December 31, 2018.

34. Your Adverse Event Log(s) from November 27, 2018, to December 31, 2018.

35. All communications between You and CMS from November 28, 2018, to the present relating to the complaint survey conducted by CMS of You in May 2019.

36. All communications between You and CMS relating to Mr. Holliman or the Donor.

37. All documents submitted to CMS in connection with the complaint survey conducted by CMS of You in May 2019.

38. All documents or letters received from CMS in connection with the complaint survey conducted by CMS of You in May 2019.

39. All reports of adverse event(s) made by You to United Network for Organ Sharing relating to Mr. Holliman or the Donor.

40. All reports of adverse event(s) made by You to CMS relating to Mr. Holliman or the Donor.

41. Your Plan of Correction submitted to CMS in June 2019.

42. Your Medicare provider agreements in effect from November 1, 2018, to the present.

43. All OPTN policies in effect on November 27, 2018.

44. All text messages and emails sent or received by the following individuals from November 27, 2018, to the present relating to Mr. Holliman or the Donor:

- a. Jacqueline Honig, MD
- b. Daniel Stanton
- c. Omar Moussa, PhD, MD
- d. Satish Nadig, MD
- e. David DeStefano

**[Signature Block on Following Page]**



Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: [jmoylan@wyche.com](mailto:jmoylan@wyche.com)

[ldinkins@wyche.com](mailto:ldinkins@wyche.com)

October 16, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

Michelle Cha Holliman, individually and as  
personal representative of the Estate of Allen  
B. Holliman,

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University  
of South Carolina, and United Network for  
Organ Sharing,

Defendant.

Civil Action No: 2020-CP-10-2902

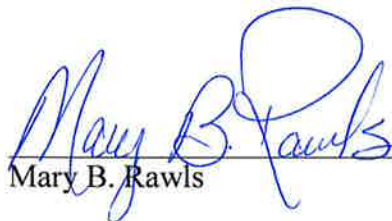
**CERTIFICATE OF SERVICE**

I certify that I have served, this 16<sup>th</sup> day of October 2020, the Plaintiff's First Set of Supplemental Requests for Production to Defendant We Are Sharing Hope SC on counsel for the Defendants by placing a copy of same in the U.S. Mail, first class postage paid, to the addresses as shown below:

Molly H. Craig, Esquire  
Jean Marie Jennings, Esquire  
Hood Law Firm, LLC  
172 Meeting St.  
Charleston, SC 29201

Darren K. Sanders, Esquire  
Buyck, Sanders & Simmons, LLC  
P.O. Box 2424  
Mt. Pleasant, SC 29465

Jack G. Gresh, Esquire  
Lauren Spears Gresh, Esquire  
Hall Booth Smith, P.C.  
111 Coleman Blvd., Suite 301  
Mt. Pleasant, SC 29464

  
\_\_\_\_\_  
Mary B. Rawls

October 16, 2020

## **EXHIBIT B**



JEAN MARIE JENNINGS

Partner

DIRECT DIAL: (843) 577-1217

E-MAIL: [jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

December 1, 2020

**Via E-Mail/Sharefile and U.S. Mail**

John C. Moylan, III, Esquire  
Mary Lucille Dinkins, Esquire  
Wyche, P.A.  
807 Gervais Street, Suite 301  
Columbia, SC 29201

Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman v. We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing  
C/A No. 2020-CP-10-02902, Charleston CP  
HLF File No. 269.009

Dear Counselors:

Enclosed for service please find Defendant We Are Sharing Hope SC's Responses to Plaintiff's First Set of Supplemental Requests for Production and Third Amended Privilege Log in the above-referenced case.

Supplemental Documents for production are available via the following Sharefile link: <https://hoodlaw.sharefile.com/d-s15cd39a19a174880bb0d721d24f509a1>. If you have any questions feel free to contact me or my paralegal, Tammy Villanueva.

