STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

SUPERIOR COURT DIVISION
FILE NO. 23-CVS-5013

Jeff Jackson, Attorney General, *ex rel.* Dogwood Health Trust,

Plaintiff,

vs.

MH Master Holdings, LLLP,

Defendant.

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS

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I. INTRODUCTION

This case should be dismissed under Rule 12(b)(1) because the Attorney General lacks constitutional or statutory authority to bring it. N.C. Gen. Stat. § 1A-1, 12(b)(1). The Attorney General seeks to interpret and enforce a commercial contract between private parties—the Amended and Restated Asset Purchase Agreement (the "APA")—through which HCA acquired Mission Hospital. His theory is that he may sue on behalf of and in the name of Dogwood Health Trust, the private entity that serves as the APA's Seller Representative, because Section 13.13(b) of the APA designates him a third-party beneficiary of Dogwood's right to enforce certain of HCA's commitments. But neither the North Carolina Constitution nor any statute authorizes him to sue a private buyer on behalf of a private seller.

Only the General Assembly can define the Attorney General's powers. N.C. Const. art. III, § 7(2). A private contract cannot add to them, and precedent makes clear that "the Attorney General may commence private lawsuits on behalf of citizens *only* when explicitly granted by statute." *Daedalus, LLC v. Mecklenburg Cnty.*, 933 S.E.2d 401, 406 (N.C. Ct. App. 2026) (emphasis added). This Court already has recognized that the

Attorney General's ability to *enforce* the APA hinges on "a right afforded by contract, not a governmental power." ECF No. 172, Order & Op. on Cross-Mots. for Summ. J. ("SJ Order") ¶ 53. That contractual right cannot serve as a substitute for the official authority the Attorney General needs to bring this suit. Because he has none, he lacks standing. The Court should accordingly dismiss this case for lack of jurisdiction.

II. BACKGROUND

1. The Attorney General is a constitutional officer whose duties "shall be prescribed by law." N.C. Const. art. III, § 7(2). The General Assembly has prescribed those duties in Chapter 114 of the General Statutes. Section 114-1.1 grants the Attorney General powers "that existed at the common law." N.C. Gen. Stat. § 114-1.1. Section 114-2 identifies a list of specific duties of the Attorney General, which includes representing the State and its agencies in litigation. *Id.* § 114-2(1), (2). Beyond those general duties, the General Assembly has granted the Attorney General specific enforcement powers in particular areas in a handful of additional statutes. *See, e.g.*, *id.* §§ 75-14, 75-15. None of those statutory grants expressly gives the Attorney General authority to enforce private contracts, either generally or when designated a third-party beneficiary

of the contract.

2. In 2019, Defendant MH Master Holdings, LLLP, a subsidiary of HCA Healthcare ("HCA") acquired Mission Hospital from Mission Health System. The sale was governed by the APA, dated January 31, 2019, among (1) HCA affiliate MH Master Holdings, LLLP, as Buyer; (2) Mission Health System and its affiliated entities, as Sellers; and (3) Dogwood Health Trust, the nonprofit foundation created to hold, and eventually disburse, the sale proceeds. In February 2019, Dogwood "became the 'Seller Representative' pursuant to Section 3.5(b) of the APA." ECF No. 50, Am. Compl. ¶ 2; ECF No. 50-1, APA §§ 1.1, 3.5.

Because Mission Health was a nonprofit corporation, the proposed transfer was reviewable by the Attorney General under N.C. Gen. Stat. § 55A-12-02(g). That statute grants the Attorney General authority to review nonprofit asset sales before closing. During his review, the Attorney General requested a provision in the APA giving him the contractual right to enforce certain commitments on behalf of Dogwood. The parties added that provision, which is set out in Section 13.13 of the APA.

