STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG Christopher Williamson, Plaintiff, vs. Southern Health Partners, Inc., and Sara Thacker, NP, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-45-00389

DEFENDANTS SOUTHERN HEALTH PARTNERS, INC. AND SARA THACKER, NP's MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT, OR ALTERNATIVELY, MOTION FOR NEW TRIAL ABSOLUTE OR ALTERNATIVELY, MOTION FOR NEW TRIAL NISI REMITITTUR OR ALTERNATIVELY MOTION FOR REDUCTION OF VERDICT TO THE MEDICAL MALPRACTICE STATUTORY DAMAGE LIMITATION AND FOR SET-OFF OF AMOUNTS PAID BY SETTLING PARTIES

TO: HONORABLE R. KIRK GRIFFIN

JAMES B. MOORE, III, SCOTT C. EVANS AND JAMES M. ERVIN, COUNSEL FOR PLAINTIFF

PLEASE TAKE NOTICE THAT Defendants Southern Health Partners, Inc. and Sara Thacker, NP (collectively, the "Medical Defendants") hereby respectfully move before the Honorable R. Kirk Griffin in the Third Judicial Circuit at the Williamsburg County Judicial Center, Kingstree, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCP, granting judgment as a matter of law in favor of the Medical Defendants notwithstanding the jury's verdict. Alternatively, the Medical Defendants move for a new trial absolute pursuant to Rule 59(a), SCRCP, and pursuant to the thirteenth juror doctrine. If the foregoing motions are denied, the Medical Defendants move that the verdict in favor of the Plaintiff be reduced to the actual economic damages and the monetary non-economic damage

limitations in accordance with S.C. Code Ann. § 15-32-220. Alternatively, the Medical Defendants move for a new trial *nisi remittitur* for the Court to reduce the verdict to an amount equal to or less than the statutory medical malpractice damage limitations. Finally, the Medical Defendants move the Court to apply the set-off of $300,000, the amount of funds received by the Plaintiff from other settling parties, under the common law and S.C. Code Ann. § 15-38-15 and § 15-38-50. The Medical Defendants reserve the right to supplement these Motions with a supporting memorandum of law and also respectfully request oral argument.

The grounds for the Medical Defendants' post-trial Motions are as follows:

I. NEW TRIAL ABSOLUTE

It is well settled that the trial court has the discretion to order a new trial if the circumstances warrant a new trial. *Hassell v. City of Columbia*, 430 S.C. 620, 628, 846 S.E.2d 373, 378 (Ct. App. 2020) (citing *Jenkins v. Dixie Specialty Co.*, 284 S.C. 425, 326 S.E.2d 658 (1985)). In addition, a hearing on claims of juror misconduct is almost always preferred. *State v. Rowell*, 444 S.C. 109, 115-116, 906 S.E.2d 554, 557 (2024). The Medical Defendants request an evidentiary hearing to examine Medical Defendants' claim of jury misconduct and prejudicial nondisclosure. A party has a fundamental right to a fair and impartial jury. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980) ("The Due Process Clause entitled a person to an impartial and disinterested tribunal in both civil and criminal cases"). As shown herein and to be more fully established, the jury in this case was tainted with prejudicial bias and concealment, coercion, and too small a pool of jurors to provide a fair and impartial jury. As a result, the jury verdict was grossly excessive, shocking, and clearly the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. Therefore, this Court should grant the Medical Defendants' motion for the reasons set forth herein.

A. Two Jurors Were Untruthful During Voir Dire and Concealed Information that Would Have Supported a Challenge for Cause or Would Have Been a Material Factor for Defendants to Exercise a Preemptory Strike or Would Have Required Dismissal for Lack of Being Qualified.

"[W]hen a juror untruthfully answers or fails to answer a qualification question or a *voir dire* question, and as such withholds material information, the trial court must determine whether the concealed information reveals a potential for bias and would have made an objectively material difference in the Defendants' use of a peremptory strike or resulted in a successful challenge for cause." *Rowell*, 444 S.C. at 115-116, 906 S.E.2d at 557. The nature of the information concealed drives the inquiry. *Id.*

1. Juror #73 – Turquoise Rouse

The jurors were asked during voir dire "Has any member of the jury panel ever been involved in a civil lawsuit as a plaintiff or defendant?" *See Transcript of Voir Dire, attached hereto as Exhibit A at pg 22.* It has now come to the Defendant's knowledge that juror #73 failed to disclose that she had been the Plaintiff in a lawsuit against Williamsburg County that lasted for over two years. Specifically, the lawsuit was filed on January 5, 2023 and concluded by stipulation of dismissal on April 23, 2025, a mere 76 days before jury selection. *See complaint, answer, and stipulation of dismissal as Exhibit B.*

Clearly, juror #73 was untruthful by sitting silently when asked this material question during voir dire. This question was not ambiguous or lacking clarity. Juror #73's silence is particularly egregious because immediately before this question was asked, another prospective juror stood and said "the question you asked about a lawsuit." That prospective juror then came forward and was ultimately excused for cause. *See Exhibit A, pg. 21.*