Kind regards,

Yours truly,



Jean Marie Jennings

JMJ/jku

Enclosures

cc: Darren K. Sanders, Esquire [***Via E-Mail/Sharefile***]  
Jack G. Gresh, Esquire/Lauren Spears Gresh, Esquire [***Via E-Mail/Sharefile***]

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
)

Michelle Cha Holliman, individually and as ) C/A No. 2020-CP-10-02902  
personal representative of the Estate of Allen B. )  
Holliman, )  
)

*Plaintiff,* )  
)

Versus )  
)

We Are Sharing Hope SC, Medical University )  
of South Carolina, and United Network for )  
Organ Sharing, )  
)

*Defendants.* )  
)

**DEFENDANT  
WE ARE SHARING HOPE SC's  
RESPONSES TO PLAINTIFF'S  
FIRST SET OF SUPPLEMENTAL  
REQUESTS  
FOR PRODUCTION**

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), responds to the Plaintiff's First Set of Supplemental Requests for Production, as follows:

31. All versions of Your standard operating procedure entitled "Medical Director Responsibilities" in effect from November 1, 2018, to the present.

**RESPONSE: This Defendant objects to this Request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections this Defendant refers to documents labeled for production as *WASH 0750-0756 CONFIDENTIAL*.**

32. All versions of Your procedure entitled "Adverse Events" in effect from November 1, 2018, to the present.

**RESPONSE: This Defendant objects to this Request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these**

objections this Defendant refers to documents labeled for production as *WASH 0743-0749 CONFIDENTIAL*.

33. Your Non-Conformance Report(s) from November 27, 2018, to December 31, 201820.153.

**RESPONSE:** This Defendant objects to this Request as overly broad, not reasonably calculated to lead to the discovery of admissible evidence, as peer review and quality assurance protected, and to the extent this Request purports to seek documents unrelated to this case. Without waiving these objections, a non-conformance report was created on November 28, 2018 regarding the Donor involved in this case. The Non-Conformance report has been identified on the privilege log and is a peer review/quality assurance protected document.

34. Your Adverse Event Log(s) from November 27, 2018, to December 31, 2018.

**RESPONSE:** This Defendant objects to this Request as overly broad, not reasonably calculated to lead to the discovery of admissible evidence, as peer review and quality assurance protected, and to the extent this Request purports to seek documents unrelated to this case. Further responding and without waiving these objections, this Defendant does not possess a “log” of adverse events as the forms are computer generated.

35. All communications between You and CMS from November 28, 2018, to the present relating to the complaint survey conducted by CMS of You in May 2019.

**RESPONSE:** This Defendant objects to this Request as overly broad, seeking quality assurance protected materials, and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to

documents labeled for production as *WASH 0691-0699* and *WASH 0741-0743*. In addition, this Defendant also refers to the privilege log.

36. All communications between You and CMS relating to Mr. Holliman or the Doner.

**RESPONSE:** This Defendant objects to this Request as overly broad, seeking quality assurance protected materials, and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to documents labeled for production as *WASH 0691-0699* and *WASH 0741-0743*. Further responding, this Defendant also refers to the privilege log.

37. All documents submitted to CMS in connection with the complaint survey conducted by CMS of You in May 2019.

**RESPONSE:** This Defendant objects to this Request as overly broad, seeking quality assurance protected materials, and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to documents labeled for production as *WASH 0694-0740 CONFIDENTIAL (CONTAINS SOME CONFIDENTIAL DOCUMENTS)*.

38. All documents or letters received from CMS in connection with the complaint survey conducted by CMS of You in May 2019.

**RESPONSE:** This Defendant objects to this Request as overly broad, seeking quality assurance protected materials, and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to documents labeled for production as *WASH 0691-0692, 0741-0743*.

39. All reports of adverse event(s) made by You to United Network for Organ Sharing relating to Mr. Holliman or the Doner.

**RESPONSE:** This Defendant objects to this Request as seeking peer review and quality assurance materials. Without waiving these objections, this Defendant reported an adverse event related to Donor AFKY198 to UNOS through the internet portal, but this Defendant does not have a copy of the report made to UNOS because it was reported through the internet. If this Defendant was in possession of this document it would be labeled on the privilege log.

