VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Bruce Lee Irle, Administrator of the Estate of Harry Lee Irle,	
Plaintiff,	
v.	**Law No. CL-2018-11276**
INOVA HEALTH SYSTEM FOUNDATION Et al.	
Defendants.	

Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel Mandatory Arbitration

COMES NOW Plaintiff, Bruce Lee Irle, as Administrator of the Estate of Harry Lee Irle, through counsel, and files this, his Memorandum in Opposition to Defendant's Motion to Compel Arbitration and in support thereof, states as follows:

I. Introduction

Defendant Beverley Enterprises – Virginia Inc. ("Beverly") is the operator of a skilled nursing facility in Fairfax. After depriving Mr. Irle of his life through neglect, Beverly now seeks to deprive his heirs of their rights to pursue a wrongful death action in Virginia Courts.

Neither Beverly nor Bruce Irle were actual signatories to the jury trial waiver provision that forms the basis for Defendant's Plea in Bar. Beverly is not a party to the purported agreement. Bruce Irle, the resident, never signed the agreement. His son, James Irle, who had no authority to do so, signed the agreement on July 25, 2016, three days after Mr. Irle had already been admitted to the nursing home.

Defendant Beverly mistakenly argues that this is a federal claim subject to federal jurisdiction. Plaintiff has pursued uniquely state law claims premised on common law negligence, not federal substantive law. The U.S. Supreme Court has made clear that state courts first look to state law to determine if a contract was even formed. Here, there was no meeting of the minds, as Bruce Irle never signed the agreement and his Power of Attorney, through counsel, opted out of any alleged jury trial waiver under Va. Code under Va. Code Va. Code 8.01-581.12

Although the Court need look no further than the four corners of the statute in this case, there are compelling justifications for denying mandatory arbitration. First, not all parties are subject to the purported agreement, including codefendant Inova Fairfax Hospital. Severing the case could result in inconsistent results and would cause unnecessary litigation in two forums. Second, mandatory arbitration provisions should be strictly construed against the drafters, especially where they implicate the substantive waiver a parties' rights. Here, there was never any consideration supplied to Irle or his family for waiving their rights to a trial by Jury. Enforcing the arbitration agreement under these facts would interject reversible error into this case.

II. Factual Background

On July 25, 2016, while executing numerous admission documents as part of his admission to Golden Living, Plaintiff's son, James Irle, signed an admission contract that contained a mandatory arbitration provision purportedly waiving his father's "constitutional right to have [his] disputes decided in a court of law by a judge or jury. . ." (Exh. No. 1. Admission Agreement, GR-ILRE 00041). The facility covered by this admission agreement

was "GLC-SHM," an entity that simply does not exist.[1] Plaintiff has properly sued the licensed operator of the facility, Beverly Enterprises-Virginia, Inc, not GLC-SHM. (Exh. No. 2, license application, pg. 6 of 9).[2]

As alleged in the Complaint, Mr. Irle was admitted to Inova hospital from Golden Living on August 13, 2016. On October 10, 2016, Plaintiff opted out of the alleged mandatory arbitration provision pursuant to Va. Code 8.01-581.12. (Exh. No. 3).

After filing suit and serving Defendant, Beverly filed responsive pleadings on June 4, 2019, arguing that this matter should be dismissed based on the admission agreement, which contained a mandatory arbitration provision.

III. Argument

A. Beverly Enterprises Virginia - Inc in Not a Party to the Agreement

Although not even listed as a party to this agreement, Beverly argues that they should be covered under its terms. They argue that the agreement states that the facility "shall refer to the living center, its employees, agents, officers, directors, affiliates and any parent of subsidiary of facility and its medical director acting in his or her capacity as medical director." (Exh 1, at GL IRLE 00041). In short, Defendant argues that every person or entity who is in any way affiliated with GLC-SHM, is subject to the waiver. However, since the entity GLC-SHM does not exist, even as a trade name, there can be no related entities which can benefit from this provision.

---

[1] The last page of the document includes a signature page where the name of the entity is repeated as "GLC-SHM 204." (Exh. 1, GL IRLE 000444). Even defense counsel refers to a different entity in their Plea in Bar, referring to the nursing home as "Golden Living Center – Sleepy Hollow." The purported mandatory arbitration agreement refers only to GLC-SHM and GLM-SHM 204 and as such, does not cover Beverly or the actual licensed entity.