When examining the personal nature of juror #73's wrongful termination lawsuit, coupled with the fact that juror #73 was the plaintiff in litigation against Williamsburg County, would have,

on its own, provided sufficient grounds for the Defendants to strike juror #73 for cause, regardless of her answers to the Court's inquiry. Williamsburg County is heavily involved in this case; it was named as a Defendant in the Complaint; it selected the contract with the medical staffing model at-issue; testifying fact witnesses are/were employed by Williamsburg County, and Williamsburg County is, in effect, directly aligned with SHP in this case. Any concealed information that would have exposed a potential bias against Williamsburg County is highly prejudicial against the Defendants given their relationship and alignment with the County in this case. *See Gray v. Bryant*, 298 S.C. 285, 288, 379 S.E.2d 894 (1989). Further, Defendants would have used a peremptory strike to excuse juror #73 if she had disclosed the lawsuit against Williamsburg County. Juror #73's failure to disclose her lawsuit against Williamsburg County requires the granting of a new trial absolute.

2. Juror #71 – Harry Reid

The jurors were asked during qualification, "Is there any member of the jury panel who is unable to read, write, speak, or understand the English language?" *See Exhibit A, pg 3-4.*

Such skills are prerequisites for a person to serve as a juror in South Carolina. *See* S.C. Code Ann. § 14-7-810(2), (4). Juror #71 did not respond to the question. During the events that occurred after the jury was polled, which included numerous notes to the Court involving juror #71, it became clear that juror #71 cannot write and is likely unable to read adequately to be qualified as a juror. As required by statute, "[a]ny person called to jury service who knows or has good reason to suspect that he is disqualified under this section, upon questioning by the trial judge, hearing officer, or clerk of court, must state the disqualifying facts or the reasons for his suspicions . . . ." S.C. Code Ann. § 14-7-810. Juror #71 failed to do so. The Defendants recognize the difficulty and potential embarrassment of having to stand and address the court in response to this

question. However, being able to write is a minimum requirement of service on a jury; and juror #71 would have been disqualified had he truthfully answered this question. Therefore, juror #71's participation requires the granting of new trial absolute.

3. Medical Defendants' Research of Jury Panel

The Medical Defendants retained a third party to conduct jury research on the original panel of 100 jurors. The research did not locate juror #73's lawsuit or juror #71's lack of ability to write. *See jury research for juror #73 as Exhibit C and jury research for juror #71 as Exhibit D.* The Medical Defendants would also point out that juror #73 ignored the summons and did not report for jury duty on Monday July 7. She was one of the jurors summoned by Sheriff deputies to appear on Tuesday July 8. This suggests additional bias.

4. The Medical Defendants' Batson Challenge

At the close of jury selection, the Medical Defendants objected to Plaintiff's use of all three of his preemptory strikes against white jurors, otherwise known as a *Batson* challenge. "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a [juror] on the basis of race or gender." *McCrea v. Gheraibeh,* 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (citing *State v. Shuler,* 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)); *see also Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). After a party makes a sufficient showing that the preemptory strike was based on race, the non-moving party is required "to provide a race neutral explanation for the challenge. *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014). "If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination." *State v. Inman*, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014) (citations omitted). "[S]tep three of the above analysis requires the court to carefully evaluate whether the

party asserting the *Batson* challenge has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent." *Id.* at 27, 760 S.E.2d at 108.

Here, Plaintiff used all three preemptory strikes to strike three of eight white jurors present during jury selection. Thereafter, Plaintiff's counsel offered non-discriminatory explanations for each strike. The Medical Defendants now renew the *Batson* challenge as to Plaintiff's explanation of striking juror #16. Specifically, Plaintiff purportedly struck juror #16 "out of[] an abundance of caution" because he appeared to be "very conservative," and grew up in the same county as NP Thacker and is "the same age range as [NP Thacker's children]." *See Exhibit A at 33.* However, juror #16 did not respond to the voir dire question regarding whether the juror had a "social, personal, or business relationship" with NP Thacker. *See id. at 15*. Whether out of an abundance of caution or not, Plaintiff's non-discriminatory explanation is insufficient and suggests a "mere pretext for discriminatory intent." *Inman*, 409 S.C. at 27, 760 S.E.2d at 108.

B. The Jury Verdict Was Not Unanimous and Was Tainted by Coercion and Arbitrary Deadline.

The Medical Defendants further move for a new trial absolute based on jury coercion – both internally and by the process after polling. Because of the unique process required in medical malpractice cases, after the jury announced their verdict, the jury was instructed to return an allocation among the Medical Defendants and after the allocation was announced, the jury heard opening statements and some testimony on the punitive damage claim before Plaintiff abandoned their claim for punitive damages. The jury then was polled and it became apparent that the verdict was not unanimous and had never been unanimous. When the jury returned to deliberate, it had engaged in deliberations in an improper order and had heard inadmissible argument and testimony. Therefore, once the poll revealed that the verdict was not unanimous, the verdict should have been

declared void and a mistrial declared. *See State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020)*, aff'd,* 439 S.C. 101, 886 S.E.2d 206 (2023) ("If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial") (citing *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007)).