40. All reports of adverse event(s) made by You to CMS relating to Mr. Holliman or the Doner.

**RESPONSE:** At the time of the of the reporting of events related to this Donor, this Defendant believed that reporting the event to UNOS through the internet portal also simultaneously reported the event to CMS.

41. Your Plan of Correction submitted to CMS in June 2019.

**RESPONSE:** This Defendant refers the Plaintiff to documents labeled for production as *WASH 0694-0699*.

42. Your Medicare provider agreements in effect from November 1, 2018, to the present.

**RESPONSE:** This Defendant refers to documents labeled for production as *WASH 0757-0758*.

43. All OPTN policies in effect on November 27, 2018.

**RESPONSE:** This Defendant refers the Plaintiff to OPTN for its policies in effect on November 27, 2018 as this Defendant is not in possession of copies of the OPTN policies from November 27, 2018 at this time.

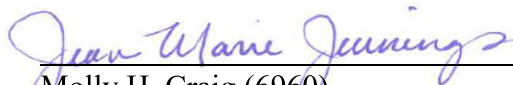


44. All text messages and emails sent or received by the following individuals from November 27, 2018, to the present relating to Mr. Holliman or the Doner:

- a. Jacqueline Honig, MD;
- b. Daniel Stanton;
- c. Omar Moussa, PhD, MD;
- d. Satish Nadig, MD; and
- e. David DeStefano.

**RESPONSE:** This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further objecting, this Defendant does not have the ability to search text messages and emails from persons this Defendant does not represent. This Defendant responds that David DeStefano's emails have been checked using the names Daniel Stanton, Omar Moussa, Satish Nadig, and Jacqueline Honing. Emails found were previously produced as *WASH 0441-0445*. Further responding, additional emails containing both Dave DeStefano and Jacqueline Honing which are part of the peer review/quality assurance process are identified on the privilege log.

HOOD LAW FIRM, LLC  
172 Meeting Street / Post Office Box 1508  
Charleston, SC 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630



Molly H. Craig (6960)

[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)

Jean Marie Jennings (100651)

[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

*Attorneys for the Defendant  
We Are Sharing Hope SC*

**December 1, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's RESPONSES TO PLAINTIFF'S FIRST SET OF SUPPLEMENTAL REQUESTS FOR PRODUCTION*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This **1<sup>st</sup>** day of **December**, 2020.



|                                                   |   |                                       |
|---------------------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                           | ) | IN THE COURT OF COMMON PLEAS          |
|                                                   | ) | NINTH JUDICIAL CIRCUIT                |
| COUNTY OF CHARLESTON                              | ) |                                       |
| Michelle Cha Holliman, individually and as        | ) | C/A No. 2020-CP-10-02902              |
| personal representative of the Estate of Allen B. | ) |                                       |
| Holliman,                                         | ) |                                       |
|                                                   | ) |                                       |
| <i>Plaintiff,</i>                                 | ) |                                       |
|                                                   | ) |                                       |
| Versus                                            | ) | <b>DEFENDANT</b>                      |
|                                                   | ) | <b>WE ARE SHARING HOPE SC's THIRD</b> |
| We Are Sharing Hope SC, Medical University        | ) | <b>AMENDED</b>                        |
| of South Carolina, and United Network for         | ) | <b>PRIVILEGE LOG</b>                  |
| Organ Sharing,                                    | ) |                                       |
|                                                   | ) |                                       |
| <i>Defendants.</i>                                | ) |                                       |

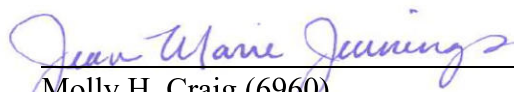
TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter "this Defendant"), hereby submits the following log of privileged documents withheld from production:

