IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased)	)	Case No. 2018 CV 0100
	)	Judge Scott A. Washam
Plaintiff	)	Plaintiff's Motion to Strike Defendants' Motion to Stay and Motion for Sanctions
vs.	)	or, in the alternative,
Valley Oaks Care Center, et al. Defendants.	)	Plaintiff's Motion for Extension of Time to Respond to Defendants' Motion to Stay Proceedings and Compel/Enforce Arbitration.
	)	and
	)	Plaintiff's Motion to Compel.

Now comes Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased), by and through his attorneys, Blake A. Dickson, Danielle M. Chaffin and Tristan R. Serri of The Dickson Firm, L.L.C., and, and for his Motion to Strike Defendants' Motion to Stay and Motion for Sanctions, or in the alternative, Motion for Extension of Time to Respond to Defendants' Motion to Stay Proceedings and Compel/Enforce Arbitration and Motion to Compel states as follows:

I. Introduction.

On July 20, 2018, Defendants filed a Motion to Stay and Compel/Enforce Arbitration. The basis of their Motion is an arbitration clause which is contained within an Admissions Agreement, which was executed when Janet Gamble was being admitted to the subject nursing home.

Defendants Motion is completely without merit, as the entire Admissions Agreement, which includes the arbitration clause in question, automatically self-terminated upon Janet

Gamble's death, one (1) year prior to Plaintiff filing his Complaint in this case.

Page 8, Section IV, Paragraph C of the Admission Agreement unquestionably states, "This Agreement shall automatically terminate upon the death of the Resident." (Emphasis added).

Janet Gamble died on February 27, 2017.

This case was filed on February 27, 2018.

The arbitration clause, and the Admission Agreement, terminated upon Janet Gamble's death on February 27, 2017.

Defendants' motion to stay should be stricken.

Defendants and their counsel were aware that the entire Admissions Agreement, including the arbitration clause, had terminated, yet they chose to file their Motion to Stay and Compel/Enforce Arbitration anyway. Defendants' actions are in direct violation of Civil Rule 11, which states that "The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay."

There is no question that Defendants and their counsel do not have a good faith basis to believe there is good ground to support their Motion.

Defendants filed their Motion solely to delay this case in excess of eighteen (18) months, as an order from this Court either granting or denying Defendants' Motion to Stay would constitute a final appealable order, and would immediately be subject to appeal. Therefore, even if this Court denies Defendants' frivolous Motion to Stay, Defendants will have achieved their goal, which is to delay this case.

Plaintiff respectfully requests that this Honorable Court strike Defendants' frivolous Motion

to Stay, pursuant to Civil Rule 11. Striking Defendants' Motion is the only way to prevent Defendants from benefitting from filing their frivolous Motion.

Plaintiff is also seeking reasonable attorney fees associated with filing this Motion, in the amount of $500.00. The only way to deter improper conduct is by sanctioning it. If the only thing that happens is that Defendants' frivolous motion is stricken, there will be no reason for these Defendants to attempt this strategy of delay in the next case. This Court should not have had to spends its valuable time on Defendants' baseless motion. Plaintiff's counsel should not have had to spend time responding to this clearly baseless motion nor should Plaintiff's counsel have had to file a Motion to Compel.

If this Court does not strike Defendants' baseless Motion to Stay, Plaintiff respectfully requests that this Honorable Court grant him an extension of sixty (60) days within which to conduct discovery and then to file his Brief in Opposition to Defendants' Motion to Stay.

As explained below, there are numerous reasons why an arbitration clause within a nursing home Admissions Agreement may be void under Ohio law. The arbitration clause in question is unquestionably invalid and unenforceable under R.C. § 2711.23(G), because it is not a separate document. This Court must also determine whether the terminated arbitration clause is unconscionable, as well as identify the parties to the clause.

Plaintiff cannot fully develop these arguments without an opportunity to conduct discovery. Numerous appellate courts across Ohio have held that it was an abuse of discretion for a trial court to compel arbitration **without** allowing a plaintiff the opportunity to conduct discovery and present evidence concerning the enforceability of the arbitration clause. *See e.g. Harrison v. Toyota Motor Sales, U.S.A., Inc.*, 9th Dist. No. 20815, 2002 Ohio 1642, ¶16 ("The record regarding the

circumstances surrounding the making of an arbitration clause must be well-developed to permit a court to determine whether the clause is enforceable.")

While Plaintiff does outline numerous reasons why the arbitration clause in question is not valid or enforceable, **this is in no way meant to be Plaintiff's Brief in Opposition to Defendants' Motion to Stay and Compel/Enforce Arbitration**. Plaintiff is merely outlining these arguments to not only show why discovery is necessary, but in order to demonstrate that the question of whether a valid and enforceable agreement to arbitrate exists is not as cut and dry as Defendants suggest.

If this Honorable Court is not persuaded to simply strike Defendants' baseless Motion to Stay which is based on an arbitration clause that was clearly terminated a long time ago, Plaintiff respectfully requests that this Honorable Court grant Plaintiff an extension of sixty (60) days to conduct discovery concerning the terminated arbitration clause and Admissions Agreement, prior to filing her Brief in Opposition to Defendants' Motion to Stay.

Plaintiff also requests that this Court order Defendants to cooperate with discovery, as Defendants have refused to do so up to this point.

II. Statement of the Facts.

On November 5, 2016, Janet Gamble was admitted to Valley Oaks Care Center nursing home. Janet Gamble suffered from dementia and it was noted that she needed extensive assistance from two (2) staff members to reposition herself within her bed and for transfers. Janet Gamble was also noted to be incontinent of urine and bowel.

She was identified by the subject facility as at risk for the development of bed sores, but she did not have any bed sores upon admission.

Less than three (3) months later, on January 22, 2017, Janet Gamble was admitted to East

Liverpool City Hospital, where she was diagnosed with sepsis, a UTI, pneumonia and severe protein-calorie malnutrition. She was discharged six (6) days later and re-admitted to Valley Oaks Care Center.

On January 28, 2017, a nurse at Valley Oaks Care Center noted that Ms. Gamble had a 4.5 cm x 3.0 cm blister to her left heel, a 6.0 x 4.0 cm blister to her right heel, and a 1.4 cm x 1.0 bed sore on her coccyx. No comprehensive assessments were completed at that time, so the specific characteristics of the bed sore are unknown. No pictures were taken of any of her bed sores.

The blisters on Janet Gambles heels continued to worsen and she was noted to have an additional bed sore.

Her doctor was not notified of the new bed sore in violation of state and federal law.

Her family was not notified of the new bed sore in violation of state and federal law.

A comprehensive assessment was not completed of the new wound.

On February 7, 2017, it was noted that the bed sore which was discovered five days prior, was now a Stage III pressure ulcer, meaning that the wound was open and muscle and tendon were exposed.

New wounds were documented two days later, on February 9, 2017. Janet Gamble had developed a bed sore that measured 6.0 cm x 5.7 cm on her left buttock, with two open areas, with the largest measuring 1.0 cm x. 2.4 cm, with bloody, yellow drainage and a beefy red center. Janet Gamble's right buttocks had two distinct bed sores measuring 3.0 x 2.0 cm and 2.0 cm x 2.0 cm. There were bed sores on Janet Gamble's toes.

None of these areas had previously been identified or assessed by the staff at the subject facility.

Her doctor was not notified in violation of state and federal law.

Her family was not notified in violation of state and federal law.

On February 11, 2017, a nurse noted that Ms. Gamble had a temperature of 102.5 degrees and labored breathing. Her physician was called and she was sent to East Liverpool City Hospital for evaluation.

At the hospital, Janet Gamble was diagnosed with severe sepsis and acute aspiration pneumonia. Janet Gamble was discharged back to Valley Oaks Care Center on February 16, 2017.

On February 27, 2017, Janet Gamble was again admitted to East Liverpool City Hospital. Upon admission, she was diagnosed with septic shock, a UTI, and was noted to have numerous pressure ulcers. A full assessment noted that Ms. Gamble's urine was "thick milky w/ foul odor".

Janet Gamble died on February 27, 2017.

Her death certificate lists her cause of death as medullary failure, due to cardiac arrest, due to severe sepsis.

III. Defendants' Motion to Stay Proceedings and Compel/Enforce Arbitration should be stricken and Defendants, and their counsel, should be sanctioned, for seeking to enforce and Admissions Agreement which terminated upon Janet Gamble's death on February 27, 2017, well over one (1) year ago.[1]

Defendants have filed a Motion to Stay and Compel/Enforce Arbitration. In support, Defendants have produced an Admissions Agreement, which contains an arbitration clause. A copy

---

[1] Plaintiff previously filed a Motion to Compel relative to both written discovery and a Civil Rule 30(B)(5) deposition. Within that Motion, Plaintiff explained that Defendants were refusing to participate in discovery, based upon their alleged right to arbitrate this matter. Plaintiff further explained that the only arbitration clause which Defendants had provided was contained within an Admissions Agreement which automatically terminated upon Janet Gamble's death, on February 27, 2018, well over one (1) year ago. Plaintiff is once again including that argument, for this Court's convenience.

of that Admissions Agreement is attached hereto as Exhibit "A".

Page 8, Section IV, Paragraph C of the Admission Agreement states as follows:

> C. **Termination by Resident.** This Agreement may be terminated by the Resident and/or by Representative at any time; however, Facility requests that the Resident and/or Representative provide it with at least thirty (30) days' advance notice so that it can conduct proper discharge planning. This Agreement shall automatically terminate upon the death of the Resident.

As the Court can see, the last sentence clearly states, "**This Agreement shall automatically terminate upon the death of the Resident.**" (Emphasis added).

Janet Gamble died on February 27, 2017. Therefore, the entire Admissions Agreement *automatically* terminated on that date.

Defendants have alleged a right to compel arbitration based upon Section V of the Admissions Agreement, and the attached signature page. Because the entire Admissions Agreement automatically terminated on February 27, 2017, the arbitration clause also automatically terminated on that date.

Defendants drafted the Admissions Agreement. Defendants could have drafted the arbitration clause to say anything they chose. Defendants made the choice to include the self-termination clause. Defendants also chose not to draft the arbitration clause, so that the obligation to arbitrate survived the residents' death. A contract must be strictly construed against the party who drafted it. *King v. Nationwide Ins. Co.*, 35 Ohio St. 3d 208, 211 (1988), citing *Faruque v. Provident Life & Acc. Ins. Co.* (1987), 31 Ohio St. 3d 34, 31 OBR 83, 508 N.E. 2d 949, syllabus and *Thompson*

v. Preferred Risk Mut. Ins. Co. (1987), 32 Ohio St. 3d 340, 342, 513 N.E. 2d 733, 736. The Admission Agreement clearly states that the entire agreement "shall automatically terminate upon the death of the Resident."

On July 16, 2018, Plaintiff's counsel sent a letter to Defendants' counsel explaining that Defendants had no good faith basis to seek to compel arbitration. Within that letter, Plaintiff's counsel pointed out that Page 8, Section IV, Paragraph C of the Admissions Agreement explicitly stated that the entire agreement automatically terminated upon Janet Gamble's death, and that Janet Gamble died on February 27, 2017. Plaintiff's counsel also included a copy of Section IV of the Admissions Agreement for Defendants' counsel's review. Plaintiff further explained that if Defendants intended to move forward with their Motion to Stay Proceedings and Compel/Enforce Arbitration, that Plaintiff's counsel would have no choice but to seek sanctions, including attorney fees incurred in defending against Defendants' frivolous Motion.

Defendants counsel did not respond to Plaintiff's counsel's letter.

On July 20, 2018, four (4) days later, Defendants filed their Motion to Stay Proceedings and Compel/Enforce Arbitration.

Notably, Defendants' Motion does not address the fact that the entire Admissions Agreement, which includes the arbitration clause, automatically terminated one (1) year prior to the filing of Plaintiff's Complaint. Defendants' failure to reference this section of the Agreement is evidence of their intent to purposely mislead this Court and to delay this case.

Defendants recently filed a Brief in Opposition to Plaintiffs' Motion to Compel and briefly addressed the termination clause. Defendants argue that "It makes no logical sense for a nursing home's contractual obligations and the patient's contractual obligations to continue after the patient's

death." Yet, Defendants are attempting to enforce a patient's alleged contractual obligation. Defendants argue that "the language terminating the Admissions Agreement upon Janet Gamble's death does not impact the applicability and enforceability of this Agreement." Of course it does. If the Admissions Agreement is terminated, **there is no contract to enforce.** Defendants chose to draft the arbitration clause in such a way that all obligations terminated. They do not explain how they have a right to enforce the alleged arbitration clause in a contract, which they acknowledge has terminated.