After polling revealed the jury's verdict was not unanimous, the Medical Defendants moved for a mistrial, but the Court ordered the jury to return to deliberate and reach a unanimous verdict. However, the jury continued to use the same verdict form signed by the foreperson with the damage awards and answers to the gross negligence questions. At a minimum, the jury should have been provided a blank form and told to start deliberations from the beginning.

During the additional deliberations, several facts became apparent that require the Court to grant a new trial:

First, juror #71 could not write a note that could be understood by the Court or attorneys.

Second, juror #73 wrote notes signed by juror #71 which showed he was under duress and coercion.

Third, juror #73 wrote a note suggesting that juror #71 be removed and a "tiebreaker" be elevated.

Fourth, juror #73 wrote a note retracting juror #71's statement of dissent and stated "I agree."

See jury notes as Exhibit E. This entire process grossly undermines the legitimacy of the jury's verdict and deliberation process. If the Court does not find the Medical Defendants are entitled to a JNOV, the Medical Defendants should at least receive a new trial absolute based on the substantial and clear evidence of coercion and/or undue pressure during the jury's deliberations.

The note regarding the need for a tiebreaker also shows that the verdict was not unanimous.

Finally, the Court announced the jury foreperson had a conflict on Thursday and deliberations had to be concluded by then. While the jury returned the original verdict around 3:30 p.m. on Wednesday, the jury was forced to continue deliberating into the evening when jury polling revealed there still had not been a unanimous verdict. The Court's disclosure of Juror #73's conflict had the effect of setting a timer on the jury's deliberations under the pretext that they would have to return on Friday unless they reached a verdict on Wednesday evening. This fact added to the coercion that tainted the ultimate verdict.

C. The Jury Pool Was Insufficient and Violated South Carolina Law.

Lastly, the Medical Defendants move for a new trial absolute because the jury pool that was present and available for jury selection on July 7 and July 8 was insufficient to meet the minimum requirements imposed by South Carolina law. South Carolina statute provides, "in civil cases, any party shall have the right to demand a panel of **twenty competent and impartial jurors**" from which "the parties or their attorneys shall alternatively strike, until there are but twelve left, which shall constitute the jury to try the case or issue." S.C. Code Ann. § 14-7-1050 (emphasis added). On Monday July 7, only 22 jurors reported for jury duty. Before qualification and voir dire, there was not a sufficient number of jurors present to seat a jury. The panel should have been dismissed on Monday because there were not enough jurors who reported on the date they were summoned.

Over the Medical Defendants' objection, the Court requested Sheriff deputies locate and require jurors in the original panel who had not appeared on July 7 to appear on July 8. After the Sheriff's office search, 26 jurors reported for duty on July 8. However, the additional jurors gathered by the Sheriff's Office and brought in on Tuesday were not randomly selected to fairly

represent a cross-section of the remaining summoned jurors who failed to appear. Instead, they were simply those jurors that the Sheriff's deputies were able to easily locate and contact on short notice. Involving Williamsburg County Sheriff deputies in this manner during the jury selection process in a case involving the Williamsburg County Detention Center was prejudicial to the Medical Defendants.

These new jurors who appeared on July 8 were not summoned to appear on July 8. Even with additional jurors on July 8, only 21 jurors were available to be selected. Of those twenty-one jurors, two were reserved for the alternate juror seat. Therefore, only nineteen, instead of the statutorily-required twenty jurors, were impaneled for primary jury selection. Plaintiff waived one preemptory strike for jury selection to continue, which the Court allowed over the Medical Defendants objection. The Court also removed one alternate juror seat, leaving only one alternate juror to be selected.[1] In addition to the insufficient number of available jurors, the parties have a statutory right to **twenty competent and impartial jurors**. S.C. Code Ann. § 14-7-1050. Here, as fully discussed above, jurors #73 and 71, were not competent and impartial. As such, there were only seventeen available for primary selection. Even if the Court finds that those jurors were impartial, there were still only 19 available jurors for selection, which does not meet the requirements of the statute. Simply put, the jury selection process was insufficient and prejudicial. An insufficient number of jurors adequately responded to the jury summons and attended jury selection; an insufficient number of jurors were impaneled to seat a jury; and jurors concealed material information during voir dire that would have resulted in removal for cause or in the

[1]The lack of sufficient jurors was compounded by the fact that only one alternate could be selected for such a long trial. Juror #95 had a medical emergency during the afternoon of July 10 during the testimony of a treating physician. Because there was only one alternate, the trial was suspended for the day and the witness had to return on Monday. Breaking up the testimony of this witness was prejudicial to Defendants.

alternative the use of a preemptory strike and disqualification. If the Court does not find the Medical Defendants are entitled to a JNOV, the Medical Defendants should receive a new trial absolute based on the insufficient and prejudicial jury selection process.