| Bates Label Nos.               | Document Description                                                                                                                                                                                     | Privilege Asserted                                |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Privileged 0001-0186           | Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS                                                                                   | Peer Review Quality Assurance/Quality Assessment. |
| Privileged 0187-0195           | Root Cause Analysis involving We Are Sharing Hope SC and Grand Strand Medical Center                                                                                                                     | Peer Review Quality Assurance/Quality Assessment  |
| Privileged 0196-210, 0224-0226 | Emails between We Are Sharing Hope and VRL-Eurofins involving ABO testing/part of peer review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS | Peer Review Quality Assurance/Quality Assessment. |
| Privileged 0211-0223           | Emails re: Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS                                                                        | Peer Review Quality Assurance/Quality Assessment. |

|                      |                                                                                    |                                                   |
|----------------------|------------------------------------------------------------------------------------|---------------------------------------------------|
| Privileged 0224-230  | Emails between We Are Sharing Hope SC and Kathy Brazil re: adverse event reporting | Peer Review Quality Assurance/Quality Assessment. |
| Privileged 0231-0235 | Printable version of Non-conformance Report                                        | Peer Review Quality Assurance/Quality Assessment. |

HOOD LAW FIRM, LLC  
 172 Meeting Street / Post Office Box 1508  
 Charleston, SC 29402  
 Phone: (843) 577-4435  
 Facsimile: (843) 722-1630

  
 Molly H. Craig (6960)  
[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)  
 Jean Marie Jennings (100651)  
[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)

*Attorneys for the Defendant  
 We Are Sharing Hope SC*

**December 1, 2020**

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of the ***DEFENDANT WE ARE SHARING HOPE SC's THIRD AMENDED PRIVILEGE LOG*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This **1<sup>st</sup>** day of **December**, 2020.



## EXHIBIT C

**From:** [John C. Moylan](#)  
**To:** [Jean Marie Jennings](#)  
**Cc:** [Molly Craig](#); [Lucy Dinkins](#)  
**Subject:** RE: Holliman v. WASH et al.  
**Date:** Thursday, December 3, 2020 1:09:00 PM  
**Attachments:** [image001.jpg](#)

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Thank you Jean Marie. I am happy to discuss any time that is good for you.



**John C. Moylan | Wyche**

807 Gervais St., Suite 301 | Columbia, SC 29201  
 Phone: (803) 254-6542 | Fax: (803) 254-6544  
[jmoylan@wyche.com](mailto:jmoylan@wyche.com) | [www.wyche.com/jmoylan](http://www.wyche.com/jmoylan) | [vCard](#)

A [Lex Mundi](#) Member Firm

---

**From:** Jean Marie Jennings [mailto:[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)]  
**Sent:** Thursday, December 3, 2020 12:57 PM  
**To:** John C. Moylan <[jmoylan@wyche.com](mailto:jmoylan@wyche.com)>  
**Cc:** Molly Craig <[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)>; Lucy Dinkins <[ldinkins@wyche.com](mailto:ldinkins@wyche.com)>  
**Subject:** RE: Holliman v. WASH et al.

John,

In response to your email below, we will supplement with the Health Insurance Benefits Agreement at our earliest convenience.

In addition, now that we have responded to your supplemental requests, I would like to focus on narrowing the issues in the motion to compel to the extent we can prior to a hearing. Would it be possible to schedule a call next week to discuss?

Thank you,

Jean Marie

---

**From:** John C. Moylan <[jmoylan@wyche.com](mailto:jmoylan@wyche.com)>  
**Sent:** Wednesday, December 2, 2020 5:40 PM  
**To:** Jean Marie Jennings <[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)>  
**Subject:** Holliman v. WASH et al.

Jean Marie,

Thank you for sending WASH's responses to Plaintiff's first set of supplemental requests for production. I am writing to follow up on two issues with the responses.

First, WASH's response to Request No. 42 refers to the document labeled WASH 757-58. Request No. 42 asks for WASH's Medicare provider agreements in effect from November 1, 2018, to the

present. The document labeled WASH 757-58 is a letter from CMS that states WASH's Health Insurance Benefits Agreement is enclosed. It does not appear, however, that the enclosure has been produced. Please produce the Health Insurance Benefits Agreement at your earliest convenience.