Given the fact that the Admissions Agreement unequivocally terminated on February 27, 2017, Defendants and their counsel should be sanctioned for filing such a baseless Motion, which was clearly filed solely for the purpose of delaying this case.

Ohio Civil Rule 11 states in pertinent part (emphasis added):

> The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; **that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay**. If a document is not signed or is signed with intent to defeat the purpose of this rule, **it may be stricken as sham and false and the action may proceed as though the document had not been served**. For a **willful violation of this rule, an attorney or pro se party**, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, **including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.**

Numerous court of appeals have upheld the imposition of sanctions when a party files a motion or pleading with knowledge that it cannot be supported. *First Fed. Bank of Ohio v. Angelini*, 3rd Dist. Crawford No. 3-11-16, 2012 Ohio 2136 (holding the trial court properly imposed sanctions when the defendants filed counterclaims that were not recognized by Ohio law, were "based upon a legal nullity" and when counsel's actions were "unwarranted, willful, and frivolous"); *Rust v.*

Harris-Gordon, 6th Dist. Lucas No. L-03-1091, 2004 Ohio 1636 (holding the trial court properly imposed sanctions pursuant to Civil Rule 11 when a party continued to pursue a claim which he had previously been informed was not viable); *Sickle v. Yeager*, 11th Dist. Trumbull No. 2015-T-0096, 2016 Ohio 4740 (affirming trial court's imposition of sanctions when appellants' motion "had no basis in law or fact.").

The purpose of the Civil Rule 11 "is to deter pleading and motion abuses; it is to assure the court that the pleading or motion was filed in good faith with sufficient grounds to support it. If a court determines that a pleading or motion was filed to defeat this purpose, it may strike the document". *Woods v. Savannah Foods & Industries*, 6th Dist. Lucas No. L-92-160, 1993 Ohio App. LEXIS 1151, *20 (Feb. 26, 1993), citing *Stevens v. Kiraly*, 24 Ohio App.3d 211, 213, 494 B.E.2d 1160 (9th Dist 1985).

Defendants' and their counsel have absolutely no reason to believe that there is "good ground" to support Defendants' Motion to Stay. Defendants and their counsel were in possession of the entire Admissions Agreement at the time they filed their Motion to Stay, as it was attached to their Motion and had previously been produced to Plaintiff's counsel. That Admissions Agreement clearly included the self-termination clause.

Defendants willfully mislead this Court by asserting that they had the right to compel arbitration, based upon an agreement which they knew had terminated.

Plaintiff's counsel specifically wrote to Defendants' counsel, pointing out that the entire Admissions Agreement, which included the arbitration clause, had terminated upon Janet Gamble's death. The fact that Defendants still filed their Motion to Stay and Compel/Enforce Arbitration after receiving Plaintiff's counsel's letter is further evidence that Defendants and their counsel filed their

Motion, knowing that it was completely baseless.

Defendants have not, and cannot, offer this Court any legitimate basis for them to believe that they have any right whatsoever to compel arbitration in this case. The termination clause is not open to interpretation. It is explicitly clear. The entire Admissions Agreement terminated upon Janet Gambles death, one (1) year prior to Plaintiff filing his Complaint.

It is obvious that Defendants' Motion to Stay and Compel/Enforce Arbitration was made solely for the purpose of delay.

The decision granting or denying a motion to compel arbitration is a final appealable order. *Strader v. Magic Motors of Ohio, Inc.*, 5th Dist. Stark No. 2006CA00376, 2007 Ohio 5358. Regardless of whether this Court denies or grants Defendants' frivolous Motion to Stay, either party will have the right to appeal that decision to the Seventh District Court of Appeals. The party who does not prevail in the Court of Appeals could then attempt to appeal that decision to the Supreme Court of Ohio. Therefore, by filing their Motion to Stay and Compel/Enforce Arbitration, Defendants have essentially ensured that this case will be subject to at least an eighteen (18) month delay, **for absolutely no reason**.

Such a long delay will only prejudice Plaintiff. During that delay, witnesses' memories will fade, documents will be misplaced, witnesses will move and become harder if not impossible to locate. Janet Gamble's family should not be forced to incur such a long delay in their search for justice, considering there is no question that there is not an enforceable agreement to arbitrate in this case.

Defendants and their counsel clearly violated Civil Rule 11. Therefore, this Court is well within its right to impose sanctions upon Defendants and their counsel.

"A trial court has broad discretion in determining what sanction, if any, is to be imposed for violating [Civil Rule 11]." *Rust v. Harris-Gordon*, 6th Dist. Lucas No. L-03-1091, 2004 Ohio 1636; See also *Nancy Lowrie & Assocs. v. Ornowski*, 8th Dist. Cuyahoga No. 100694, 2014 Ohio 3718.

Civil Rule 11 explicitly provides that if a document is signed "with intent to defeat the purpose of this rule, it may be stricken as sham and false". The purpose of Civil Rule 11 is to "deter pleading and motion abuses" and " to assure the court that the pleading or motion was filed in good faith with sufficient grounds to support it." *Woods v. Savannah Foods & Industries*, 6th Dist. Lucas No. L-92-160, 1993 Ohio App. LEXIS 1151, *20 (Feb. 26, 1993), citing *Stevens v. Kiraly*, 24 Ohio App.3d 211, 213, 494 B.E.2d 1160 (9th Dist 1985).

In *Kaufman v. Young*, 8th Dist. Cuyahoga No. 105761, 2017 Ohio 9179, the Eighth District Court of Appeals upheld a trial court's decision to strike a party's motion which was willfully misleading. The defendant in Kaufman had filed a reply brief which made material misrepresentations in the case law which it cited. *Id.* at ¶15. The trial court then granted the plaintiff's motion to strike the defendants reply brief. *Id.* On appeal, the Eighth District stated:

> [W]e find no abuse of discretion in the trial court's decision to strike the Youngs' reply brief or to deny their request that their reply brief be reinstated. In sum, the propositions for which they cited *Cavoto* and *Pitcher* could be deemed misleading. Although the court could have ignored the Youngs' arguments relative to the two cases, it was within its discretion to strike the reply brief altogether and we decline to second-guess its decision.

Id. at ¶31.

Given the fact that Defendants' Motion was filed solely to delay this case, the most appropriate sanction would be to strike Defendants' Motion to Stay and Compel/Enforce Arbitration.

If this Court rules on Defendants' Motion to Stay, that decision will be appealed and an

unnecessary and extensive delay will ensue. The **only** way to prevent Defendants from benefitting from the filing of their frivolous Motion is for this Court to strike their Motion. This Court should not tolerate such an abuse of process by Defendants and their counsel.

Plaintiff respectfully requests that this Honorable Court strike Defendants' Motion to Stay and Compel/Enforce Arbitration, as it was clearly filed in violation of Civil Rule 11.

Plaintiff further requests that this Honorable Court award Plaintiff reasonable expenses and attorney fees in having to file this Motion, pursuant to Civil Rule 11, in the amount of $500.00.

IV. If this Court does not strike Defendants' Motion to Stay and Compel/Enforce Arbitration, Plaintiff should be granted an extension of time to file conduct discovery and then file her Brief in Opposition to Defendants' Motion to Stay.

If this Court does not strike Defendants' Motion to Stay and Compel/Enforce Arbitration, Plaintiff respectfully requests that this Honorable Court grant Plaintiff an extension of sixty (60) days to conduct discovery and then to file her Brief in Opposition to Defendants' Motion to Stay and Compel/Enforce Arbitration.

As briefly explained below, there are a number of issues which this Court must consider prior to compelling arbitration, including whether the clause is void under Ohio law, whether the clause is unconscionable, whether any parties to this case are actually bound by the clause, and whether the parties signed the clause.

However, many of these arguments cannot be fully developed and briefed by Plaintiff without discovery.

Plaintiff is respectfully requesting an extension of sixty (60) days to conduct discovery concerning the alleged arbitration clause, prior to filing his Brief in Opposition to Defendants' Motion to Stay and Compel/Enforce Arbitration.

Given the fact that Defendants have completely refused to participate in any discovery, Plaintiff would further request that this Honorable Court issue an order compelling Defendants to produce answers to Plaintiff's Interrogatories No. 8, 9, 10, 26 and 38, responses to Plaintiff's Request for Production of Documents No. 1, 10, 12, 40 and 62, and to schedule a Civil Rule 30(B)(5) deposition relative to arbitration, and order Defendants to cooperate with the scheduling of the depositions of all individuals who participated in the admission of Janet Gamble to the Valley Oaks Care Center.

Plaintiff also requests that this Honorable Court hold a hearing, after discovery is conducted, during which it can hear evidence on the validity and enforceability of the alleged arbitration clause in question.

A. Plaintiff should be permitted to conduct discovery, including the circumstances surrounding the nature and execution of the alleged arbitration clause, prior to filing her Brief in Opposition to Defendants' Motion to Stay.

In *Strader v. Magic Motors of Ohio, Inc.*, the Fifth District Court of Appeals held that the trial court abused its discretion in staying the proceedings in favor of arbitration without allowing discovery to be conducted. 5th Dist. Stark No. 2006CA00376, 2007 Ohio 5358. In *Strader*, the defendants filed a motion to stay the proceedings and refer to arbitration. *Id.* at ¶14. The plaintiff filed a motion for extension of time to respond to the motion to stay and requested ninety (90) days to conduct discovery on the enforceability of the arbitration clause at issue. *Id.* at ¶16. The trial court in *Strader* granted the defendants' motion to stay without ruling on the plaintiff's motion for extension or giving the plaintiff an opportunity to file a brief in opposition without the requested discovery. *Id.* at ¶16-17.

Strader appealed, and his sole assignment of error stated, "The Trial Court erred by denying

Plaintiff's right to conduct discovery and produce evidence on the enforceability of the arbitration clause before staying proceedings and ordering the case to arbitration." *Id.* at ¶19. The Fifth District Court of Appeals sustained Strader's sole assignment of error. *Id.* at ¶20. The Court recognized that an arbitration clause may be legally unenforceable if it is found to be unconscionable. *Id.* at ¶25. It further explained that a party needs information beyond the terms of the agreement itself to fully investigate and develop their argument:

> In order to determine if there is a legitimate challenge to the validity of an arbitration clause **the circumstances surrounding the nature and execution of the provision must be developed and presented to the court**, not just the terms of the agreement. *Sikes v. Ganley Pontiac Honda, Inc.* Cuyahoga County App. No. 82889, 2004 Ohio 155, 2004 WL 67224.
>
> ***
>
> In this case, the trial court relied solely upon the terms of the agreement in determining the issue of unconscionability. While appellants may or may not ultimately be successful on the issue of unconscionability, **the better course is to permit discovery on all the relevant factors and afford the parties the opportunity to present their finds on this issue.**

Id. at ¶¶29, 31 (Emphasis added). The Court in *Strader* also recognized that other Ohio appellate courts had held that a trial court abused its discretion in granting a motion stay in favor of arbitration without permitting discovery:

> Ohio appellate courts have found that the trial court abuses its discretion in granting a motion to stay the proceedings pending arbitration without affording a party a reasonable opportunity to discover and present evidence as to the enforceability of the arbitration clause. *Hamption v. Swad,* Franklin County App. No. 03AP-294, 2003 Ohio 6655, 2003 WL 22927367; *Harrison v. Toyota Motor Sales, U.S.A., Inc.*, Summit County App. No. 20815, 2002 Ohio 1642, 2002 WL 533478; *Dunn v. L.M. Building Inc.*, Cuyahoga App. No. 77399, 2000 Ohio App. LEXIS 4954, 2000 WL 1594102 (trial court erred under R.C. 2711.03 in failing to hold a hearing to determine if there was a legitimate challenge to the validity of the arbitration clause; court "shall hear the parties, and upon being satisfied that the making of the agreement for arbitration *** is not in issue, the court shall make an order directing

the parties to proceed to arbitration***").

Id. at ¶30.

In *Harrison v. Toyota Motor Sales, U.S.A., Inc.*, the Ninth District Court of Appeals wrote, **"The record regarding the circumstances surrounding the making of an arbitration clause must be well-developed to permit a court to determine whether the clause is enforceable."** 9th Dist. No. 20815, 2002 Ohio 1642, ¶16 (Emphasis added). In *Harrison*, the plaintiff moved for the trial court to postpone its ruling on the defendant's motion to stay pending arbitration so that the plaintiff could conduct discovery. *Id.* at ¶14. However, the trial court granted the defendant's motion to stay without giving the plaintiff an opportunity to respond or conduct discovery. *Id.* On appeal, the Ninth District Court held the trial court "abused its discretion in granting Ganley's motion to stay the proceedings pending arbitration without affording Appellant an opportunity to conduct discovery as to the enforceability of the arbitration clause and, further, to present his findings on the issue." *Id.* at ¶16.