[2] In applying for its license with the Department of Health in October of 2015, Defendant reported that Beverly Enterprises – Inc. was the legal operator of the nursing home. The trade name Golden Living Center-Sleepy Hollow is not the same as GLC-SHM, even if one assumes that the letters were used as abbreviations.

Beverly's attempt to bootstrap itself to an over-broad arbitration provision as the parent company must fail as matter of Virginia law. Any obligation to arbitrate arises from a contractual undertaking and whether such an agreement is valid is determined by Virginia contract law. *Doyle & Rynell, Inc. v. Roanoke Hospital Association*, 213 Va. 489, 494, 193 S.E.2d 662 (1973).[3] Under basic Virginia contract law there must be a meeting of the minds of the essential elements of the contract between the actual parties. *Brooks & Co. v. Randy Robinson Contracting*, 257 Va. 240, 513 S.E.2d 858, (1999)(Failure to show a meeting of the minds in a purported contract modification requiring arbitration was unenforceable). Consideration must be exchanged between the parties. *Sager v. Basham*, 241 Va. 227, 401 S.E.2d 676 (1991). Any ambiguity in the contract must be construed against the drafter. *Winn v. Aleda Constr. Co*, 227 Va. 304, 307, 315 S.E.2d 193, 195 (1984); *Heye v. American Golf Corp.*, Inc., 134 N.M. 558, 2003-NMCA-138, 80 P.3d 495 (Ct. App. 2003)(Mandatory arbitration provision unenforceable to bar plaintiff's harassment claim; Defendant's promise to arbitration was illusory, unsupported by consideration and ambiguity in the arbitration agreement was to be construed against company as drafter).

Here, there can be no meeting of the minds as there is not even a clear identity of the parties. Beverly was not part of the agreement and the signature by an unauthorized family member without power of attorney had no binding effect upon Harry Irle. *Bishop v.*

---

[3] The U.S. Supreme Court has repeatedly stressed that arbitration clauses are governed by state, not federal, contract law except in those instances where state law targets arbitration clauses for treatment that is inferior to other types of contracts. E.g., *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995) (In cases involving the FAA, courts "should apply ordinary state-law principles that govern the formation of contracts"); Volt, 489 U.S. at 474 ("the interpretation of private contracts is ordinarily a question of state law"). In addition, the Supreme Court has further held that principles of state contract law provide the primary source of protection for consumers against corporate over-reaching in cases governed by the FAA. See, *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281 (1995).

Medical Facilities of America, 65 Va. Cir. 187 (Roanoke 2004), citing *Peru v. Illinois Power Company*, 258 Ill.App.3d 309, 630 N.E.2d 454 (1994).[4] In *Bishop*, the patient's son and POA signed the resident agreement because his mother lacked mental capacity. Finding no indication that the son signed as agent of his mother, the Court invalidated the mandatory arbitration agreement.

Courts construing such waivers have held that it can only be applied to parties who are reflected signatories in the agreement. *FN Holdings, LLC v. MFM Holdings Inc*, 71 Va. Cir. 153 (City of Richmond, 2006)(Plaintiff, a non-signatories to the agreement, could not compel mandatory arbitration), citing, *Weitz v. Hudson*, 262 Va. 224, 228 (2001).

Similarly, *In Commonwealth of Virginia ex Rel v. Net Credit Financial Solutions of Utah*, Law No. CL 2018-6258 (2019)(Exh. No. 4) this Court held that the Commonwealth of Virginia could pursue consumer protection claims on behalf of borrowers who had signed a mandatory arbitration agreement. The Attorney General had statutory authority to pursue claims on behalf of borrowers and the fact that the Commonwealth was not party to the borrower's mandatory arbitration agreement precluded its application to the case. See also, *Goliger v. AMS Properties*, 123 Cal. App. 4th 374, 19 Cal Rept. 3rd 819, 204 Cal. App. LEXIS 1756 (2nd App. 2004)(Where daughter signed arbitration provision as responsible party for her mother, it did not bar daughter's claim for wrongful death); *Griggs v. Evans*, 43 A.3d 1081 (Md. Ct. Special Appeals 2012) (Non-signatories to an arbitration agreement could not assert the mandatory arbitration provision on the basis that they were agents of the mortgage company, who had included the provision in the mortgage contract). Here,

[4] The Bishop Court also rejected the argument that the family member was an intended third-party beneficiary of the contract.

decedent's surviving children have statutory remedies under Virginia's Wrongful Death Act which they never waived.