Second, WASH's third amended privilege log provided with its responses to the supplemental requests indicates that additional documents have been withheld on a claim of peer review privilege. We object to the withholding of these additional documents for the same reasons set forth in Plaintiff's motion to compel filed on November 18, 2020. We respectfully request that WASH either produce the additional documents withheld, or file them under seal for judicial review pursuant to S.C. Code Section 40-71-30.

Please let me know if you have any questions or would like to discuss this further.



**John C. Moylan | Wyche**

807 Gervais St., Suite 301 | Columbia, SC 29201

Phone: (803) 254-6542 | Fax: (803) 254-6544

[jmoylan@wyche.com](mailto:jmoylan@wyche.com) | <https://link.edgepilot.com/s/7447356d/vMzMjESlb0aiuwZV1oiBNA?u=http://www.wyche.com/jmoylan> | [vCard](#)

**A [Lex Mundi](#) Member Firm**

-----  
This e-mail may contain privileged or confidential information.

If the e-mail was not intended for you, please:

- (i) delete the e-mails and any attachments
- (ii) destroy any copies that may have been made
- (iii) do not use, copy or distribute the contents in any form
- (iv) notify the sender by return e-mail or call.

No privilege is waived by inadvertent transmission.

Thank you.  
-----

## EXHIBIT D



**From:** [Lucy Dinkins](#)  
**To:** [Jean Marie Jennings](#)  
**Cc:** [John C. Moylan](#); [Cricket Rawls](#); [Molly Craig](#)  
**Subject:** RE: Holliman  
**Date:** Tuesday, January 5, 2021 11:39:00 AM  
**Attachments:** [image001.jpg](#)

---

Jean Marie,

Thank you for searching for communications responsive to Request No. 44.



**Lucy Dinkins | Wyche**

807 Gervais St., Suite 301 | Columbia, SC 29201

Phone: (803) 254-6542 | Fax: (803) 254-6544

[ldinkins@wyche.com](mailto:ldinkins@wyche.com) | [www.wyche.com/ldinkins](http://www.wyche.com/ldinkins) | [vCard](#)

A [Lex Mundi](#) Member Firm

---

**From:** Jean Marie Jennings [mailto:[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)]  
**Sent:** Monday, January 4, 2021 5:19 PM  
**To:** Lucy Dinkins <[ldinkins@wyche.com](mailto:ldinkins@wyche.com)>  
**Cc:** John C. Moylan <[jmoylan@wyche.com](mailto:jmoylan@wyche.com)>; Cricket Rawls <[crawls@wyche.com](mailto:crawls@wyche.com)>; Molly Craig <[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)>  
**Subject:** RE: Holliman

Hi Lucy,

I believe Request No. 44 is from your First Set of Supplemental Requests for Production which we have not discussed. John emailed on 12/2/20 about two issues with regard to these Requests but did not discuss any deficiencies regarding our response to No. 44. John's email included alleged issues regarding documents withheld from privilege and a Health Care Insurance Benefits Agreement which we produced following his email.

I believe your email misconstrues our response. We have no ability to search the texts and emails of Daniel Stanton, Omar Moussa, PhD, MD and Satish Nadig, MD because they are not Sharing Hope employees. The response provides a general objection that we cannot search text messages and emails from persons we do not represent. The response does not state that we do not represent Dr. Honig or Dave DeStefano. We do represent both of those individuals as employees of We Are Sharing Hope SC.

As we discussed last week on 12/29 and in response to your email below, just prior to the New Year holiday, we are working on obtaining any additional communications if they exist and supplementing our response and I will add No. 44 to the list.

Thank you,

Jean Marie

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**From:** Lucy Dinkins <[ldinkins@wyche.com](mailto:ldinkins@wyche.com)>  
**Sent:** Monday, January 4, 2021 12:35 PM  
**To:** Jean Marie Jennings <[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)>  
**Cc:** John C. Moylan <[jmoylan@wyche.com](mailto:jmoylan@wyche.com)>; Cricket Rawls <[crawls@wyche.com](mailto:crawls@wyche.com)>  
**Subject:** RE: Holliman

Jean Marie,

I'm writing to follow up on my below email regarding deficiencies with WASH's production, specifically emails and text messages requested by Plaintiff.