In *Molina v. Ponsky*, the Eighth District Court of Appeals reversed the trial court's order granting a defendant's motion to stay pending arbitration, stating:

> In the instant case, the record is not well developed as to the specific details of the execution of the arbitration clause or the court's findings and reasoning in granting Great Lakes' motion to stay proceedings pending arbitration. Therefore, we reverse and remand this matter to develop the record as to whether the arbitration agreement is unconscionable.

8th Dist. Cuyahoga No. 86057, 2005 Ohio 6349, ¶22.

In *Hampton v. Swad*, the Tenth District Court of Appeals reversed the trial court's order granting a defendants' motion to stay pending binding arbitration. The Tenth District wrote,

An arbitration agreement should only be enforceable when it was freely entered into,

> and the circumstances should be scrutinized where a consumer is confronted with a sophisticated lending institution, and waives the constitutional right of trial. Whether the arbitration agreement is unconscionable should be reviewed by the trial court prior to granting a stay of litigation and compelling arbitration.

10th Dist. Franklin No. 03AP-294, 2003 Ohio 6655, ¶9. The court went on to state that the trial court had erred in failing to hold a hearing and allowing the plaintiff the opportunity to present evidence as to whether the arbitration agreement was enforceable. *Id.* at ¶10.

Recently, Judge Eugene A. Lucci, of the Lake County Court of Common Pleas, granted Plaintiff's counsel an extension of time to conduct discovery prior to filing his brief in opposition to the defendants' motion to stay pending binding arbitration, and his motion to compel discovery relative to the arbitration agreement in another case. Judgment Entry dated April 9, 2018, *Jennifer Donaldson, as the Personal Representative of the Estate of Howard Donaldson, v. Kindred Transitional Care & Rehab Lakemed, et al.*, Lake County Court of Common Pleas, Case No. 17CV001448, attached hereto as Exhibit "B".

In the present case, Plaintiff is seeking an extension of time to file her Brief in Opposition to Defendants' Motion to Stay, so that Plaintiff's counsel can conduct depositions and obtain copies of all of the admission documents. At this time, the record is completely devoid of any evidence regarding the circumstances under which the alleged arbitration clause was entered into.

Who signed the arbitration clause on behalf of the nursing home? Who did that person work for? What was their authority? Did he or she explain the meaning of the arbitration clause to Janet Gamble or John Gamble, or any member of the Gamble family? How many documents were presented to Janet Gamble or John Gamble? Was Janet Gamble present when this clause was signed? What other documents were presented during Janet Gamble's admission? Was the

termination clause explained to Janet Gamble or John Gamble? Was any portion of the arbitration clause explained to Janet Gamble or John Gamble? All of these questions need to be answered before Plaintiff's counsel can properly respond to Defendants' Motion to Stay. These are all issues that are entirely relevant to the Court's consideration as to whether or not the arbitration clause is valid and enforceable, as further explained below.

Plaintiff is respectfully requesting the opportunity to gather information beyond the terms of the agreement itself to fully investigate and develop his arguments. As explained below, there are numerous reasons why an arbitration clause in a nursing home admissions agreement may be invalid or unenforceable. However, these arguments cannot be fully presented to this Court without further discovery.

Accordingly, Plaintiff respectfully requests an extension of sixty (60) days to file her Brief in Opposition to Defendants' Motion to Stay Pending Arbitration, so that Plaintiff's counsel may conduct discovery regarding the validity and enforceability of the alleged arbitration clause.

B. This Court should order Defendants to participate in discovery relative to the alleged arbitration clause, as Defendants have completely stonewalled all discovery.

As Plaintiff outlined in his Motion to Compel, which was filed on July 23, 2018, Defendants have refused to participate in discovery in this case.

Plaintiff filed his Complaint in this case on February 27, 2018, **five (5) months ago**.

Despite being served with Plaintiff's discovery requests on **March 24, 2018, four (4) months ago**, Defendants have not yet provided any answers to Plaintiff's First Set of Interrogatories nor any responses to Plaintiff's First Request for Production of Documents. Defendants have also not provided any responsive documents, with the exception of Janet Gamble's nursing home records,

which were only produced after Plaintiff was forced to file a Motion to Compel.

Plaintiff's counsel has sent multiple letters to Defendants' counsel requesting Defendants' discovery responses. Although they have made representations on three (3) occasions that meaningful discovery answers will be provided at some unknown time in the future, Defendants have still not produced any further discovery.

Defendants have also refused to produce a representative for three (3) properly noticed Civil Rule 30(B)(5) depositions.

Following Defendants' counsel's assertion that Plaintiff's claims are subject to arbitration, Plaintiff counsel sent Defendants' counsel a letter on July 10, 2018, a copy of which is attached hereto as Exhibit "C". Within that letter, Plaintiff's counsel requested that all Defendants immediately provide answers and responses to certain interrogatories and requests for production of documents, as they pertain directly to the issue of arbitration.

Plaintiff requested that all Defendants provide verified answers to the following Interrogatories:

- Interrogatories Nos. 8, 9, 10 and 26, as they seek to identify every individual who participated in the operation and management of the subject nursing home, which is necessary to identify all proper Defendants in this case; and
- Interrogatory No. 38, as it seeks to identify every individual involved in the admissions process.

Plaintiff also requested that all Defendants provided responses to the following Request for Production of Documents:

- Request for Production of Documents No.1, as it requests complete and accurate copies of all records relative to Janet Gamble which are in Defendants' possession, or to which Defendants have access to, including Janet Gamble's entire admissions file;

- Request for Production of Documents Nos. 10, 40 and 62, as they request complete and accurate copies of documents which were provided to Janet Gamble and/or her family while she was a resident of the subject facility; and

- Request for Production of Documents No. 12, as it seeks to identify every individual who participated in the operation and management of the subject nursing home, which is necessary to identify all proper Defendants in this case.

Within the July 10, 2018 letter, Plaintiff counsel requested to depose all individuals involved in the admission of Janet Gamble to the Valley Oaks Care Center.

Plaintiff's counsel also included a Civil Rule 30(B)(5) Deposition Notice, which contained three (3) topics, all of which pertained directly to the issue of arbitration. A copy of Plaintiff's Notice is attached hereto as Exhibit "D".

On July 16, 2018, Defendants' counsel wrote to Plaintiff's counsel stating, "The depos you noticed cannot proceed because this matter is subject to binding arbitration." Exhibit "E".

In response, Plaintiff's counsel reiterated that the Notice was limited solely to the issue of arbitration. Defendants' counsel did not respond to Plaintiff's counsel's e-mail.

Defendants have demonstrated a clear intention not to participate in any discovery whatsoever, including any discovery which pertains directly to the terminated arbitration clause in question. Even after Plaintiff's counsel was gracious enough to allow Defendants a thirty (30) day extension to produce their answers and responses to Plaintiff's interrogatories and requests for production of documents, Defendants' answers and responses are still two (2) months overdue. Plaintiff has already had to file two (2) Motions to Compel discovery, in the five (5) months that this case has been pending.

Plaintiff's Interrogatories No. 8, 9, 10, 26 and 38 and Request for Production of Documents

No. 1, 10, 12, 40 and 62, pertain directly to the validity and enforceability of the arbitration clause. They are intended to help identify all proper Defendants in this case, collect all of the documents which were provided to the Gamble family upon admission to the subject facility and identify all individuals who participated in the admissions process so that they may be deposed. Similarly, Plaintiff's Civil Rule 30(B)(5) Deposition Notice is limited to the admissions process, including what was explained to Janet Gamble and her family and what documents were provided to them.

This information is essential and must be obtained prior to Plaintiff filing his Brief in Opposition to Defendants' Motion to Stay and Compel/Enforce Arbitration.

Accordingly, Plaintiff respectfully requests that this Honorable Court issue an order compelling all Defendants to produce verified answers to Plaintiff's Interrogatories No. 8, 9, 10, 26 and 38, responses to Plaintiff's Request for Production of Documents No. 1, 10, 12, 40 and 62, order Defendants to schedule a Civil Rule 30(B)(5) deposition relative to arbitration, and order Defendants to cooperate with the scheduling of the depositions of all individuals who participated in the admission of Janet Gamble to the Valley Oaks Care Center.

C. The validity, enforceability and scope of the arbitration agreement is a matter for this Court to decide, following further discovery.

1. This Court must determine whether a valid agreement to arbitrate exists.

It is up to this Court to determine the validity of the alleged arbitration clause. "Where the validity of an arbitration agreement has been challenged, the Ohio Supreme Court has determined that the FAA, Section 2, Title 9, U.S. Code, requires the trial court to first consider whether an arbitration agreement is valid before compelling arbitration." *Miller v. Household Realty Corp.*, 8th Dist. Cuyahoga No. 81968, 2003 Ohio 3359, ¶28, citing *Williams v. Aetna Finance Co.*, 65 Ohio St.

3d 1203, 1204, 602 N.E.2d 246 (1992).

In addition to having terminated over one (1) year ago, the arbitration clause in this case is absolutely void under Ohio law.

R.C. § 2711.23 states, in pertinent part:

> **To be valid and enforceable** any arbitration agreements pursuant to sections 2711.01 and 2711.22 of the Revised Code for controversies involving a medical, dental, chiropractic, or optometric claim that is entered into prior to a patient receiving any care, diagnosis, or treatment shall include and be subject to the following conditions:
>
> (A) The agreement shall provide that the care, diagnosis, or treatment will be provided whether or not the patient signs the agreement to arbitrate;
>
> (B) The agreement shall provide that the patient, or the patient's spouse, or the personal representative of the patient's estate in the event of the patient's death or incapacity, shall have a right to withdraw the patient's consent to arbitrate the patient's claim by notifying the health care provider or hospital in writing within thirty days after the patient's signing of the agreement. Nothing in this division shall be construed to mean that the spouse of a competent patient can withdraw over the objection of the patient the consent of the patient to arbitrate;
>
> © The agreement shall provide that the decision whether or not to sign the agreement is solely a matter for the patient's determination without any influence;
>
> (D) The agreement shall, if appropriate, provide that its terms constitute a waiver of any right to a trial in court, or a waiver of any right to a trial by jury;
>
> (E) The agreement shall provide that the arbitration expenses shall be divided equally between the parties to the agreement;
>
> (F) Any arbitration panel shall consist of three persons, no more than one of whom shall be a physician or the representative of a hospital;
>
> (G) The arbitration agreement shall be separate from any other agreement, consent, or document;
>
> (H) The agreement shall not be submitted to a patient for approval when the patient's condition prevents the patient from making a rational decision whether or not to agree;

(I) Filing of a medical, dental, chiropractic, or optometric claim within the thirty days provided for withdrawal of a patient from the arbitration agreement shall be deemed a withdrawal from the agreement;

(J) The agreement shall contain a separately stated notice that clearly informs the patient of the patient's rights under division (B) of this section.

The alleged arbitration clause in this case is absolutely invalid and unenforceable, as it does not comply with the clear requirements set forth within R.C. § 2711.23.

The arbitration clause in this case violates R.C. §2711.23(A) because it does not provide that "care, diagnoses, or treatment will be provided whether or not the patient signs the agreement."

The arbitration clause in this case violates R.C. §2711.23© because it does not provide that "the decision whether or not to sign the agreement is solely a matter for the patient's determination without any influence."

The arbitration clause in this case violates R.C. §2711.23(D) because it does not state that its terms constitute "a waiver of any right to a trial in court, or a waiver of any right to a trial by jury."

The arbitration clause in this case violates R.C. §2711.23(E) because it does not state that arbitration expenses shall be divided **equally** between the parties to the agreement." (Emphasis added). The arbitration clause states "any person requesting arbitration will be required to pay a filing fee to NAF or any other nationally recognized arbitration organization, and any other expenses associated with arbitration." R.C. §2711.23 is expressly clear that expenses must be divided **equally.** The arbitration agreement which Defendants are seeking to enforce absolutely does **not** provide that expenses will be divided equally. Under the alleged arbitration agreement, Plaintiff would be required to pay **all** expenses associated with arbitration, including the hourly fee for all arbitrators, regardless of the merits of his claims. This expense is significant, given most plaintiff's

attorneys handle cases on a contingent fee basis, which results in no out of pocket cost for a plaintiff. Having to pay all arbitration costs is a sufficient enough burden to deter a potential plaintiff who has been the victim of negligence, from moving forward with arbitration. This is a perfect example of why R.C. §2711.23(E) is in place.