Section 13.13(a) first provides that the Agreement's terms are "intended solely for the benefit of" the buyer and sellers—i.e., MH Master

Holdings, LLLP, and the Mission entities, with Dogwood Health Trust—along with the buyer and seller indemnified parties and their respective successors, assigns, or delegates. The Agreement expressly provides that it "shall not confer" third-party beneficiary rights on any other person. ECF No. 50-1, APA § 13.13(a). Section 13.13(b) then purports to grant certain rights to the Attorney General. If the Attorney General determines that the Seller Representative has failed to adequately enforce certain specified obligations, he may notify the Seller Representative. *Id.* § 13.13(b). If the Seller Representative does not cure that failure within forty days, the Attorney General "shall have the right to enforce such obligation on behalf of and in the name of the Seller Representative," subject to the APA's other terms, and "shall become a third-party beneficiary of such right." *Id.*

3. In December 2023, the Attorney General filed this case alleging that HCA breached commitments in the APA to continue providing certain healthcare services at Mission Hospital. The Attorney General cited Section 13.13(b) as the sole basis of his authority to bring this lawsuit. He brought the suit "on behalf of and in the name of Dogwood Health Trust"—not on behalf of the State or any state agency. ECF No. 50, Am.

Compl. ¶ 1; *see also id.* ¶ 203 (alleging that the Attorney General "has the right to enforce the obligation on behalf of and in the name of Dogwood"). In December 2024, this Court dismissed HCA's counterclaims on sovereign immunity grounds. ECF No. 97, Order & Op. on Mot. to Dismiss Countercls. ¶ 34. The parties then filed cross-motions for summary judgment on contract interpretation and breach.

In July 2026, the Court ruled on those motions. *See* ECF No. 172, SJ Order. The ruling directly addressed the nature of the Attorney General's enforcement authority. The Court held that "the Attorney General's ability to *enforce* the APA . . . is a right afforded by contract, not a governmental power." *Id.* ¶ 53. This holding confirmed what the Attorney General has acknowledged throughout this litigation. In his briefs, he has stated that he "is not a party to the APA" and that "*[a]ll* the Attorney General has done is bring suit for breach of contract as a third-party beneficiary, which HCA agreed to allow . . . ." ECF No. 29, Pl.'s Br. in Supp. of Mot. to Dismiss HCA Countercls. 3, 11 ("First MTD Br.") (emphasis added).

III. ARGUMENT

To have jurisdiction over the merits of this case, the Court must

first assure itself that the plaintiff—the Attorney General—has standing to bring it. *Cmty. Success Initiative v. Moore*, 384 N.C. 194, 206 (2023); *United Daughters of the Confederacy v. City of Winston-Salem by & through Joines*, 383 N.C. 612, 649 (2022). As the North Carolina Supreme Court has recognized, whether the Attorney General has standing turns on whether he has been given official authority to sue. *Bailey v. State*, 353 N.C. 142, 148, 153 (2000); *see also Sotelo v. Drew*, 123 N.C. App. 464, 468 (1996), *aff'd*, 345 N.C. 750 (1997); *State v. Felts*, 79 N.C. App. 205, 213 (1986). If not, the case must be dismissed for lack of jurisdiction. *Bailey*, 353 N.C. at 148, 156; *Daughters of the Confederacy*, 383 N.C. at 650.

Here, the Attorney General lacks official authority to bring this case. His general duties under the Constitution and Chapter 114 concern representing the State, not suing on behalf of private parties to enforce a private agreement. The Attorney General has effectively acknowledged as much, consistently identifying Section 13.13(b) of the APA—not any statute—as the source of his enforcement authority. But the Attorney General is wrong that Section 13.13(b) can give him authority he has not been granted by the Constitution or the General Assembly. A private

contract between two private parties cannot expand the powers of a public officer.

Because the Attorney General is without authority to bring this lawsuit, he lacks standing—and this case must now be dismissed for lack of jurisdiction.[1]

A. The Attorney General Lacks Authority To Bring This Lawsuit

The Attorney General may sue only when the laws defining his powers authorize him to do so. The North Carolina Constitution leaves his duties to be "prescribed by law," and North Carolina courts accordingly require explicit statutory authorization before he may initiate litigation, particularly on behalf of private parties. The Attorney General has no such authorization here. No statute permits him to sue a private buyer to enforce a private contract on behalf of a private nonprofit. Indeed, in addressing HCA's estoppel defense, this Court recognized that the Attorney General's ability to enforce the APA "is a right afforded by contract, not a governmental power." ECF No. 172, SJ Order ¶ 53.