In addition to the communications referenced below, WASH's response to Plaintiff's request for production No. 44 is deficient. Request No. 44 calls for the production of all text messages and emails sent or received by Jacqueline Honig, Daniel Stanton, Omar Moussa, Satish Nadig, and David DeStefano from November 27, 2018, to the present and relating to Mr. Holliman or the Donor. WASH objects to this request on the ground that it "does not have the ability to search text messages and emails from persons this Defendant [WASH] does not represent." WASH also states that "David DeStefano's emails have been checked using the names Daniel Stanton, Omar Moussa, Satish Nadig, and Jacqueling Honig," and that emails found were previously produced. The request, however, does not ask for Mr. DeStefano's emails relating to Stanton, Moussa, Nadig, and Honig. Rather, it calls for the production of emails and text messages sent or received by Honig, Stanton, Moussa, Nadig, and DeStefano that relate to Mr. Holliman or his Donor. Therefore, WASH's response as to Mr. DeStefano is non-responsive to the request, and it is incomplete because there is no mention of searching Mr. DeStefano's text messages.

As requested by Request No. 44, please produce all of Mr. DeStefano's text messages and emails from November 27, 2018, to the present that relate to Mr. Holliman or the Donor at issue in this case. If it is your position that you cannot conduct the requested search of his emails and text messages because you do not represent him, please state so.

According to WASH's objection quoted above, WASH is unable to search for the requested text messages and emails of Honig, Stanton, Moussa, and Nadig because it does not represent them. Accordingly, we will proceed with issuing a subpoena to Dr. Honig for her requested communications. If your representation of Dr. Honig has changed since WASH responded to this discovery request, please let us know by Wednesday, January 6.

Best regards,  
 Lucy



**Lucy Dinkins | Wyche**

807 Gervais St., Suite 301 | Columbia, SC 29201

Phone: (803) 254-6542 | Fax: (803) 254-6544

[ldinkins@wyche.com](mailto:ldinkins@wyche.com) | [https://link.edgepilot.com/s/c1e99a2f/TK8GV-hzZEC1emIGH\\_2VhQ?u=http://www.wyche.com/ldinkins](https://link.edgepilot.com/s/c1e99a2f/TK8GV-hzZEC1emIGH_2VhQ?u=http://www.wyche.com/ldinkins) | vCard

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**From:** Lucy Dinkins

**Sent:** Tuesday, December 29, 2020 12:45 PM

**To:** 'jeanmarie.jennings@hoodlaw.com' <[jeanmarie.jennings@hoodlaw.com](mailto:jeanmarie.jennings@hoodlaw.com)>

**Cc:** John C. Moylan <[jmoylan@wyche.com](mailto:jmoylan@wyche.com)>

**Subject:** Holliman

Jean Marie,

It was nice speaking with you this morning to discuss the issues raised in Plaintiff's motion to compel. As a follow-up to our conversation, an email from UNOS to transplant programs and OPOs dated November 30, 2018 (MUSC\_Subpoena 207) and an email from Jeff Thomas dated December 3, 2018, at 11:11 pm (MUSC\_Subpoena 14) are among the emails we know to be missing from WASH's production. Also, as I mentioned during our call, there are several references to text messages in the case notes and call notes produced by WASH that do not appear to be included in the text messages produced by WASH. For the text messages that WASH did produce, it is impossible to determine the sender, recipient, date, and time of the messages.

Happy New Year's to you.



**Lucy Dinkins | Wyche**

807 Gervais St., Suite 301 | Columbia, SC 29201

Phone: (803) 254-6542 | Fax: (803) 254-6544

[ldinkins@wyche.com](mailto:ldinkins@wyche.com) | [https://link.edgepilot.com/s/c1e99a2f/TK8GV-hzZEC1emIGH\\_2VhQ?u=http://www.wyche.com/ldinkins](https://link.edgepilot.com/s/c1e99a2f/TK8GV-hzZEC1emIGH_2VhQ?u=http://www.wyche.com/ldinkins) | [vCard](#)

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Thank you.

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