II. JUDGMENT NOTWITHSTANDING THE VERDICT

A. This Court Should Grant Judgment for the Medical Defendants Notwithstanding the Verdict.

Pursuant to Rule 50(b) SCRCP, the Medical Defendants move the Court for judgment notwithstanding the verdict ("JNOV"). "In ruling on directed verdict or JNOV motions, the trial court "is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). Moreover, neither an appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Garrett v. Locke*, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992). When ruling on a directed verdict or JNOV motion, the trial court must view the evidence and the inferences that reasonably can be drawn from it in the light most favorable to the nonmoving party. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." *Chaney v. Burgess*, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965).

1. The Court Should Grant JNOV to Sara Thacker.

There is no evidence to support the jury's finding that Sara Thacker was negligent. Every time that NP Thacker was notified about Mr. Williamson, she took action. First, when she was told that Plaintiff had suffered a seizure, she sent Plaintiff to the Emergency Department to be examined. Next, she continued the prescription written by the Emergency Department physician when Plaintiff returned to the jail. When she was told that Plaintiff might be depressed, she

referred him for a neurological and mental health consult. Finally, when she was told about the wound on June 9, she sent him back the hospital for treatment. This is the evidence adduced at trial regarding NP Thacker. There is no evidence that she breached the standard of care.

In fact, Plaintiff's expert, Dr. O'Bryan testified that NP Thacker breached the standard of care by following the orders of the physician who physically examined Plaintiff in the ED on May 29 for a seizure (at which time he was exhibiting the exact same symptoms as he did on the withdrawal monitoring form earlier that day). He testified that NP Thacker should have disregarded the order of the treating physician and instead given Plaintiff a Librium taper. Importantly, the ED physician drew labs and was provided with the information that Plaintiff had suffered a seizure and was experiencing withdrawal symptoms. He chose to prescribe Dilantin and not a Librium taper. Dr. O'Bryan and Dr. Holmstead opined that the ED physician did not breach the standard of care in choosing to prescribe Plaintiff Dilantin instead of a Librium taper. However, NP Thacker (who had not physically examined Plaintiff in the Emergency Department, was not privy to his lab work at that point, and had not spoken to Plaintiff) ***did*** breach the standard of care in deciding to continue the Dilantin prescription in the jail and not ordering the Librium taper. This cannot be the standard of care in South Carolina for a nurse practitioner. Plaintiff's expert did not find fault in the other decisions NP Thacker made with respect to Plaintiff. Thus, NP Thacker is entitled to JNOV as a matter of law. The evidence in this case does not support the jury's finding that NP Thacker was negligent.

2. The Medical Defendants Were Not Grossly Negligent, Reckless, Willful or Wanton.

"Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland Sch. Dist. One,* 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000) (citing *Clyburn v.*

Sumter Cnty. Dist. Seventeen, 317 S.C. 50, 451 S.E.2d 885 (1994); *Richardson v. Hambright,* 296 S.C. 504, 374 S.E.2d 296 (1988)). In other words, "[i]t is the failure to exercise slight care." *Id.* at 310, 534 S.E.2d at 277 (citation omitted). "[T]he fact that the [defendant] might have done more does not negate the fact that it exercised 'slight care.'" *Id.* at 312, 534 S.E.2d at 278. "Gross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances." *Id.* (citing *Hollins v. Richland Cnty. Sch. Dist. One,* 310 S.C. 486, 427 S.E.2d 654 (1993)). "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990) (per curiam). Normally, the question of what activity constitutes gross negligence is a mixed question of law and fact. *Id.* However, "when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Id.* (citation omitted).

Further, the standard for a finding of gross negligence should have been clear and convincing, and not preponderance. However, the verdict form did not contain this standard regarding the gross negligence, willful and wanton standard. The standard for gross negligence is clear and convincing, not a preponderance of the evidence.

None of the testimony or evidence elicited at trial supports the jury finding that the Medical Defendants were grossly negligent. Initially, it is important to recognize that the uncontroverted testimony was that the resources available to Nurse Buddin or NP Thacker in the jail are very limited. There are no labs, no diagnostic equipment, and no hospital beds. Nursing coverage is limited to eight hours per day on Monday through Friday and less hours on the weekend. Therefore, other than basic treatment similar to what could be provided in a small physician office or by a school nurse, the nurse's only option when a patient presents with a need greater than what

can be provided is to elevate the patient to a higher level of care. For Nurse Buddin, a higher level of care is one of two options: she can call NP Thacker for an order; or she can send the patient to the Hospital. The decision of when and how to elevate patient care is a judgment decision based on the facts presented at that moment.