[1] A party may challenge subject-matter jurisdiction at any time, even on appeal. *Town of Midland v. Harrell*, 385 N.C. 365, 371 (2023); *In re McClatchy Co., LLC*, 386 N.C. 77, 85 (2024). And "[s]tanding must be maintained throughout the entirety of the suit." *Cherry Cmty. Org. v. City of Charlo*tte, 257 N.C. App. 579, 582 (2018) (citation omitted).

Without a valid source of authority, he lacks standing to bring this action.

1. The Attorney General May Initiate Actions Only When Explicitly Authorized By Statute

The Attorney General is a creature of the North Carolina Constitution. N.C. Const. art. III, § 7(2); *see N.A.A.C.P. v. Eure*, 245 N.C. 331, 336 (1957). The Constitution's only directive is that the Attorney General's "duties shall be prescribed by law." N.C. Const. art. III, § 7(2). Pursuant to that directive, the General Assembly enacted Chapter 114 of the General Statutes which set forth the Attorney General's duties. *See Bailey*, 353 N.C. at 153; *Martin v. Thornburg*, 320 N.C. 533, 545 (1987).

Section 114-1.1 states that the Attorney General "has had and continues to be vested with those powers of the Attorney General that existed at the common law, that are not repugnant to or inconsistent with the Constitution or laws of North Carolina." N.C. Gen. Stat. § 114-1.1. Section 114-2 then enumerates the Attorney General's statutory duties. Those duties are directed at serving the State. They include defending the State in appellate and trial courts where the State is a party or interested, representing State departments and agencies, advising prosecutors and providing legal opinions to State officials, managing funds received for State debts or penalties, and coordinating with legislative

leadership on challenges to State statutes or constitutional provisions. *See generally id.* § 114-2. And Section 114-3 underscores that the office exists to serve the State, not private parties, by requiring that the Attorney General "shall devote his whole time to the duties of the office and shall not engage in the private practice of law." *Id.* § 114-3.

North Carolina courts have interpreted this constitutional and statutory framework to establish a clear rule: The Attorney General cannot initiate litigation absent express statutory authorization. When the Attorney General brings any action, courts must "examine . . . whether [the] claim of authority is rooted in statutory or constitutional mandates," *Bailey*, 353 N.C. at 153, and the only constitutional mandate leaves the Attorney General's duties to be "prescribed by law," N.C. Const. art. III, § 7(2). Absent statutory authorization, the Attorney General has no power to initiate litigation.

More specifically, courts have stated that the Attorney General cannot commence lawsuits on behalf of private citizens absent explicit statutory authorization. In *Daedalus*, the Court of Appeals explained that "North Carolina has . . . historically restricted local government entities or agencies from initiating claims on behalf of fully competent citizens

unless explicitly authorized by statute." 933 S.E.2d at 406. The court observed that "the Attorney General may commence private lawsuits on behalf of citizens *only* when explicitly granted by statute." *Id.* (emphasis added); *see also Sotelo*, 123 N.C. App. at 467–68 (holding that the Attorney General lacked authority to file a motion on behalf of a private party where he "ha[d] not shown any statutory authority which permits him" to do so).

In *Daedalus*, Mecklenburg County initiated counterclaims against a property developer, seeking relief on behalf of private homeowners who had purchased defective duplex units. 933 S.E.2d at 404–05. The County pointed to N.C. Gen. Stat. §§ 160D-1104(b) and 160D-404(c), which authorized it to bring "judicial actions against actual or threatened violations" of the Building Code and to "institute any appropriate action or proceedings to restrain, correct or abate the violation." *Id.* at 405–06. Despite this statutory language, the Court of Appeals refused to find authorization because "Chapter 160 does not explicitly specify what these appropriate measures are, nor does it clarify whether such actions may be initiated on behalf of others." *Id.* at 406. Because the statute lacked express authorization for the County to initiate litigation to recover

damages on behalf of private citizens, the court held that the County lacked standing to pursue those claims. *See id.* In reaching this conclusion, the court drew an analogy to the same restriction on the Attorney General, observing that he may initiate private lawsuits only where expressly authorized by statute. *See id.*

In short, the Attorney General may initiate litigation only when the law explicitly authorizes him to do so, and that requirement applies with particular force when he purports to sue on behalf of a private party. Broad or general grants of authority will not suffice. And absent explicit authorization, the Attorney General lacks standing, and the court consequently lacks jurisdiction.