The arbitration clause in this case also violates R.C. §2711.23(G) because it is not separate from any other documents, consent or agreements. As this Court can see, the arbitration clause in this case is part of a larger Admissions Agreement. The arbitration clause begins on page 8 of the Admissions Agreement, and is the fifth section of the Agreement. **There is no question that the alleged arbitration clause is not its own separate document as R.C. §2711.23(G) requires.**

While Defendants may argue that there is a separate signature page relative to the arbitration clause, that signature page is also a part of the Admissions Agreement. In addition to being labeled page "14 of 14", which shows it is part of the larger Admissions Agreement, the Admissions Agreement explicitly states that it incorporates "all documents that the Resident and/or Representative signed or received during the admission process to Facility." Further, the signature page would be insufficient on its own, as it does not comply with the requirements set forth in R.C. §2711.23, and does not explain the other terms relative to arbitration, such as what the parties are agreeing to arbitrate.

R.C. §2711.23 is explicitly clear. In order for an arbitration agreement to be valid and enforceable, it "shall include and be subject to" a list of conditions. The arbitration clause in this case violates R.C. §2711.23 in at least five (5) different ways. R.C. §2711.23 is not optional. Its terms are mandatory. Therefore, the clause in this case is invalid and unenforceable as a matter of law.

2. This Court must determine whether the arbitration clause is unconscionable following further discovery.

Arbitration provisions may also be challenged in court under "such grounds as exist at law or in equity for the revocation of a contract". *Miller v. Household Realty Corp.*, 8th Dist. Cuyahoga No. 81968, 2003 Ohio 3359, ¶36. "Unconscionability is a ground for revocation of an arbitration agreement." *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 67, 2009 Ohio 2054, 908 N.E.2d 408 (2009), citing *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008 Ohio 938, 884 N.E.2d 12 (2008). "Unconscionability includes both 'an absence of meaningful choice on the part of the parties together with contract terms which are unreasonably favorable to the other party." *Id.*, quoting *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 383, 613 N.E.2d 183 (1993). "When a party attacks the arbitration provision by asserting that the provision itself is unconscionable, the enforceability of the arbitration provision is an issue for the Court." *Miller* at ¶38.

Plaintiff absolutely intends to argue that the alleged arbitration agreement is unenforceable, as it is both procedurally and substantively unconscionable. However, Plaintiff cannot do so without conducting discovery.

"Procedural unconscionability involves those factors bearing on the relative bargaining position of the contracting parties, e.g., 'age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible, whether there were alternative sources of supply for the goods in question.' " *Small v. HCF of Perrysburg*, 159 Ohio App.3d 66, 2004-Ohio-5757, 823 N.E.2d 19 (6th Dist. 2004), quoting *Johnson v. Mobil Oil Corp.*, 415 F.Supp. 264, 268 (E.D. Mich. 1976).

In *Manley v. Personacare of Ohio*, 2007-Ohio-343, ¶ 31 (11th Dist. 2007), the Eleventh District Court of Appeals held that an arbitration agreement, signed by a nursing home resident during admission, was procedurally unconscionable. Of note, the court relied upon the deposition of the admissions coordinator in making their determinations:

> Additionally, the deposition of Darlene Stincic, the admissions coordinator, demonstrates that although she read the agreement to decedent, she had difficulty explaining what arbitration is, how it works, and what rights he was relinquishing by signing the arbitration agreement. Under the circumstances, we conclude the trial court did not err in finding the agreement was procedurally unconscionable.

Id. at ¶40.

In order to fully develop Plaintiff's arguments regarding unconscionability, further discovery is necessary. Plaintiff must depose the individuals who participated in Janet Gamble's admission and determine what was explained to Janet Gamble and her family regarding arbitration, what documents were presented at that time, whether the fees associated with arbitration were explained, whether the difference between arbitration and litigation was properly explained, whether the benefits of litigation were explained, whether Janet Gamble or her family were encouraged to ask questions and whether those questions were answered correctly, etc.

3. This Court must determine who the parties are to the alleged arbitration agreement.

Another issue which this Court must determine is whether Plaintiff entered into an agreement to arbitrate with any or all of the Defendants. A plaintiff cannot be compelled to submit claims against a party "to arbitration if those parties are not parties to the contract containing the arbitration provision." *White v. Equity, Inc.*, 191 Ohio App. 3d 141, 2010 Ohio 4743, ¶ 19, 945 N.E.2d 536 (10th Dist). "Parties not privy to a contract may not benefit from an arbitration agreement

incorporated therein." *Hess v. Heer,* 10th Dist. Franklin No. 98AP-597, 1999 Ohio App. LEXIS 1419, *7 (March 30, 1999), citing *Kline v. Oakridge Builders, Inc.*, 102 Ohio App. 3d 63, 656 N.E.2d 992 (9th Dist. 1995). A trial court must "at a minimum" require proof that a defendant is privy to a contract containing an arbitration clause prior to issuing a stay. *Id.* at *7-8. Without such proof, a trial court has "insufficient basis to find that the matter was subject to the arbitration clause and should be stayed". *Id.*

In *Council of Smaller Enters. v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 1998-Ohio-172, 687 N.E.2d 1352 (1998), the Supreme Court of Ohio reaffirmed the first principle to be analyzed when considering the applicability of any arbitration clause or agreement. The Court stated that "'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.' * * * This axiom recognizes the fact that arbitrators derive their authority to resolve disputes only because the parties have agreed to submit such grievances to arbitration." *Council of Smaller Enters.*, 80 Ohio St.3d, at 665, quoting *AT&T Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648-49, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). The Court went on to hold that there is a **presumption against arbitrability** when "there is serious doubt that the party resisting arbitration has empowered the arbitrator to decide anything." *Id.* at 667-68, citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995).

In *Doe v. Vineyard Columbus*, 10th Dist. Franklin No. 13AP-599, 2014-Ohio-2617, ¶¶ 15- (emphasis added), the Tenth District Court of Appeals held:

> **The court must first determine whether the parties agreed to submit a matter to arbitration**, a question typically raising a question of law for the court to decide. Id. Arbitration is a matter of contract and a party cannot be required to submit a

> dispute to arbitration when it has not agreed to do so. *Academy of Med. of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657, ¶ 11. Thus, a court must **"'look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement.'** " *Columbus Steel Castings v. Real Time Staffing Servs.*, 10th Dist. No. 10AP-1127, 2011-Ohio-3708, ¶ 13, quoting *White v. Equity, Inc.*, 191 Ohio App.3d 141, 2010-Ohio-4743, (10th Dist.) ¶ 19, quoting *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002).

Therefore, whether Plaintiff can be compelled to submit all or part of her claims against any of the Defendants is a matter for this Court to decide.

As Plaintiff argued in her Motion to Compel discovery, which was filed on July 23, 2018, Defendants Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust are **not parties to the Admissions Agreement nor to the arbitration clause,** and therefore, Plaintiff cannot be compelled to submit her claims against these Defendants to arbitration.

The Admissions Agreement, which Defendants produced, states as follows:

Admission Agreement

I. PARTIES

This Agreement is made and entered into this 6 day of november 20 16 by and between, **Selfridge Leasing, LLC d/b/a Valley Oaks Care Center** ("Facility"), Janet Gamble ("Resident"), and/ or John Gamble ("Representative"), if applicable. By signing this Agreement, the Representative is certifying that he/she: (1) has legal access to and agrees to make payment from the Resident's income, assets or resources, including Social Security, pension or retirement funds, annuities, insurance, etc., for charges incurred by the Resident for services performed by Facility or on the Resident's behalf by any other person or company for which the Resident is responsible for payment through Facility billing; (2) has an interest or responsibility in the Resident's welfare; and (3) has identified himself or herself to Facility as the person responsible for exercising the rights of the Resident if and when the Resident is mentally and/or physically incapable of exercising such rights on his/her own behalf.

Defendants Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust **are not listed anywhere in the arbitration clause nor the Admissions Agreement.**

Further Defendants Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust **did not sign the arbitration clause nor the Admissions Agreement, nor did anyone sign on their behalf.**

The only signatories to the agreement were John Gamble, who signed on behalf of Janet Gamble, and someone who signed on behalf of Selfridge Leasing, LLC d/b/a Valley Oaks Care Center.

In addition, paragraph A on page 10 of the agreement states, "There are no actual or intended third party beneficiaries of this Agreement other than those persons or entities whose names are signed below." Therefore, Defendants cannot argue that they are actual or intended third party beneficiaries of the Admissions Agreement.

A contract must be strictly construed against the party who drafted it. *King v. Nationwide Ins. Co.*, 35 Ohio St. 3d 208, 211 (1988), citing *Faruque v. Provident Life & Acc. Ins. Co.* (1987), 31 Ohio St. 3d 34, 31 OBR 83, 508 N.E. 2d 949. One of more Defendants drafted the arbitration clause and Admissions Agreement. Defendants could have drafted the arbitration clause to say anything they chose. They chose to draft the Admissions Agreement in a way that they were not parties to it.

Defendants Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust are not signatories parties to the arbitration clause. They are not parties to the clause. Therefore there is no basis for these Defendants to seek to compel arbitration and there is

no basis to stay this case with respect to these Defendants.

V. Pursuant to the Ohio Supreme Court's decision in *Peters v. Columbus Steel Casting, Co.*, 115 Ohio St.3d 134, 2007 Ohio 4787, 873 N.E.2d 1258 the wrongful death claims of Janet Gamble's next-of-kin are not subject to the terminated Admissions Agreement.

Defendants argue that the wrongful death claims of Janet Gamble's next-of-kin are bound by the terminated arbitration clause. They argue that with one signature, John Gamble was able to bind Janet Gamble, himself, and all of Janet Gamble's next-of-kin to the arbitration agreement.

Defendants' argument is incredibly flawed, not only because it is premised upon the incorrect assumption that John Gamble signed the Admission Agreement in an individual capacity, rather than as Janet Gamble's representative, but because it is in direct contradiction with the Supreme Court of Ohio's decision in *Peters v. Columbus Steel Castings Co.*

In *Peters v. Columbus Steel Castings Co.*, 115 Ohio St.3d 134, 2007 Ohio 4787, 873 N.E.2d 1258 (2007), the Supreme Court of Ohio considered the issue of "whether the personal representative of a decedent's estate is required to arbitrate a wrongful-death claim when the decedent had agreed to arbitrate all claims against the alleged tortfeasor." *Peters*, 115 Ohio St.3d at 135. In considering this issue, the Court reviewed the separate nature of survival claims and wrongful death claims. The Court stated "when an individual is killed by the wrongful act of another, the personal representative of the decedent's estate may bring a survival action *for the decedent's own injuries* leading to his or her death as well as a wrongful-death action *for the injuries suffered by the beneficiaries of the decedent* as a result of the death." *Id.* at 137 (emphasis in original); *See also* R.C. §§2125.02 and 2305.21, which provide separate causes of action for wrongful death claims and survival claims respectively. As a result of the different nature of wrongful death claims from survival claims, the Court held that "a decedent cannot bind his or her beneficiaries to arbitrate their wrongful-death

claims. Because Peter's beneficiaries did not sign the plan nor any other dispute- resolution agreement, they cannot be forced into arbitration." *Id.* at 138, citing *Thompson v. Wing*, 70 Ohio St. 3d 176, 182-83, 637 N.E.2d 917 (1994).

The Supreme Court of Ohio relied upon contract principles, stating, "there is no dispute that 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.' " *Id.* at 136.

> However, Peters could not restrict his beneficiaries to arbitration of their wrongful-death claims, because he held no right to those claims; they accrued independently to his beneficiaries for the injuries they personally suffered as a result of the death. See Thompson, 70 Ohio St.3d at 182-183, 637 N.E.2d 917. Thus, a decedent cannot bind his or her beneficiaries to arbitrate their wrongful-death claims. Id. The beneficiaries can agree to arbitrate these claims themselves, but they are not required to do so. Because Peters's beneficiaries did not sign the plan or any other dispute-resolution agreement, they cannot be forced into arbitration.