For the reasons already stated above, NP Thacker's actions relative to Plaintiff's care cannot be said to be negligent, let alone grossly negligent. The decision to follow the physician's order for Dilantin is not the absence of care as a matter of law, especially under these circumstances where the ED physician was in the better position to examine and treat Plaintiff in a hospital setting versus the jail. Given that NP Thacker's decision to follow the physician's order with respect to Plaintiff is the only breach identified by Plaintiff's expert, Dr. O'Bryan, NP Thacker was not grossly negligent as a matter of law.

As to SHP, at trial, the only testimony and/or evidence elicited that could even approach gross negligence by Nurse Buddin is the failure to send Plaintiff to the hospital for the sacral wound sooner than June 9. However, the evidence and testimony elicited at trial in the light most favorable to Plaintiff showed that the nurses saw Plaintiff every day from May 29 to June 3. On June 4, Nurse Buddin spoke to the correctional officers about Plaintiff and received information about his condition and documented the information. On June 5, she treated a red area on his back and applied a dressing and antibiotic cream. There was never a time between June 5-9 that she received information that Plaintiff's condition had changed or declined. When examining the entirety of Plaintiff's incarceration, there is no basis to conclude that Nurse Buddin failed to exercise slight care. According to the June 9 note, Nurse Buddin indicated that it was her understanding that Plaintiff was receiving daily dressing changes and showers by the correctional officers. When correctional officers notified Nurse Buddin about Plaintiff's wound, he was

promptly transferred to the Hospital. The standard of care is what a reasonable nurse would do ***under the same or similar circumstances***—meaning a nurse in the jail, not a hospital or other medical setting.

Regarding the brain injury, neither Nurse Buddin or NP Thacker could have been grossly negligent because Plaintiff's experts opined that Plaintiff had "invisible" status epilepticus seizures from May 31 to June 1—and she pinpointed these hypoxic seizures to these dates only. The Medical Defendants cannot be charged with knowledge of invisible seizures. If the Medical Defendants were not aware of the invisible seizures, they cannot fail to exercise slight care. Thus, the Medical Defendants are entitled to a JNOV regarding the jury finding of gross negligence as a matter of law.

3. The Medical Defendants' Failure to Act Is Not the Proximate Cause of Plaintiff's Injuries As a Matter of Law.

As argued in summary judgment and directed verdict, the Medical Defendants are entitled to JNOV because Plaintiff has failed to prove that any action by the SHP nurses or NP Thacker was the proximate cause of Plaintiff's injuries as a matter of law.

"When one relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant's negligence." *Jamison v. Hilton*, 413 S.C. 133, 141, 775 S.E.2d 58, 62 (Ct. App. 2015) (quoting *Hoard ex rel. Hoard v. Roper Hosp.*, 387 S.C. 539, 546, 694 S.E.2d 1, 5 (2010)). "The reason for this rule is the highly technical nature of malpractice litigation." *Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996). "When expert testimony is the only evidence of proximate cause relied upon, the testimony must provide a significant causal link between the alleged negligence and the plaintiff's injuries, rather than a tenuous and hypothetical

connection." *Hilton*, 413 S.C. at 141, 775 S.E.2d at 62 (quoting *Hoard*, 387 S.C. at 546-47, 694 S.E.2d at 5).

The evidence overwhelmingly established that Plaintiff's drug overdose was the cause of his brain injury. Further, Dr. Holmstead testified that there would have been no treatment available for Plaintiff's brain injury, and that they were invisible seizures. Therefore, the nurses would not have been able to tell that they were occurring, and the only known treatment could not have been rendered in time. Therefore, any inaction alleged by Plaintiff could not have proximately caused Plaintiff's brain damage and Plaintiff has not proved a critical element of his medical malpractice claim.

Likewise, Plaintiff has failed to establish how the NP Thacker or the nurses caused Plaintiffs' sacral wound. The evidence at trial established that the nurse were never informed that his wound had gone from a red, irritated area with sloughing skin that was treated with dressing and antibiotic ointment to the wound on July 9. Other than that, the nurses educated Plaintiff not to lay on his back. He did not follow these instructions. No one, including Plaintiff, ever told the nurses that Plaintiff needed to be seen until June 9. No action by the nurses or NP Thacker proximately caused this injury to Plaintiff.

All in all, Plaintiff's theories regarding how his injuries occurred are purely speculative and amount to nothing more than impermissible re ipsa loquitar arguments. In other words, Plaintiff's theory is that because Plaintiff had an injury in the jail, it must have been caused by these Defendants. This is not the law of South Carolina.

The Medical Defendants are entitled to JNOV as a matter of law. The Medical Defendants will provide further analysis of the grounds for JNOV in a supporting memorandum.