B. Harry Irle Never Signed the Agreement and the Signatory, his Son James Irle, Lacked Authority to Sign as Power of Attorney

Defendant states that "Irle's legal representative . . . voluntarily signed the ADR agreement requiring mediation/arbitration." (Defendant's Plea, p. 2). In fact, the son who signed the agreement, James Irle, was not the lawful Power of Attorney. (Exh. No. 5, Affidavit of Bruce Irle, POA). As such, James was not his father's legal representative and he had no authority to waive his father's legal rights.

The agreement does have a signature block for authorized representatives. (Exh. 1, GL-IRLE 00044). However, it is blank. James Irle, the son without legal authority, signed his name in the signature block of the resident. (Exh. Nos. 1 & 5). This signature was a legal nullity.

A similar result was reached in *Gibson v. Medical Facilities of America*, Law CL09-3289 (Norfolk 2010)(Exh. No. 6), where Ms. Gibson's sister signed the admission agreement, but did not have her sister's Power of Attorney. Unlike the case at bar, the sister signed the agreement as "responsible party," but the signature block for resident was left blank. Finding that the sister was not POA or guardian at the time she signed the agreement, the Court invalidated the mandatory arbitration provision. It also rejected Defendant's arguments premised on Va. Code § 54.1-2986, apparent agency[5] and third-party beneficiary.

Similarly, in *Giordano v. Atria Assisted Living*, 429 F.Supp.2d 732 (E.D. Va), decedent's daughter had filed a wrongful death action. Finding that the daughter did not

[5] For apparent agency to apply, there must be (1) an appearance of agency, (2) and acquiescence by the principal, and reasonable reliance by a third party. *Giordano v. Atria Assisted Living*, 429 F.Supp.2d 732, 736 (E.D. Va 2006). None of the required elements are present in this case.

possess her mother's POA at the time she signed the agreement, the Court invalidated the mandatory arbitration provision.[6]

As to relates to an agency relationship, the law "indulges no presumption that an agency exists. On the contrary, one is legally presumed to be acting for himself and not as the agent of another." *Raney v. Barnes Lumber Corp.*, 195 Va. 956, 966 (1954). The party alleging the agency relationship has to burden to prove it. *Allen v. Linstrom*, 237 Va. 489, 496, cert denied, 493 U.S. 849 (1989). Here, as James Irle did not possess his father's Power of Attorney, there is no question that he was without legal authority to bind his father.[7]

Defendant's reliance on *Firebaugh v. Whitehead*, 263 Va. 398, 559 S.E. 611 (2002) is misplaced. There, the Court simply held that an executor was liable on a contract of first refusal that the property owner executed before his death. Here, Plaintiffs are pursuing separate wrongful death claims under statute that are not derived from any contractual agreement between decedent and Beverley.

C. **Plaintiff Opted Out of any Purported Arbitration Agreement**

Defendant's Plea in Bar fails to mention the fact that Plaintiff, through counsel, withdrew from any purported mandatory arbitration agreement within 60 days of the termination of his care, as allowed under Va. Code § 8.01-581.12.

Defendant acknowledges that Mr. Irle had the right to revoke this agreement and explains that "Irle did not attempt to revoke the agreement at any point during his lifetime."

---

[6] In *Giordano*, the daughter had signed the signature block for resident and she signed the signature block for the "responsible party." Here, the non-POA did not even sign as "responsible party," providing even less support for the defense position.

[7] The failure of the facility to have proper documentation upon admission is another reflection of the questionable practice of having cognitively impaired residents or their unauthorized family members complete significant, complex legal paperwork, as an afterthought to the admission's process. Defendant's own checklist for admission included a check-box for the Power of Attorney. It was blank. (Exh. 1, GL IRLE 00029). Also left unchecked was Defendant's explanation of Plaintiff's "rights as a nursing home resident under federal and state law." *Id.*, GL IRLE 00031.