Id. at 138. The Supreme Court of Ohio concluded: "[a]lthough we have long favored arbitration and encourage it as a cost-effective proceeding that permits parties to achieve permanent resolution of their disputes in an expedient manner, it may not be imposed on the unwilling." *Peters*, 115 Ohio St.3d at 138. The Court went on to state: "[r]equiring Peters's beneficiaries to arbitrate their wrongful-death claims without a signed arbitration agreement would be unconstitutional, inequitable, and in violation of nearly a century's worth of established precedent." *Id.* at 138-39.

The holding and reasoning in *Peters* applies to the wrongful death claims which have been brought by Plaintiff John Gamble, on behalf of Decedent Janet Gamble's next-of-kin. The wrongful death claims in this case are not subject to arbitration pursuant to *Peters*. None of Janet Gamble's next-of-kin were ever a party to the arbitration clause, so they are not bound by it.

Defendants argue that the Admissions Agreement was signed by a beneficiary to Janet

Gamble's estate, therefore the Supreme Court of Ohio's decision in *Peters* is not applicable.

Defendants argument is premised upon the ridiculous assertion that John Gamble was a party to the arbitration agreement. John Gamble was not a party to the terminated arbitration clause. John Gamble is not listed as a party to the Admissions Agreement. John Gamble signed the document under the title "REPRESENTATIVE". As Defendants stated in their Motion to Stay, John Gamble was Janet Gamble's guardian. Therefore, John Gamble signed the Admissions Agreement on Janet Gamble's behalf. John Gamble is not personally bound by the terminated Admissions Agreement and Defendants offer no support whatsoever for their statement that John Gamble is bound by the terminated Admissions Agreement.

Defendants want this Court to rule that the survivorship claims should be stayed because Janet Gamble is a party to the arbitration clause, John Gamble the clause as her Guardian. They then want the Court to ignore that argument and hole that John Gamble signed the clause in his personal capacity.

This exact issue was before the Third District Court of Appeals in *Loyer v. Signature Healthcare of Galion*. In *Loyer,* the decedent's husband, Calvin Loyer, signed an arbitration clause on his wife's behalf while she was being admitted to a nursing home. 3rd Dist. Crawford No. 3-16-09, 2016 Ohio 7736. The court of appeals ultimately held that the arbitration clause was not enforceable relative to the survivorship or the wrongful death claims. *Id.* at ¶19, 22. As for the wrongful death claims, the court stated:

> We conclude that the trial court did not abuse its discretion by denying defendants' motion to stay pending arbitration with respect to the wrongful-death claim because defendants failed to show that Calvin signed the arbitration agreement in his **individual capacity**.

> "'[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" McFarren v. Emeritus at Canton, 2013-Ohio-3900, ¶29, 997 N.E.2d 1254, quoting Council of Smaller Ents. v. Gates, McDonald & Co., 80 Ohio St.3d 661, 665, 1998 Ohio 172, 687 N.E.2d 1352 (1998). See also Peters, 115 Ohio St. 3d 134, 2007-Ohio-4787, at ¶ 8, 873 N.E.2d 1258. "While arbitration is encouraged as a form of dispute resolution, the policy favoring arbitration does not trump the constitutional right to seek redress in court." Peters at ¶ 8. **An arbitration agreement is not enforceable against a beneficiary who signs that agreement in a purported representative capacity**. See McFarren at ¶ 30; Peters at ¶ 8. **Only if that beneficiary signs that agreement in his or her individual capacity will the arbitration agreement be enforceable against that beneficiary**. See id.; Id.
>
> As we noted above, aside from defendants' representative, King, Calvin was the only person to sign the arbitration agreement. However, **Calvin did not sign the arbitration agreement in his individual capacity, but, as we addressed above, signed as the purported representative of Edeltrud**. Indeed, Calvin's printed name appears as "Calvin Loyer Spouse" above the line entitled "Resident's Authorized Representative/Name and Relationship" and Calvin's signature appears above the line entitled "RESIDENT REPRESENTATIVE SIGNATURE."

Id. at ¶20-22; See also *Younce v. Heartland of Centerville*, 2nd Dist. Montgomery No. 26794, 65 N.E.3d 192, 2016 Ohio 2965 (holding that the plaintiff's wrongful death claims were not subject to arbitration because although the decedent's spouse signed the arbitration agreement, "she did so in the capacity of Younce's 'legal representative,' and she did not do so in her individual capacity").

The Fifth District Court of Appeals has also decided the exact issue before this Court. In *McFarren v. Emeritus at Canton*, the court held "**arbitration agreements are not enforceable against non-signing beneficiaries to a wrongful death claim**." 5th Dist. Stark No. 2013CA00040, 2013 Ohio 3900, ¶30 (Emphasis added). The arbitration clause in *McFarren* was signed by the decedent's grandson and power of attorney. *Id.* at ¶6. The decedent later suffered a fall at the subject nursing home and died as a result. *Id.* at ¶7. The defendants sought to compel arbitration and the trial court granted the defendants' motion. *Id.* at ¶8. On appeal, the Fifth District held that

the trial court had erred in staying the wrongful death claims and the survivorship claims. *Id.* at ¶24, 30. The court relied heavily upon the Supreme Court of Ohio's language in *Peters*:

> Rather, the holding in Peters was based on common law principles governing contracts and found that **only signatories to an arbitration agreement are bound by its terms**. This holding comports with the general rule that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." Council of Smaller Ents. v. Gates, McDonald & Co., 80 Ohio St.3d 661, 665, 1998 Ohio 172, 687 N.E.2d 1352 (1998).

Id. at ¶29 (Emphasis added). The court specifically held that arbitration agreements are not enforceable against "non-signing" beneficiaries. *Id.* at ¶30. The court went on to elaborate that none of the beneficiaries were bound by the arbitration clause:

> Here, the only one of Rinker's beneficiaries to sign the arbitration agreement was Gerber. However, Gerber did not sign the arbitration agreement in his individual capacity, but signed as the purported "representative" of Rinker. Pursuant to Peters, the arbitration agreement in the instant case, as it pertains to the wrongful death claim, is not enforceable against Rinker's beneficiaries.

Id.

In the present case, John Gamble clearly singed under the line entitled "REPRESENTATIVE". John Gamble did not sign the agreement under "RESIDENT". Furthermore, Section IV of the Admissions Agreement, which pertains explicitly to arbitration, states "The Resident and/or Representative **on behalf of the Resident** agree that any dispute with the Facility relating to medical and other services rendered for any condition, ... shall be subject to binding arbitration." (Emphasis added). Therefore, the agreement explicitly states that the Representative, John Gamble, was entering into an agreement **"on behalf of the Resident"** and not in his individual capacity.

Defendants have offered absolutely no case law nor factual evidence to support their

argument that John Gamble signed the Admissions Agreement in his individual capacity. They offer no explanation for how John Gamble could be bound by an agreement which he did not sign in an individual capacity.

Defendants' argument that John Gamble is bound by the terminated arbitration clause must fail.

Not only is John Gamble not personally bound by the terminated arbitration clause, but he was not capable of binding Janet Gamble's other next-of-kin to the arbitration clause. John Gamble was not appointed as the Personal Representative of Janet Gamble's Estate until May 31, 2017, months after Janet Gamble's death. He did not have any authority to bind any of Janet Gamble's next-of-kin prior to him being appointed as Personal Representative. At the time he signed the now terminated arbitration clause, Janet Gamble was alive, no estate was open for her and John Gamble was not the Personal Representative of her Estate.

As the court stated in *McFarren v. Emeritus at Canton*, "arbitration agreements are not enforceable against non-signing beneficiaries". 5th Dist. Stark No. 2013CA00040, 2013 Ohio 3900, ¶30. This is consistent with the Supreme Court of Ohio's decision in *Peters*, that arbitration "may not be imposed on the unwilling" and to allow otherwise "would be unconstitutional, inequitable, and in violation of nearly a century's worth of established precedent." *Peters v. Columbus Steel Castings Co.*, 115 Ohio St.3d 134, 138-39, 2007 Ohio 4787, 873 N.E.2d 1258 (2007). While "[i]njured persons may release their own claims; they cannot, however, release claims that are not yet in existence and that accrue in favor of persons other than themselves." *Id.* at 138.

John Gamble had absolutely no authority whatsoever to bind any of Janet Gamble's next-of-kin to any agreement when he signed the now terminated arbitration clause. The fact that John

Gamble was Janet Gamble's guardian is irrelevant to her wrongful death claims. As her guardian, John Gamble did not have the authority to bind Janet Gamble's next of kin any more than Janet Gamble did. Janet Gamble could not have bound her next-of-kin to the arbitration clause because one cannot release claims that "accrue in favor of persons other than themselves." Nor could John Gamble. John Gamble held "no right to those claims" held by Janet Gamble's next-of-kin. Neither John Gamble, nor any of Janet Gamble's other children, were signatories to the terminated arbitration clause. There is no question that they are not subject to the terminated Admissions Agreement.

Defendants have offered no support whatsoever for their assertion that John Gamble, could somehow bind every one of Janet Gamble's next-of-kin. Their argument cannot be reconciled with the holding and language of *Peters*, and the subsequent cases which have relied upon it.

VI. Conclusion.

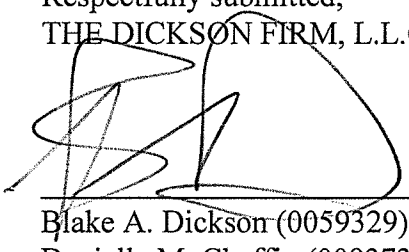
Plaintiff respectfully requests that this Honorable Court strike Defendants' Motion to Stay and Compel/Enforce Arbitration, as it was filed in violation of Civil Rule 11.

Plaintiff also respectfully requests that this Honorable Court order Defendants to pay Plaintiff reasonable attorney fees incurred in filing this Motion in the amount of $500.00.

If this Court does not strike Defendants' Motion to Stay, Plaintiff respectfully requests that this Honorable Court grant Plaintiff an extension of sixty (60) days to conduct discovery concerning the terminated arbitration clause and Admissions Agreement, prior to filing his Brief in Opposition to Defendants' Motion to Stay.

Plaintiff also requests that this Court order Defendants to cooperate with discovery, as Defendants have refused to do so up to this point.

Respectfully submitted,
THE DICKSON FIRM, L.L.C.

By: 

Blake A. Dickson (0059329)
Danielle M. Chaffin (0093730)
Tristan R. Serri (0096935)
Enterprise Place, Suite 420
3401 Enterprise Parkway
Beachwood, Ohio 44122
Telephone (216) 595-6500
Facsimile (216) 595-6501
E-Mail BlakeDickson@TheDicksonFirm.com
E-Mail DChaffin@TheDicksonFirm.com
E-Mail TSerri@TheDicksonFirm.com

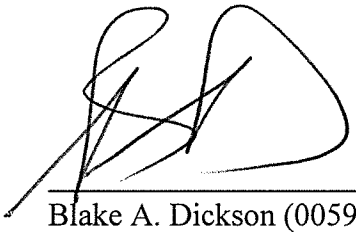
Attorneys for Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble, (deceased).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, was sent via electronic mail, this **31st day of July, 2018**, to the following:

Thomas P. Mannion, Esq.
Ryan K. Rubin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tom.Mannion@LewisBrisbois.com
Ryan.Rubin@LewisBrisbois.com

Attorneys for Defendants Valley Oaks Care Center, Selfridge Leasing, LLC, Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust.

By: 

Blake A. Dickson (0059329)
Danielle M. Chaffin (0093730)
Tristan R. Serri (0096935)

Attorneys for Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased).

Admission Agreement

I. PARTIES

This Agreement is made and entered into this 6 day of november 20 19 by and between, **Selfridge Leasing, LLC d/b/a Valley Oaks Care Center** ("Facility"), Janet Gamble ("Resident"), and/ or John Gamble ("Representative"), if applicable. By signing this Agreement, the Representative is certifying that he/she: (1) has legal access to and agrees to make payment from the Resident's income, assets or resources, including Social Security, pension or retirement funds, annuities, insurance, etc., for charges incurred by the Resident for services performed by Facility or on the Resident's behalf by any other person or company for which the Resident is responsible for payment through Facility billing; (2) has an interest or responsibility in the Resident's welfare; and (3) has identified himself or herself to Facility as the person responsible for exercising the rights of the Resident if and when the Resident is mentally and/or physically incapable of exercising such rights on his/her own behalf.

II. SERVICES

A. Basic Services. Facility will provide room, board, laundry, housekeeping, social activities and general nursing services as required by law (collectively, the "Basic Services") to the Resident. Basic Services do not include special duty nursing care, special equipment, therapy, medications, guest meals, laboratory and x-ray services, medical supplies, personal comfort items, beauty/ barber shop services, and miscellaneous personal services.