III. NEW TRIAL NISI REMITTITUR

A. The Verdict Was Excessive and Should Be Reduced.

The Medical Defendants respectfully move the Court to grant a new trial *nisi remittitur* of the jury verdict award of $9,300,00 for non-economic damages from Plaintiff's negligence claim, as it is clearly excessive in view of the evidence at trial. *See South Carolina Farm Bureau Mutual Insurance Company v. Love Chevrolet, Inc.*, 324 S.C. 149, 478 S.E.2d 57 (1996) (providing that if an award of damages is not grossly excessive so as to warrant a new trial absolute, the award may still be deemed excessive such that a new trial *nisi remittitur* may be granted). Further, the Medical Defendants submit that the economic damages should be reduced to $562,374.55 which is the amount of medical expenses testified minus the charges related to the Plaintiff's brain injury. The non-economic damages awarded by the jury should be reduced to an amount below the statutory damage limitations of medical malpractice. The Medical Defendants will provide further analysis of the excessive nature of the verdict award in their memorandum in support of the motion.

B. Without Gross Negligence, the Medical Malpractice Limitations Must Apply.

Absent a finding of gross negligence, the Court must reduce the judgment to the statutorily dictated noneconomic damages limitations. S.C. Code Ann. § 15-32-220; South Carolina State Register, Vol. 49, Issue 2 (February 28, 2025) (currently set at $580,461 per Defendant). The statutory limits can only be exceeded in three limited circumstances: (1) if the jury or court determines that the defendant was grossly negligent, willful, wanton, or reckless, and such conduct was the proximate cause of the plaintiff's noneconomic damages; (2) if the defendant has engaged in fraud or misrepresentation related to the claim; or (3) if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the plaintiff. S.C. Code Ann. § 15-32-220(E). Here, as discussed above, Plaintiff did not present sufficient evidence to support

the finding of gross negligence against the Medical Defendants and that such gross negligence was the proximate cause of Plaintiff's damages. Further, there is no evidence that Plaintiff established fraud or altered or destroyed medical records for the purpose of avoiding liability. As such, the noneconomic damages awarded to Plaintiff must be reduced to the statutory damage limitations – which is $580,461 per Defendant, or $1,160,922 total. The Medical Defendants will provide further analysis in their memorandum in support of the motion.

C. The Medical Defendants Are Entitled to Set Off.

Under established South Carolina law, "A non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action." *Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012). "The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him." *Welch v. Epstein*, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000). "When a prior settlement involves compensation for the same injury, the nonsettling defendant's right to a setoff arises by operation of law under § 15-38-50." *Pratt v. Amisub of SC, Inc.*, 445 S.C. 199, 230, 912 S.E.2d 268, 185 (Ct. App. 2025) (citing *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 271 (Ct. App. 1999). "Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012) (citing *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998). Here, it is public record that Plaintiff settled with Williamsburg County, who was named as a Defendant in the Complaint, for $300,000. Accordingly, the Medical Defendants are entitled to a set-off for the sum of the settlement received

by Plaintiff, or $300,000, from Williamsburg County.

D. The Photographs Admitted of the Sacral Injury Were Prejudicial, and Dr. O'Bryan Was not Qualified to Opine on the Photographs.

Further, the trial court erred in admitting multiple pictures of Plaintiff's sacrum wound and allowing Dr. Edward O'Bryan to testify regarding how painful such an injury would be. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. Unfair prejudice is defined as "an undue tendency to suggest a decision on an improper basis." *Johnson v. Horry Cnty. Solid Waste Auth.*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010) (quoting *State v. Owens*, 346 S.C. 637, 666, 552 S.E.2d 745, 760 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)). Here, the admission of one photograph of Plaintiff's injury was stipulated by counsel. The Court, over the Medical Defendants' objection, admitted photographs of the wound in evidence, taken during Plaintiff's subsequent hospitalization. In short, the probative value of those photographs were substantially outweighed by their prejudicial effect. Importantly, the condition of Plaintiff's wound is only relevant to the extent the Medical Defendants had seen it. It is undisputed that the pictures of Plaintiff's wound after surgery depicted the wound in a drastically different—and much worse—condition than it appeared while he was incarcerated. Indeed, juror #95 experienced an anxiety-related medical emergency shortly after Plaintiff published these pictures to the jury. Juror #95's medical emergency also interrupted the direct examination of the Medical Defendant's first witness, requiring him to return multiple days later and finish his testimony in a piecemealed manner. Simply, the Medical Defendants were prejudiced by the Court's error in admitting the post-surgery pictures of Plaintiff's wound.

Further, the Court erred in allowing testimony from Dr. Edward O'Bryan regarding the extent Plaintiff's wound and subsequent treatment and that the wound caused Plaintiff to experience pain and suffering. Dr. O'Bryan did not treat, examine, or assess Plaintiff or Plaintiff's injuries at any point. He merely reviewed Plaintiff's medical records to form opinions as to the standard of care in correctional medicine and testify regarding the Medical Defendants' conduct. However, Dr. O'Bryan, over objection, further testified regarding the extent of Plaintiff's wound care and, most importantly, to the pain Plaintiff experienced because of Plaintiff's wound injury and subsequent treatment. Dr. O'Bryan's testimony was purely speculative and provided the only basis for Plaintiff's pain and suffering, for which the jury ultimately awarded $9,300,000. Dr. O'Bryan, nor any other expert, could competently provide accurate testimony about Plaintiff's subjective feeling of pain and suffering, especially considering that Plaintiff was present in the courtroom and available to testify regarding his own experience. Further, there was almost no evidence admitted via medical records or testimony that supported Dr. O'Bryan's pain and suffering testimony. As such, Dr. O'Bryan's purely speculative pain and suffering testimony offered little to no probative value, which was substantially outweighed by the unfair prejudice that resulted from a medical doctor telling the jury how much pain Plaintiff experienced because of his injuries. The Court erred in admitting such testimony.