(Defendant's Plea at p. 2). Defendant is factually wrong, again. As anticipated and allowed by Va. Code § 8.01-581.12, Plaintiff opted out of any purported mandatory arbitration agreement on October 10, 2016, within the 60 days of his discharge from Golden Living. (Exh. Nos. 3 & 5).

Where a statute's language is plan and unambiguous, the trial court is bound by the plain meaning of the language. *Mozely v. Preswould Bd. Of Directors*, 264 Va. 549, 554, 570 S.E.2d 817 (2002). As Defendant's jury trial waiver makes clear, the waiver that was signed specified a "voluntary agreement to participate in ADR." (Exh. 1, GL-IRLE 00041). Given the purported voluntary nature of this agreement, a voluntarily opt-out under Virginia law is entirely consistent with the agreement, as well as federal law.

Virginia, like the FAA, allows parties to enter into binding arbitration agreements, "except upon such grounds as exist at law or in equity for the revocation of any contract." Va. Code 8.01-581.01.[8] Va. Code § 8.01-581.12 does not preclude the use of such arbitration agreements; it simply confirms a patient's right to withdraw from such an agreement where he/she is injured and provides notice of his/her desire to withdraw within 60 days after the termination of healthcare.

D. Lack of Consideration for the Mandatory Arbitration Provision Renders the Agreement Unenforceable

Three days after his admission to the facility, Mr. Irle's son signs the purported mandatory arbitration provision. However, as Bruce Irle explains, there was no consideration offered for this provision. (Exh. No. 6). The terms of the agreement also

[8] As noted below, this language is similar to the Federal Arbitration Act, which requires the arbitration of disputes, "save upon such grounds as exist at law or in equity for the revocation of any contract"

reflect no actual compensation being exchanged between the parties as consideration, not even a dollar.[9]

Various Courts have found that lack of consideration, in similar contests, voids the mandatory arbitration provision.[10] Moreover, even if the Court were to conclude that Harry Irle provided consideration, there is no argument that his statutory heirs, and beneficiaries under the wrongful death act, provided consideration to surrender their legal rights.

E. The FAA Does Not Preempt Va. Code § 8.01-581.12

1. Virginia's Opt-Out Provisions Provide Reasonable Limitations on Mandatory Arbitration Provisions Consistent with the Commonwealth's Authority to Regulate Contracts and State Consumer Transactions

"[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., Amdt. 10. "[T]he historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). This presumption is the "cornerstone" of federal

---

[9] Ironically, the agreement itself states that the "Parties agree that the speed, efficiency and cost effectiveness of the ADR process, together with their mutual understanding to engage in that process, constitute good and sufficient consideration of the acceptance and enforcement of the agreement." (Exh. No. 1, GL-IRLE 00041). Such illusory consideration benefits only the Defendant and misleadingly suggests that there is a mutual benefit to waiving a patient's civil rights to pursue a malpractice case in court. There is no evidence that Mr. Irle obtained anything of value in exchange for his waiver of rights. Since the mandatory dispute resolution agreement indicates that the agreement is not a condition of admission, Defendant cannot even argue that Plaintiff received health care services as consideration for waiving his rights.

[10] *Taha v. Northwest Group, Inc.*, 36 I.E.R. Cas. (BNA) 1640, 2013 WL 5376530 (D. Or. 2013) (Defendant's, motion to compel arbitration because agreement was unenforceable for lack of consideration since it was signed after plaintiff had already begun work): *Walker v. Ryan's Family Steak Houses*, Inc., 400 F.3d 370, 2005 FED App. 0115P (6th Cir. 2005) (Arbitration agreement job applicant had to sign even to be considered for position with employer unenforceable; employee received nothing of value in return for giving up right to jury trial); *Geiger v. Ryan's Family Steak Houses, Inc.*, 134 F. Supp. 2d 985 (S.D. Ind. 2001) (refusing to enforce mandatory arbitration agreement as unsupported by consideration and as unconscionable because of its one-sided nature);
Gibson v. Neighborhood Health Clinics, Inc., 121 F.3d 1126 (7th Cir. 1997) (Arbitration agreement unenforceable under state law where employer gave no consideration for employee's promise to forego judicial forum)

pre-emption doctrine. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). As James Madison stated, "[t]he powers reserved to the several states will extent to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people and the internal order, improvement and prosperity of the state." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), citing The Federalist No. 45, pp. 292-293 (C. Rossiter ed. *5 1961).