B. Additional Services. In addition to the basic services, Facility will provide additional, non-routine services and supplies, such as pharmacy and oxygen ("Additional Services") in accordance with the orders of the Resident's attending physician and/ or upon the Residents request or consent.

C. Services of Other Providers. The Resident may receive services from outside providers in Facility on condition that the outside provider is properly licensed and certified under the law, complies with all applicable government rules and Facility policies, and enters into an agreement to provide services with Facility, if applicable.

D. Purchase of Medications from an Outside Provider. It is understood that the Resident has a free choice of a provider pharmacy as long as such pharmacy adheres to the applicable State specification and regulations for long-term care. The pharmacy of choice needs to provide twenty-four (24) hour emergency service. It is the responsibility of the pharmacy and/ or the Representative to have the medications delivered to the Facility when the Facility contracted pharmacy is not utilized. The Resident understands that if a del

EXHIBIT
tabbies
A

occurs in ordering medications from _____ (insert name of outside pharmacy desired), the Facility reserves the right to order from the Facility contracted pharmacy as an emergency measure. The Resident and/ or Representative understand they will be charged for any drugs or medication at the Facility's contracted pharmacy rates.

III. FINANCIAL OBLIGATIONS

A. Payment Source. Resident and Representative agree that charges incurred by the Resident for his/her stay at Facility will be paid from the following source (please initial appropriate payment source):

1. _____ Private Pay

2. _____ Private Pay until approved by Medicaid

3. _____ Medicaid

4. ✓ Medicare, if eligible, and then followed by:
   a) _____ Private Pay
   b) _____ Medicaid

5. _____ Managed Care (please provide name of plan: _____), if eligible, and followed by:
   a) _____ Private Pay
   b) _____ Medicaid

If the Resident or Representative requests a change in payor source, Facility may request a copy of the Resident's current and three (3) prior years' Federal income tax returns for review.

B. Basic Fee. Resident and/or Representative shall pay in advance for all Basic Services and supplies provided by Facility, such as room, board, nursing, laundry, housekeeping, social and activity services, as set forth in the attached rate schedule (Schedule 1).

C. Services Not Covered by the Basic Fee. Resident and/or Representative agree to pay all charges incurred for Resident's care that are not covered by the Basic Fee upon receipt of an invoice, as set forth in the attached Schedule 1.

D. Changes to Fees. Facility may change its fees subject to thirty (30) days' written notice to Resident and/or Representative.

E. Services of Other Providers. The Resident may receive services from outside providers while residing at Facility so long as the outside provider is properly licensed and certified under the law, complies with all applicable

government rules and Facility's policies, and enters into an agreement to provide services with Facility, if applicable. The Resident and/or Representative agree to be responsible for charges incurred by outside providers.

F. **Assignment of Benefits.** The Resident and/or Representative hereby direct all payments made on Resident's behalf by third party payors, including payments from Medicare and Medicaid, to be made directly to Facility for any services furnished by Facility. If Resident is or will be a Medicaid recipient, then in addition, Resident and/ or Representative hereby direct all resource payments made to the Resident or on Resident's behalf, including payments from the Social Security Administration and pension benefits, to be made directly to Facility. The Resident and/or Representative agree to execute any forms that are necessary to implement this assignment of benefits. As of March 1, 2013, all federal benefit payments, including social security, supplemental security income, railroad retirement, civil (non-military) retirement, or VA (compensation or pension only), must be made electronically via direct deposit to a bank or credit union account or a Resident Fund Account.

G. **Resident Fund Account.** The Resident and/ or Representative have the option of authorizing Facility to safeguard and administer a Resident Fund Account on behalf of the Resident by signing the Resident Fund Authorization Agreement. Deposits and withdrawals from such account may be made during regular business hours. A quarterly account statement will be provided to the Resident and/ or Representative. If the Resident transfers to another facility, discharges, or passes away, the account will be closed and a final accounting with any remaining funds will be given to the Resident and/ or Representative. If the Resident is covered by Medicaid and they pass away, any money in the account must be returned to the state unless it is utilized to pay funeral expenses. Any federal benefit payments must be made electronically via direct deposit.

H. **Obligation to Keep Facility Informed.** The Resident and/or Representative will inform Facility as soon as possible if: (1) the Resident has decided to transfer any property, money or stock to another person or entity; (2) a decision has been made to have the Resident change insurance companies or managed care programs; or (3) the Resident inherits any property or money, or receives property or money as a gift. The Resident and/or Representative agree to provide Facility with an accurate financial statement of the Resident's income and resources upon request by Facility.

I. **Financial Obligation of Representative.** Except as specifically provided otherwise in this Agreement, or as agreed to by Personal Representative, all financial obligations in this Agreement are the Residents. By signing this Agreement, Representative has represented to the Facility that they have legal access to Resident's income, assets and resources, including but not limited to social security, pension or retirement funds, annuities, insurance, bank accounts, and mutual funds.

J. **No Requirement of Third Guarantee.** Nothing in this Agreement shall be construed to require that the Representative sign this Agreement as a condition of admission or that the Representative is in any way personally liable for payment for services rendered by Facility to the Resident; provided, however, that if the Resident does not have the capacity to understand this Agreement (as determined by the Medical Director or the Resident's attending physician at the time of admission), then the Representative must execute this Agreement and would be liable for services rendered to the Resident by Facility to the extent of the Resident's income, assets or resources to which the Representative has legal access. Representative shall be obligated to pay to Facility from the Representative's own resources, as damages, an amount equivalent to : (1) any payments or funds of the Resident that are available to pay for the Resident's care, which the Representative withholds, misappropriates for personal use, or otherwise does not turn over to Facility for payment of the Resident's financial obligations under this Agreement; or (2) unpaid charges due to Facility as a result of the Representative's failure to cooperate in the Medicaid application process or redetermination process described below.

K. **Public Assistance.** Facility currently participates in the Medicare and Medicaid programs.

1. **Medicaid Benefits:** The Resident and/or Representative are obligated to notify Facility at the point that the Resident's assets and resources total $ 1500.00 . The Resident and/or Representative are obligated to apply for Medicaid benefits within sixty (60) days of the point in time when the Resident's resources will no longer be sufficient to pay for all of Facility's charges.

   a. The Resident and/or Representative are obligated to make full and complete disclosure regarding all financial resources and income during the Medicaid application process, and to cooperate fully in providing all requested information.

   b. In the event that the Resident's eligibility for Medicaid benefits is denied, interrupted or terminated due to the failure of the Resident and/or the Representative to cooperate in the application or determination process, the Resident shall pay all applicable charges for services and supplies rendered. The Resident and/or Representative hereby grant to Facility an irrevocable Power of Attorney, coupled with an interest, to take any and all necessary action on the Resident's behalf with the applicable government agency should the Resident and/or Representative fail to timely submit the necessary information to the agency in order to make a determination of Medicaid eligibility.

c. The Resident and/or Representative understand that merely applying for financial assistance from Medicaid does not mean that the Resident will receive Medicaid.

d. While the Resident's application is being reviewed for Medicaid eligibility, the Resident and/or Representative agree to assign or continue to pay the resource amount that the Resident will be billed from Facility (from the Resident's resources).

e. The Resident and/or Representative understand the following with regard to the Medicaid application process: (i) when applying for Medicaid, the government will examine all transfers of property and resources that the Resident has made for the previous three (3) years, and all trusts created for the past five (5) years, to determine if any improper transfers were made; (ii) the government presumes that any transfer of property or resources in the look-back period is improper if the transfer made the Resident Medicaid-eligible, divested the Resident of proceeds that would be available if the property were sold, or if the Resident transfers income-producing property or resources; and (iii) if the Resident makes an improper transfer, then the Resident will not be eligible to receive Medicaid assistance for a designated period of time. Examples of improper transfers could include: the transfer of the Resident's house, car and other personal property to certain persons, the transfer of the Resident's bank accounts, stocks or bonds, the transfer of real estate, and the creation of certain trusts.

f. The Resident and/or Representative recognize that if the Resident is not approved for the Medicaid program, he/she is financially responsible for his/her care and any other services, supplies, items or goods provided to the Resident by Facility at any time, including for services provided while the Medicaid application was pending.

g. The Resident and/or Representative understand that if the Resident is approved for Medicaid, then the law requires that all of the Resident's income, assets, and resources, including but not limited to, his/her Social Security check, his/her pension or retirement fund, his/her annuities or insurance, revenues from the sale of his/her house, must be used to pay for the Resident's care at Facility. Some of the Resident's resources may be exempted if he/she has a spouse who still lives at home.

2. **Medicare Part A and Medicare Part B Benefits.** To the extent that the Resident is a beneficiary under either Medicare Part A or Medicare Part B insurance and the nursing services or ancillary services or supplies ordered by a physician are covered by such insurance, Facility or other provider will bill the charges for covered services or supplies to the Medicare program. The Resident is responsible for and shall pay any coinsurance or deductible amounts under Medicare Part A or Part B insurance. Facility shall accept payment from the Medicare intermediary or carrier as payment in full only for those services deemed to be covered in full under the Medicare Part A or Part B program. Services not covered by Medicare are identified in the attached rate schedule (Schedule 2).

Once approved for Medicare or Medicaid, the Resident is responsible for maintaining continued eligibility through compliance with all applicable State and Federal rules, including prompt submission of information requested by the government or Facility.

L. **Private Pay Residents.** Resident and/ or Representative shall pay in full and in advance each month, a sum equal to one month of Basic Rate charges as set forth in the attached Rate Schedule (Schedule 1). In addition, Resident and/ or Representative shall pay in full all charges for Additional Services incurred in the preceding month for which no advance payment was received by the Facility, as well as any applicable co-payments for therapy and other services incurred during the preceding month that are billed under Part B of the Medicare program, upon receipt of an invoice from Facility. If the Resident is covered by a health insurance plan, health maintenance organization or other third party payer, including without limitation applicable co-insurance and deductible amounts, and other amounts not timely paid by the third party payer, except and to the extent prohibited by law. In the event insurance payment is not made directly to the Facility, Resident and/ or Representative is responsible to ensure full payment of any and all applicable coinsurance is made to the Facility.

M. **Managed Care Residents.** Resident and/ or Representative are responsible to pay all services and supplies that the Resident receives. If arrangements are made by Resident and/ or Representative to have certain of those services and supplies covered by a health insurance plan, health maintenance organization or other third party payer (other than Medicare or Medicaid), Resident and/ or Representative shall pay all costs not covered by such third party payer, including, without limitation, all applicable co-insurance and deductible amounts, and other amounts not timely paid by the third party payer in accordance with this Agreement, except and to the extent not prohibited by law.

N. **Late Charges and Cost of Collection.** Any charge not paid by Resident and/or Representative within fifteen (15) days of its due date shall be subject to a late charge equal to one and one-half percent (1-1/2%) of the amount due per month, payable on demand, to cover Facility's expenses in connection with administering and collecting same, and such payment shall not constitute a waiver of Facility's other rights and remedies under this Agreement. In the event that Facility initiates any legal action or proceedings to collect payments due from the Resident under this Agreement, the Resident and/or Representative shall be responsible to pay all attorney's fees and costs incurred by Facility in pursuing the enforcement of the Resident's financial obligations under this Agreement.

O. **Refund.** If this Agreement is terminated, Facility will refund on a pro-rata basis to the Resident that portion of the pre-paid fee that is not owed for services rendered. Resident personal fund balances held by Facility will be refunded in accordance with State law.

P. **Denials of Coverage and Non-Covered Charges.** The Resident and/or Representative remain responsible for charges for services that are not covered by third party payors, including any governmental program, retroactive to the date of the initial delivery of services.

Q. **Disputed Debts.** Resident and/or Representative are responsible for payment in full of all amounts due and owing to Facility. However, if the Resident or Representative disputes a debt, then all communications, including an instrument tendered as full satisfaction of a debt, are to be sent directly to the Administrator of Facility.

R. **Indemnification.** The Resident and/or Representative is responsible to pay for any damages or injuries caused by the Resident to Facility's property, residents, staff or other persons, and shall indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from the Resident's actions or omissions.

S. **Medications.** Resident shall be charged for the costs related to his/her refusal to use generic medications, supplies and/or treatments as selected by Facility.