V. THIRTEENTH JUROR DOCTRINE

The Medical Defendants further move for a new trial absolute based upon the Thirteenth Juror doctrine. "South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2004) (quoting *Folken v. Hunt*, 300 S.C. 251,

254, 387 S.E.2d 265, 267 (1990)). The doctrine empowers the trial judge to "hang the jury by refusing to agree to the jury's otherwise unanimous verdict." *Id*; *see also Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996) ("[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree"). As discussed above, the facts and evidence before the jury in this case do not support the jury's verdict. The Medical Defendants respectfully request the Court exercise its authority under the Thirteenth Juror doctrine to hang the jury.

However, the Medical Defendants further specifically request the Court to exercise its Thirteenth Juror authority regarding the jury's decision to attribute 0% negligence to Plaintiff. Such a decision is wholly contradicted by the substantial evidence in the record, and, on its own, warrants the Court's intervention as the Thirteenth Juror. *See Travelas v. South Carolina Dept. of Transpo.*, 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct. App. 2004). Therefore, even if a JNOV is not granted, the Court should exercise its discretion and grant a new trial absolute under the "Thirteenth Juror" doctrine. The Medical Defendants will provide further analysis of this ground for new trial in its memorandum in support of the motion.

VI. OTHER ISSUES SUPPORTNG A NEW TRIAL OR REDUCTION OF THE VERDICT

The following statements by Plaintiff's counsel or rulings by the trial judge were prejudicial to the Medical Defendants and/or were error and, as such, further support the granting of a new trial or a significant remittitur of the award.

A. Plaintiff's Counsel Repeatedly Made Improper Community Safety Arguments Throughout His Questioning and Argument During Trial.

The Medical Defendants moved in limine to prohibit Plaintiff's counsel from making improper appeals to community safety or "reptile" arguments as follows:

Improper or Golden Rule Arguments:

1. That the purpose of medical care or the obligation of the Medical Defendants in a jail is to keep inmates safe or healthy.

2. That the Medical Defendants are a danger to the jury or community.

3. That a verdict for the Plaintiff will improve medical care in the jail.

4. That the Medical Defendants are incentivized (either financially or otherwise) not to send inmates to the hospital.

5. That inmates should be sent to the hospital if there is any doubt about their medical condition or that the nurses at the jail should perform the best practice, the perfect practice, or the most safe practice.

6. That this trial is necessary because the Medical Defendants will not accept responsibility for what happened to Plaintiff.

7. That the jurors should place themselves in the position or shoes of Plaintiff.

Suggesting or asking the jurors to place themselves in the position of Plaintiffs ("Golden Rule") has been held to be an improper appeal to passions and sympathies. *State v. Reese,* 370 S.C. 31, 37-39, 633 S.E.2d 898, 901-902, (2006) (overruled on other grounds). It has likewise been held to be improper to suggest that the jurors themselves are in danger or need to be protected somehow ("Reptile" method). *See Vasquez v. State*, 388 S.C. 447, 698 S.E.2d 561 (2010). South Carolina courts, including this Court during pre-trial motions, routinely exclude this type of testimony, and the Medical Defendants, as the medical provider in the local jail, were highly prejudiced by this type of testimony or argument.

In addition, these arguments listed above modify the standard of care by suggesting other methods to evaluate how a medical provider should be judged. The standard of care is what an average and competent practitioner would do when acting in the same or similar circumstances. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 246, 626 S.E.2d 1, 3 (2006). The standard of care is not the best practice, the perfect practice, the "if any doubt send to hospital" practice or the most safe practice. Any of these arguments are improper arguments. *See, e.g.*,

Castleberry v. DeBrot, 308 Kan. 791, 808, 424 P.3d 495, 508 (2018) ("The 'safe medicine or unsafe medicine' argument . . . . invited the jury to determine whether DeBrot's conduct met the standard of care based on whether it desired "safe medicine or unsafe medicine," instead of the evidence and the law . . . . As phrased, the comment implied the jury's decision could reach beyond the confines of the case and impact medical care elsewhere. As presented in this case, the comments were error.").

Medical providers in jails are tasked to address medical issues that present in the jail. The medical providers do not have a duty to inmates after release or to keep them safe or make them more healthy. All of these arguments suggest alternative standards of care which is not allowed under medical malpractice law in South Carolina. There is no evidence that a verdict related to the medical decisions made about one inmate in Williamsburg County, South Carolina in 2020 will improve medical care in jails or this particular jail. Therefore, these arguments invited the jury to pursue a social goal instead of the task at hand—determining if the Plaintiff has met his burden to establish negligence, proximate cause, and damages.