Defendant may argue that any attempt of Plaintiff to voluntarily opt out of the mandatory arbitration provision under Va. Code § 8.01-581.12 violated federal law, specifically the Federal Arbitration Act, which provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving **commerce** to settle by arbitration a controversy thereafter **arising out of such contract or transaction**, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9. U.S.C. § 2, 61. Stat. 670 (July, 1947)(emphasis added)

The burden of proof in compelling an arbitration is with the party seeking to arbitrate the controversy. *Hendrick v. Brown & Root, Inc.*, 50 S.Supp.2d 527 (E.D. Va. 1999). When the question before the Court is whether there was an agreement to arbitrate, there is no presumption in favor of arbitrability. *Mission Res. v. Triple Net Properties*, 275 Va. 157, 645 888 (2008)(Refusing to compel arbitration when one entity, which was pursing derivative claims, was a distinct company who had not entered into the agreement).

The Supreme Courts of the United States[11] and Virginia have consistently held that in deciding whether an arbitration agreement should apply, the Court looks to state law. The

[11] The U.S. Supreme Court has repeatedly stressed that arbitration clauses are governed by state, not federal, contract law except in those instances where state law targets arbitration clauses for treatment that is inferior to other types of contracts. E.g., *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995) (in cases involving the FAA, courts "should apply ordinary state-law principles that govern the formation of contracts"); Volt, 489 U.S. at 474 ("the interpretation of private contracts is ordinarily a question of state law"). In

U.S. Supreme Court has also made clear that despite the FAA, states retain the ability to regulate contracts involving arbitration agreements under general contract law principles. *Allied-Bruce Terminix Co. Inc., v Dobson*, 513 U.S. 265, 115 S.Ct. 834 (1995).

Reasonable opt-out provisions, as contained in Va. Code Va. Code § 8.01-581.12, do not violate the FAA. This case stands in sharp contrast to the facts in *Marmet Health Care Center Inc. v. Brown*, 565 U.S. 530, 132 S.Ct. 1201 (2012). There, the U.S. Supreme Court overturned a West Virginia Appellate Court which had invalidated a mandatory arbitration provision in a nursing home admission agreement. The Supreme Court held that a categorical rule which prohibited arbitration of any particular type conflicted with the terms of the FAA. On remand, the Supreme Court required the trial court to determine whether the mandatory arbitration provisions were "enforceable under state common law principles that are not specific to arbitration and pre-empted by the FAA." *Id.*, 565 U.S. at 534.

Nothing in the FAA prohibits a party from opting out of an agreement, where that opt out is authorized by State law. In fact, the express language of the FAA qualifies enforceability "save upon such grounds as exist at law," which reflects congressional intent that State law be used to limit enforcement in manners consistent with the state's inherent power to regulate contracts. As such, Plaintiff's opt out within 60 days of the termination of his care, through counsel, effectively nullified the mandatory arbitration provision at issue.

2. This Local Transaction Did Not Involve Interstate Commence Sufficient to Trigger the Application of the FAA

Courts have construed the term "commerce" to require some form of interstate commerce for the FAA to even apply. *Allied-Bruce Terminix Companies, Inc. v. Dobson,*

---

addition, the Supreme Court has further held that principles of state contract law provide the primary source of protection for consumers against corporate over-reaching in cases governed by the FAA. See, *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281 (1995)

513 U.S. 265, 115 S.Ct. 834 (1995)(Where the object of the contract containing an arbitration clause involves interstate commerce, a mandatory arbitration clause was enforceable under the FAA).