IV. TERMINATION

A. **Term.** This Agreement shall continue until it is terminated as specified in Sections IV.B. or IV.C. of this Agreement

B. **Termination by Facility.** This Agreement may be terminated by Facility upon any of the following events, subject to State and Federal transfer and discharge provisions: (1) the Resident's/Representative's failure to make payment in accordance with Article III of this Agreement, subject to Section IV.E.

below; (2) discharge from Facility; (3) the Resident's continued stay jeopardizes the health, safety or welfare of the Resident or other residents of Facility; or (4) Facility's license or certification has been revoked, renewal denied, or Facility is voluntarily closed.

C. **Termination by Resident.** This Agreement may be terminated by the Resident and/or by Representative at any time; however, Facility requests that the Resident and/or Representative provide it with at least thirty (30) days' advance notice so that it can conduct proper discharge planning. This Agreement shall automatically terminate upon the death of the Resident.

D. **Payment of Accrued Charges.** All accrued charges for which the Resident is personally responsible must be paid in full upon invoice.

E. **Inability to Pay.** This Agreement shall not be terminated solely by reason of the Resident's financial inability to pay for services. Facility will provide services for the life of the Resident without regard to the Resident's ability to pay or to continue payment for the full cost of services, **PROVIDED, HOWEVER**, nothing contained herein shall be interpreted or applied to preclude or limit Facility from exercising its right to terminate the Agreement if:

1) the Resident has financial need and refuses to apply for any and all applicable financial assistance; and/or

2) the Resident refuses to pay for services for which the Resident has contracted, even though the Resident has sufficient resources to do so.

IN ADDITION, Resident and/or Representative, on behalf of the Resident, agree not to willfully divest or transfer the Resident's assets, or to in any way impair the Resident's ability to meet his/her financial obligations hereunder. Further, should it be determined that Resident is financially unable to pay for services, then, subject to any claim by a governmental agency, the Resident and Representative, on behalf of the Resident, agree to convey and transfer to Facility any and all property thereafter inherited by the Resident, in an amount equal to the total subsidy and/or unpaid balance received by the Resident from Facility.

V. RESOLUTION OF DISPUTES/ARBITRATION

A. **Nonpayment of Charges.** Any controversy, dispute, disagreement or claim of any kind arising out of, or related to this Agreement, or the breach thereof, regarding nonpayment by Resident or Representative for payments due to the Facility shall be settled exclusively by binding arbitration as set forth in Section V.D. below.

B. **Resident's Rights.** Any controversy, dispute, disagreement or claim of any kind arising between the parties after the execution of this

Agreement in which Resident or a person on his/her behalf alleges a violation of any right granted Resident in a State or Federal statute shall be settled exclusively by binding arbitration as set forth in Section V.D. below.

C. **All Other Disputes.** Any controversy, dispute, disagreement or claim of any kind arising out of, or related to this Agreement, or the breach thereof, shall be settled exclusively by binding arbitration as set forth in Section IV.D. below. This arbitration clause is meant to apply to all controversies, disputes, disagreements or claims including but not limited to, all breach of contract claims, all negligence and malpractice claims, all tort claims, and all allegations of fraud in the inducement or requests for rescission of the contract.

D. **Conduct of Arbitration.** The Resident's agreement to arbitrate disputes is not a condition of admission. The Resident and/or Representative on behalf of the Resident agree that any dispute with the Facility relating to medical and other services rendered for any condition, including any services rendered prior to the date this agreement was signed, and any dispute including but not limited to diagnosis, treatment, or care of the Resident, shall be subject to binding arbitration. Should the Resident and/or Representative acting on behalf of the Resident agree to binding arbitration of disputes by signing this Agreement, then Facility, in reliance upon this agreement to arbitrate disputes, will submit to binding arbitration as follows: Any arbitration conducted pursuant to this Article V shall be conducted at the Facility in accordance with the National Arbitration Forum ("NAF") Code of Procedure for Arbitration or other such nationally recognized forum and/or procedure for arbitration. The award rendered by the arbitrator(s) shall be final, and judgment on the award shall be entered as a judgment in accordance with applicable law in any court having jurisdiction thereof. The parties understand that arbitration proceedings are not free and that any person requesting arbitration will be required to pay a filing fee to NAF or any other nationally recognized arbitration organization, and any other expenses associated with arbitration. The issue of whether a party's claims are subject to arbitration under this Agreement shall be decided through the NAF or any other nationally recognized arbitration process. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. If you would like information regarding NAF's arbitration process, you may contact NAF at (651) 631-1105 or (800) 474-2371, or at P.O. Box 50191, Minneapolis, MN 55405.

The Resident and/or Representative on behalf of the Resident shall have 60 days from the signing of this Agreement, and the attached Arbitration Clause, to revoke their decision to settle disputes through binding arbitration as outlined in the above paragraphs.

V. MISCELLANEOUS

A. Limitations of Facility. Facility shall not be responsible for the care and well-being of the Resident when the Resident leaves Facility's premises. Procedures established by Facility for signing in and out of the premises shall be followed by the Resident, his/her relatives, visitors, and friends. Facility shall exercise reasonable care toward the Resident as his/her known condition requires. However, the parties agree that Facility is not an insurer of the Resident's welfare, safety or his property. The parties agree that Resident will exercise due care to protect himself/herself from harm and theft. There are no actual or intended third party beneficiaries of this Agreement other than those persons or entities whose names are signed below.

B. Resident's Records. Resident and/or Representative authorize: (1) Facility to make the Resident's personal and medical records, and copies thereof, prepared and maintained by Facility, available to Facility's employees, agents, attorneys and consultants; (2) the release of the records prepared and maintained by Facility to any other health care provider from whom the Resident receives treatment, to third party payors of health services, and to any managed care organization in which the Resident may be enrolled; (3) the release to Facility of records prepared or maintained by any third party payor of health care services pertaining to health care services rendered to the Resident by Facility; and (4) the release to Facility of any records prepared or maintained by any health care provider from which the Resident has received services. Resident's records shall otherwise remain strictly confidential and shall only be released in accordance with the law. Resident and/or Representative releases Facility from any liability for damages or other loss as the result of disclosure of Resident's records in accordance with this provision.

C. Waiver. The failure of Facility in any one or more instances to insist upon strict compliance by the Resident and/or Representative with, or its waiver of any breach of, any of the terms or provisions of this Agreement, shall not be construed to be a waiver by Facility of its rights to insist upon strict compliance by the Resident and/or Representative with all of the terms of this Agreement.

D. Partial Illegality. This Agreement shall be construed in accordance with the laws of the State of Ohio, and the county in which Facility is located shall be the sole and exclusive venue for any dispute between the parties, including, but not limited to, litigation, special proceedings, or other proceedings between the parties that may be brought, arise out of, or in connection with or by reason of this Agreement. If any portion of this Agreement is determined to be illegal or not in conformity with applicable laws and regulations, such part shall be deemed to be modified so as to be in accordance with such laws and regulations, and the validity of the balance of this Agreement shall not be affected.

E. **Amendments.** Facility is not liable for, nor bound in any manner by, any statements, representations or promises made by any person representing or purporting to represent Facility, unless such statements, representations or promises are set forth in writing. Modification of this Agreement may be made only by agreement of both/all the parties in writing; provided, however, Facility reserves the right to amend the Agreement at any time in order to conform to changes in federal, state or local laws or regulations.

F. **Representations of Resident and/or Representative.** The Resident and/or Representative represent(s) that the information contained on the application forms, financial statements and health history are true to the best of his/her/their knowledge and belief. Resident and/or Representative understand that Facility has relied upon such information and agree that if any of the facts were misrepresented or any important information was left out, then Facility may be forced to discharge the Resident.

G. **Incorporation of Other Documents.** The following documents are hereby incorporated into this Agreement by reference: All attached rate schedules and all of Facility's policies governing the Resident's responsibilities, as may be amended from time to time by Facility in its sole discretion; all application forms, financial statements, and medical records provided to Facility as part of the Resident's application for admission to Facility; the Admission Authorizations; and all documents that the Resident and/or Representative signed or received during the admission process to Facility.

H. **Personal Belongings.** Facility is not responsible for the loss of any personal property owned by Resident (including, but not limited to, hearing aids, eye glasses and dentures), relatives, visitors or friends, unless delivered to the custody of administration for safekeeping and acknowledged by receipt. Facility discourages any items of personal or monetary value being brought into Facility. Upon discharge from Facility, Resident and/or Representative should gather the Resident's personal belongings quickly. It is not Facility's responsibility to ensure the storage or safekeeping of Resident's personal items.

I. **Nondiscrimination.** Facility offers its services to persons whose needs cab be met by Facility without regard to race, creed, sex, age, religion, national origin, handicap or disability.

J. **No Assignment.** No assignment of this Agreement or the rights and obligation hereunder shall be valid without the specific written consent of both parties hereto, provided, however, that this Agreement may be assigned by Facility to any successor entity operating it, and such assignment shall forever release Facility hereunder.

K. **Bed Hold and Leave of Absence.**

1. If a Resident's primary pay source is **PRIVATE PAY**, the Facility will automatically hold a Resident's bed at the routine per diem charge pending the Resident's stay in a hospital or any other place outside the Facility, unless the Facility is specifically instructed in writing not to hold the bed prior to the Resident leaving the Facility, by the Resident and/ or Representative, regardless of whether the Resident actually returns to the Facility. The Resident and/ or Representative shall be required to pay all charges incurred if the Facility does not receive the required notice prior to the Resident leaving the Facility. It is the right of each Resident who demonstrates mental and physical capabilities (determined by the Medical Director or the Resident's attending physician at the time of admission) to participate in the Facility's leave of absence program, at any time that is consistent with mature adult judgment and accompanied by a responsible adult.

2. If Resident's primary pay source is **MEDICAID**, and if the state in which the Facility is located does not provide for paid hold/ leave days, the Facility will hold a bed for the Resident up to 30days. If the Resident's absence from the Facility exceeds the days provided during the calendar year or the state does not provide for paid hold/ leave days, the Facility shall not hold the bed and the Resident will be discharged from the Facility effective the first day following the last paid Medicaid hold/ leave or in-house day. Where a Resident's paid leave days for a calendar year have been exhausted, the Resident will be entitled to re-admission to the Facility, if desired, upon the first availability of a bed in a semi-private room, if the Resident: (a) requires the services provided by the Facility; (b) is eligible for Medicaid nursing facility services; and (c) meets all State required Level of Care and Pre-Admission Screen requirements.

3. If Resident's primary source is **MEDICARE** only, the Facility shall not hold the bed unless payment arrangements have been made with the Facility's Administrator prior to the Resident leaving the Facility. Medicare does not pay for Bed Holds, however, Resident may pay privately for a Bed Hold.

THE PARTIES AGREE THAT THEY HAVE HAD AMPLE TIME TO CONSIDER THE ALTERNATIVES FOR REQUIRED CARE AND ARE AWARE THAT THERE ARE OTHER SKILLED NURSING FACILITIES OR COMPARABLE PROVIDERS OF THE CARE REQUIRED WITHIN A REASONABLE DISTANCE THAT HAVE THE CAPACITY TO PROVIDE THE REQUIRED SERVICES.

UPON DUE CONSIDERATION OF THE TERMS OF THIS AGREEMENT, THE PARTIES DO FOR THEMSELVES, THEIR HEIRS, ADMINISTRATORS AND EXECUTORS, AGREE TO THE TERMS OF THIS AGREEMENT IN CONSIDERATION OF FACILITY 'S ACCEPTANCE OF AND RENDERING SERVICES TO THE RESIDENT.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have signed this Agreement as of the date first above written.

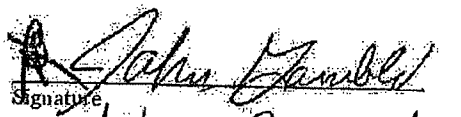
RESIDENT:

Signature

Janet Gamble

Print Name

REPRESENTATIVE:

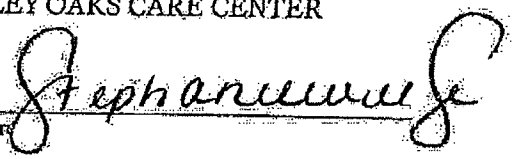


Signature

John Gamble

Print Name

SELFRIDGE LEASING, LLC d/b/a
VALLEY OAKS CARE CENTER



Signature

ARBITRATION CLAUSE

THE PERSON(S) SIGNING BELOW HAVE READ ALL OF THE TERMS OF THIS AGREEMENT, INCLUDING CHAPTER IV, RESOLUTION OF DISPUTES/ARBITRATION, AND HAVE HAD AN OPPORTUNITY TO ASK QUESTIONS REGARDING THOSE TERMS. THE PARTIES UNDERSTAND THAT THIS CLAUSE IS NOT A CONDITION OF ADMISSION, AND THAT BY SIGNING THIS AGREEMENT THEY ARE VOLUNTARILY AGREEING TO WAIVE THEIR RIGHT TO SUE IN A COURT OF LAW AND ARE AGREEING TO ARBITRATE DISPUTES.