Finally, SHP is paid a flat fee under contract to provide medical services in the jail. The amount paid for services is not affected by the decisions made by the medical staff. As such, there is no financial incentive for the nurses or medical provider to fail to send an inmate to the Hospital. To allow Plaintiff to argue or suggest otherwise was incorrect and improper.

Plaintiff's counsel made these types arguments throughout the trial including woven throughout his questioning that further inflamed the jury to render an unsupported and excessive verdict based on passion and prejudice. The Medical Defendants will provide further analysis of this issue in its memorandum in support of the motion.

B. Plaintiff's Counsel Made Improper Arguments about the Relationship between the County and SHP.

The Medical Defendants contend that the Plaintiff's counsel made the following improper arguments through questioning or in argument to the jury:

1. Plaintiff repeatedly blamed the nurses for the Plaintiff's alleged failure to receive his Dilantin prescription when the undisputed testimony was that the medicine was provided by the correctional officers, not the nurses.

2. Plaintiff repeatedly imputed the work of the correctional officers to the nurses by failing to recognize that the correctional officers must inform the nurse about changes in the medical condition of inmates and that the correctional officers do not work for SHP.

3. Plaintiff made improper arguments through questions and argument that SHP breached its contract to the County.

4. Plaintiff through argument and questions improperly contended that NP Thacker should be liable for the acts of nurse Buddin by arguing the Captain of Ship doctrine which has been rejected by South Carolina.

This were improper and prejudiced the Medical Defendants. The Medical Defendants will provide further analysis of this issue in its memorandum in support of the motion.

C. The Court erred in Excluding Evidence of Plaintiff's Arrests After the May 18, 2020 Drug Overdose.

Over the Medical Defendants' objection, the Court disallowed evidence or testimony regarding the specific details and charges resulting from Plaintiff's illegal conduct between May 18, 2020 and his incarceration on May 22, 2020. Specifically, the Court excluded the criminal charges surrounding Plaintiff's May 18 and May 22, 2020 arrests. These four days are critical to the Medical Defendants' defense theory that, days before his incarceration began, Plaintiff was

experiencing symptoms of a permanent brain injury because of his drug overdose. Plaintiff's specific conduct, and the criminal charges stemming from such conduct, is highly probative to Plaintiff's mental state in the days leading up to and including his incarceration. Further, the unfair prejudice resulting from the introduction of such evidence is limited, as the jury was more than aware of Plaintiff's drug use (May 20, 2020 arrest) and the arrest leading to his incarceration (May 22, 2020). As such, the Court erred in excluding evidence and testimony regarding these arrests because the probative value is not substantially outweighed by its prejudicial effect. The Medical Defendants will provide further analysis of this issue in its memorandum in support of the motion.

D. Doward Harvin, GAL Should Not Have Been permitted to Testify at Trial.

Mr. Harvin lacked personal knowledge of Plaintiff's medical expenses and charges and should not have been permitted to testify at trial. Further, Mr. Harvin's testimony presented the GAL relationship to the jury which was prejudicial. As such, Mr. Harvin should not have been permitted to testify at trial. The Medical Defendants will provide further analysis of this issue in its memorandum in support of the motion.

CONCLUSION

The Medical Defendants make the following request of the Court:

1. The Court should grant JNOV in favor of the Medical Defendants for the reasons set forth herein.

2. The Court should grant a new trial absolute because of jury misconduct and concealment as described herein. This allegation requires a full evidentiary hearing and the Medical Defendants request such a hearing.

3. The Court should grant a new trial absolute because the verdict was grossly excessive.

4. The Court should grant a new trial *nisi remittitur* and reduce the verdict to an amount of actual damages in the amount of $562,374.55 and a non-economic amount equal to or below the statutory medical malpractice damage limitations.

5. The Court should impose the statutory medical malpractice damage limitations.

6. The Court should reduce the verdict by the set off of $300,000.

7. The Court should grant a new trial absolute under the "thirteenth juror" doctrine.

8. The Court should grant a new trial absolute because of the admission of the photographs; improper reptile arguments; improper arguments about the relationship between SHP and the County; and for the testimony of Mr. Harvin improperly inflamed the passions of the jury leading to an excessive verdict.

Respectfully submitted,

s/ James G. Long, III
James G. Long, III, S.C. Bar No. 64103
Amelia S. Waring, S.C. Bar No. 78232
MAYNARD NEXSEN PC
1230 Main Street, Suite 700
Columbia, SC 29201
803.771.8900
JLong@maynardnexsen.com
AWaring@maynardnexsen.com

Attorneys for Defendants Southern Health Partners, Inc. and Sara Thacker, NP

July 25, 2025
Columbia, South Carolina