Here, the object of the contract was local skilled nursing care provided by local providers exclusively in the Commonwealth. While Defendant is admittedly an out of state corporation, the object of the contract was local health care. Moreover, Plaintiff's common law tort claims do not involve a transaction involving interstate commerce. These state-based tort claims are not premised on any contractual right arising out of the admission agreement. They would exist independently of any contrived interstate commerce transaction that Plaintiff purportedly entered into. See, *Hirras v. National R.R. Passenger Corp.*, 44 F.3d 278 (5th Cir. 1995) (Title VII and intentional infliction claims not subject to mandatory arbitration under RLA because they are based on independent state rights and not dependent on analysis of collective bargaining agreement); *Elijahjuan v. Superior Court*, 210 Cal. App. 4th 15, 147 Cal. Rptr. 3d 857 (2d Dist. 2012), review denied, (Jan. 16, 2013) (Truck drivers claims fell outside the scope of issues the parties had agreed to arbitrate, since the claims implicated state statutory rights, not federal rights). *Alamo Rent A Car, Inc. v. Galarza*, 306 N.J. Super. 384, 703 A.2d 961 (App. Div. 1997) (Arbitration agreement did not bar litigation of statutory claim under state law since it referred only to disputes arising under employment contract and not to statutory claims).

Various courts from around the County have found that state-based claims did not implicate interstate commerce.[12] But even if they did, since Plaintiff's claims do not derive in any form from the contract, they did not arise from such a contractual undertaking.

---

[12] *Arkansas Diagnostic Center, P.A. v. Tahiri*, 370 Ark. 157, 257 S.W.3d 884 (2007) (Refusing under FAA to enforce arbitration provision of physician's employment contract since employer failed to prove sufficient connection to interstate commerce); *Slaughter v. Stewart Enterprises, Inc.*, 2007 WL 2255221 (N.D. Cal. 2007) (FAA does not apply where

IV. Conclusion

After the current administration scrapped Obama regulations which precluded jury trial waivers in nursing home agreements, these agreements are becoming the new normal. While they may be enforceable under the appropriate circumstances, the facts in this case leave little doubt that the agreement is enforceable here. Finally, Plaintiff requests a Jury to resolve any factual disputes, should the Court find any legal basis supporting Defendant's Plea in Bar. *Bethel Inv. Co. V. City of Hampton*, 272 Va. 765, 636 S.E.2d 466 (2006)(Plaintiff entitled to a jury trial on Defendant's plea in bar asserting the statute of limitations, where a factual question existed as to when Plaintiff's damages first started).

Wherefore, these and other premises considered, Plaintiff respectfully requests that he be permitted to pursue these claims in Court and that Defendant's Plea in Bar and Motion for a Protective Order be denied. Alternatively, Plaintiff requests a jury trial on Defendant's Plea in Bar.

Dated: July 15, 2019

Respectfully submitted,

Bruce Lee Irle, Executor of the Estate
of Harry Lee Irle,

Jeffrey J. Downey (VSB No. 31992)
The Law Office of Jeffrey J. Downey, P.C.
8270 Greensboro Drive, Suite 810
McLean, VA 22102
Telephone: (703)-564-7318
Facsimile: (703)-883-0108
Email: jdowney@jeffdowney.com

employee of funeral home had no connection to interstate commerce; employer's alternative dispute resolution procedure still enforceable under state law). *Ex parte Webb*, 855 So. 2d 1031 (Ala. 2003) (laborer who lived in Alabama and worked for Alabama employer did not have contract affecting interstate commerce so arbitration provision was unenforceable under FAA); *Patterson v. Tenet Healthcare*, Inc., 113 F.3d 832 (8th Cir. 1997) (contract of medical technologist did not directly involve movement of goods in interstate commerce).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Opposition to Defendant Motion to Compel Arbitration was served upon the Defendants, through service upon their below referenced counsel, through first class mail, postage prepaid, and electronically, on July 15 2019, upon the following:

Timothy Benjamin
Brian Sanderson
Blankingship & Keith
4020 University Drive
Fairfax, VA 22030
Counsel for Inova Health System Foundation and Inova Health Care Services

Mark S Brennan, Esq. (VSB No. 24991)
Asley Moss (VSB 83448)
Vandeventer Black, LLP
901 East Byrd St, Suite 1600 (West Tower)
Richmond, VA 23219
Email:mbrennan@vanblacklaw.com
Email: amoss@vandblacklaw.com
Counsel for Defendant Beverly Enterprises-Virginia Inc

_____
Jeffrey J. Downey