THE RESIDENT AND/OR REPRESENTATIVE ON BEHALF OF THE RESIDENT SHALL HAVE 60 DAYS FROM THE SIGNING OF THE AGREEMENT, AND THE ARBITRATION CLAUSE, TO REVOKE THEIR DECISION TO SETTLE DISPUTES THROUGH BINDING ARBITRATION AS OUTLINED IN THE ABOVE PARAGRAPHS.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have signed this Agreement as of the date first above written.

RESIDENT:

Signature: Janet Gamble

Janet Gamble.
Print Name

REPRESENTATIVE:

Signature: John Gamble

John Gamble
Print Name

SELFRIDGE LEASING, LLC d/b/a
VALLEY OAKS CARE CENTER

Signature: Stephanie Lange

EXHIBIT
tabbies
C

FILED
IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
2018 APR -9 PM 1:27
MARGARET E. KELLY
CLERK OF COURTS

JENNIFER DONALDSON, REPRESENTATIVE OF THE ESTATE OF HOWARD DONALDSON	)	CASE NO. 17CV001448
Plaintiff(s)	)	JUDGE EUGENE A. LUCCI
vs.	)	ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME AND PLAINTIFF'S MOTION TO COMPEL
KINDRED TRANSITIONAL CARE & REHAB LAKEMED, et al.	)	
Defendant(s)	)	

The court has considered the plaintiff's motion for extension of time to respond to defendants' motion to stay proceedings, filed February 12, 2018, the defendants' brief in opposition, filed February 28, 2018, and the plaintiff's reply brief and motion to compel, filed March 5, 2018.

The motion for an extension of time is well-taken and is hereby granted. The plaintiff is granted leave to respond to the defendants' motion to stay through June 4, 2018. This extension shall not be grounds for rescheduling either the final pretrial/settlement conference set for January 11, 2019 or the trial, set for February 11, 2019. No further leaves shall be considered.

The plaintiff's motion to compel is also well-taken and is hereby granted. The defendants are hereby ordered to fully comply with the discovery requested in the plaintiff's motion to compel forthwith.

IT IS SO ORDERED.

EUGENE A. LUCCI, JUDGE

c: Blake A. Dickson, Esq., Attorney for Plaintiff
Paul W. McCartney, Esq., Attorney for Defendants

EXHIBIT
tabbies
B

The Dickson Firm

July 10, 2018

VIA ELECTRONIC MAIL TOM. MANNION@LEWISBRISBOIS.COM AND RYAN.RUBIN@LEWISBRISBOIS.COM AND ORDINARY U.S. MAIL

Thomas P. Mannion, Esq.
Ryan K. Rubin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114

RE: *David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased) v. Valley Oaks Care Center, et al.*
Columbiana County Court of Common Pleas, Case No. 2018 CV 0100
The Honorable Judge Scott A. Washam

Counselors:

As you are aware, Defendants' Answers and Responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents were due on **May 23, 2018, seven (7) weeks ago**.

To date, Defendants have only provided their Responses to Plaintiff's First Request for Admissions. Defendants have not provided any answers to any of Plaintiff's First Set of Interrogatories, nor any responses to any of Plaintiff's First Request for Production of Documents.

On May 23, 2018, Mr. Rubin stated that a "more extensive document production" is under review and "should be forwarded this week". However, no such documents were ever produced.

Defendants filed a Motion to Stay Discovery pending the production of Plaintiff's Affidavits of Merit. The filing of this motion was completely inconsistent with our agreement that you not seek any additional extensions of time to respond to our written discovery requests. The Court denied that Motion on June 20, 2018. Therefore, discovery has never been stayed in this case and Defendants' answers and responses to Plaintiff's written discovery are over one month overdue.

In light of your recent Motion to Stay Proceedings and Compel/Enforce Arbitration, please immediately provide me with verified answers to the following Interrogatories, on behalf of all Defendants:

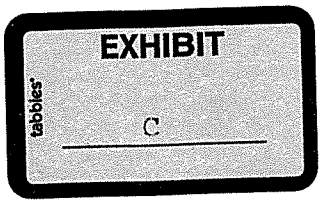
- Interrogatories Nos. 8, 9, 10 and 26, as they seek to identify every individual who participated in the operation and management of the subject nursing home, which is necessary to identify all proper Defendants in this case; and

Enterprise Place
Suite 420
3401 Enterprise Parkway
Beachwood, Ohio
44122-7340

Telephone (216) 595-6500
1 (800) OHIO LAW
1 (800) 644-6529
Facsimile (216) 595-6501

www.TheDicksonFirm.com

Stop Elder Abuse



- Interrogatory No. 38, as it seeks to identify every individual involved in the admissions process.

Please immediately provide me with verified responses to the following Request for Production of Documents, on behalf of all Defendants:

- Request for Production of Documents No.1, as it requests complete and accurate copies of all records relative to Janet Gamble which are in Defendants' possession, or to which Defendants have access to, including Janet Gamble's entire admissions file;

- Request for Production of Documents Nos. 10, 40 and 62, as they request complete and accurate copies of documents which were provided to Janet Gamble and/or her family while she was a resident of the subject facility; and

- Request for Production of Documents No. 12, as it seeks to identify every individual who participated in the operation and management of the subject nursing home, which is necessary to identify all proper Defendants in this case.

Please immediately provide me with the names and addresses of all individuals involved in the admission of Janet Gamble to the Valley Oaks Care Center, including the individual whose signature appears on the admissions agreement.

Please find enclosed a Revised Notice to Take the Deposition of Defendants Valley Oakes Care Center, Selfridge Leasing, L.L.C., Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust, Pursuant to Civil Rule 30(B)(5), which concerns the alleged arbitration clause. This Deposition is scheduled to take place on **Tuesday, July 24, 2018, starting at 10:00 a.m., at my office.** I would also like to depose anyone involved in the admission process on that date. Please identify them promptly. I would be happy to reschedule this deposition if you or the witnesses are not available on this date provided you contact me within seven (7) days of receipt of this letter. I would also be happy to choose an alternate location.

Thank you for your attention.

Very truly yours,

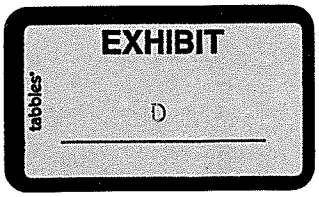
Blake A. Dickson

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased)	)	Case No. 2018 CV 0100
	)	Judge Scott A. Washam
Plaintiff	)	Plaintiff's Notice to Take the Deposition of Defendants Valley Oaks Care Center, Selfridge Leasing, LLC, Eli M. Gunzburg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust Pursuant to Ohio Civil Rule 30(B)(5).
vs.	)	
Valley Oaks Care Center, et al.	)	
Defendants.	)	

Please note that Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased), by and through his attorneys, Blake A. Dickson, Danielle M. Chaffin and Tristan R. Serri of The Dickson Firm, L.L.C., will take the deposition of Defendants Valley Oaks Care Center, Selfridge Leasing, LLC, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust, pursuant to Ohio Civil Rule 30(B)(5), at the offices of The Dickson Firm, L.L.C., located at 3401 Enterprise Parkway, Suite 420, Beachwood, Ohio 44122 on **Tuesday, July 24, 2018, starting at 10:00 a.m.** Such deposition will continue from day to day until completed. The deposition will be recorded both by stenographic means and will be videotaped, and the video and the audio will be recorded, digitally, on DVD, and otherwise.

Pursuant to Ohio Civil Rule 30(B)(5), Defendants Valley Oaks Care Center, Selfridge Leasing, LLC, Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust (hereafter collectively referred to as "Defendants"), shall **each designate a person or persons, duly authorized to testify on behalf of each of the Defendants, with authority to testify on behalf of each of the Defendants, whom the Defendants will fully prepare to testify as to all information that is known or reasonably available to each of the Defendants,**



regarding the following designated matters:

1. The identity of all individuals who participated, in any way, in the admission of Janet Gamble to Valley Oaks Care Center, including each individual's name and title, each individual's current address, an indication of whether or not each individual was employed by any of the Defendants, an indication of which of the Defendants each individual was employed by, and a description of each individual's involvement in the admission process, relative to Janet Gamble, including the contents of all communications relative to the admission process, specifically including, but not limited to, all documentation of all communications as well as the identity of any and all individuals who acted on Janet Gamble's behalf at any time relative to the admission process.

2. The identity and contents of all documents that were provided to Janet Gamble or any member of her family as part of the admission process, specifically including, but not limited to, any documents that were signed by Janet Gamble or any member of her family, as well as any other documents that were provided to Janet Gamble or any member of her family and/or were shown to Janet Gamble or any member of her family, relative, in any way, to Janet Gamble's admission to Valley Oaks Care Center.

3. The content of any and all conversations and/or communications, relative, in any way, to Janet Gamble's admission to Valley Oaks Care Center involving Janet Gamble or any member of her family or any one acting on her behalf, specifically including, but not limited to, any and all in-person meetings, any and all telephone conversations, any and all letters and/or e-mails sent to Janet Gamble or any member of her family or anyone acting on her behalf, and any and all other communications relative, in any way, to Janet Gamble's admission to Valley Oaks Care Center, specifically including, but not limited to: the date and time of each such conversation and/or communication; the name, title, and current address of each person who participated in each such conversation and/or communication; how each such conversation and/or communication was conducted (i.e., in-person, by telephone, by e-mail, by facsimile, by text message, etc.); and a description of each such conversation and/or communication including the content of all such communications.

THE DICKSON FIRM, L.L.C.

By: /s/ Blake A. Dickson

Blake A. Dickson (0059329)
Danielle M. Chaffin (0093730)
Tristan R. Serri (0096935)
Enterprise Place, Suite 420
3401 Enterprise Parkway
Beachwood, Ohio 44122
Telephone (216) 595-6500
Facsimile (216) 595-6501
E-Mail BlakeDickson@TheDicksonFirm.com
E-Mail DChaffin@TheDicksonFirm.com
E-Mail TristanSerri@TheDicksonFirm.com

Attorneys for Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, Plaintiff's Civil Rule 30(B)(5) Deposition Notice was sent this **10th day of July, 2018,** via electronic mail, to the following:

Thomas P. Mannion, Esq.
Ryan K. Rubin, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tom.Mannion@lewisbrisbois.com
Ryan.Rubin@lewisbrisbois.com

Attorneys for Defendants Valley Oakes Care Center, Selfridge Leasing, L.L.C., Eli Gunzberg, Eli M. Gunzberg Irrevocable Trust, and Frank Gunzberg 2015 Succession Trust.

By: /s/ Blake A. Dickson
Blake A. Dickson (0059329)
Danielle M. Chaffin (0093730)
Tristan R. Serri (0096935)

Attorneys for Plaintiff David Gamble, as the Personal Representative of the Estate of Janet Gamble (deceased)

Danielle Chaffin

From: Rubin, Ryan <Ryan.Rubin@lewisbrisbois.com>
Sent: Monday, July 16, 2018 2:20 AM
To: Danielle Chaffin
Cc: Blake A. Dickson; Patti, Sara
Subject: Re: Gamble v. Valley Oaks Care Center et al

The depos you noticed cannot proceed because this matter is subject to binding arbitration.

Ryan K. Rubin
Partner
Ryan.Rubin@LewisBrisbois.com
O: 216.344.9422
C: 216.870.3781
LewisBrisbois.com

Via cell phone speech to text, please excuse typos or terseness.

From: Danielle Chaffin <dchaffin@thedicksonfirm.com>
Date: July 10, 2018 at 8:12:59 AM EDT
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, Rubin, Ryan <Ryan.Rubin@lewisbrisbois.com>
Subject: Gamble v. Valley Oaks Care Center et al

Please see attached.

Danielle M. Chaffin
THE DICKSON FIRM, L.L.C.
Enterprise Place, Suite 420
3401 Enterprise Parkway
Beachwood, Ohio 44122

Telephone (216) 595-6500
Toll Free 1 (800) OHIO LAW
1 (800) 644-6529
Facsimile (216) 595-6501
E-Mail DChaffin@TheDicksonFirm.com
Web Site www.TheDicksonFirm.com