2. No Statute Authorizes The Attorney General To Bring This Suit

Applying these rules here, nothing authorizes the Attorney General to bring this suit. Neither his general duties under Chapter 114, nor the common law, nor Chapter 75, nor Section 55A-12-02(g) permits him to sue a private buyer to enforce a private contract on behalf of a private nonprofit. Each potential source of authority falls short.

1. The General Assembly has enumerated the Attorney General's duties in N.C. Gen. Stat. § 114-2(1)–(10). Most subsections are narrow

and patently inapplicable. *See, e.g.*, *id.* § 114-2(2) (directing the Attorney General to represent State agencies); *id.* § 114-2(4) (advisory duty to "consult with and advise the prosecutors, when requested by them"); *id.* § 114-2(6)–(7) (ministerial fiscal duties); *id.* § 114-2(9)–(10) (notifying and deferring to legislative leaders when statutes are challenged).

As to litigation, Section 114-2(1), (2), and (10) state that "it shall be the duty of the Attorney General":

> (1) To defend all actions in the appellate division in which the State shall be interested, or a party, and to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested. . . .
>
> (2) To represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. . . .
>
> …
>
> (10) . . . [T]o represent upon request and otherwise abide by and defer to the final decision-making authority exercised by the Speaker of the House of Representatives and the President Pro Tempore of the Senate . . . in defending any State or federal action challenging the validity or constitutionality of an act of the General Assembly. . . ."

N.C. Gen. Stat. § 114-2.

None of those provisions grants the Attorney General the authority to initiate litigation on behalf of private parties. To be sure, Section 114-2(1) directs the Attorney General "to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested." N.C. Gen. Stat. § 114-2(1). But it authorizes the Attorney General only to *appear* for the State and to *defend* actions in which the State is a party or interested. It does not authorize him to *initiate* actions—let alone on behalf of private parties. *Compare id.* ("appear for the State" and "defend"), *with id.* § 114-2(8) (repealed 2024) ("institute and originate proceedings"); *see State v. Camacho*, 329 N.C. 589, 594–95 (1991) (noting that under Section 114-2(1), the Attorney General is "directed to *appear* in causes or matters in which the State has an interest, but given no authority to *prosecute* criminal cases upon [its] own motion" (emphasis in original)); *Felts*, 79 N.C. App. at 210–11 ("[W]e are not persuaded that G.S. 114-2(1) contemplates the Attorney General's initiating an action . . . ."); *see also Sotelo*, 123 N.C. App. at 467 (holding that the Attorney General "ha[d] not shown

any statutory authority which permits him to supplant the district attorney").

Notably, North Carolina courts have repeatedly rejected attempts to read narrow, specific powers into broad, general statutes. In *Bailey*, for example, the North Carolina Supreme Court rejected the Attorney General's invocation of a "common law power to defend the public interest" because he cited "no source—case or statute" extending that power to the facts before it. 353 N.C. at 152–53. And in *Daedalus*, the Court of Appeals held that a statute broadly authorizing the County to enforce the Building Code did not permit it to "initiate litigation . . . on behalf of private citizens." 933 S.E.2d at 406. Even the most generous interpretation of the Attorney General's Section 114-2 powers leaves him without authority here.

2. If anything, the General Assembly has affirmatively signaled that the Attorney General lacks broad, generalized authority to litigate on behalf of the public interest. Until recently, Section 114-2(8) provided the only, even arguable, statutory foothold for the Attorney General to "institute and originate proceedings" in "matters affecting the public

interest." N.C. Gen. Stat. § 114-2(8) (repealed 2024).[2] But in 2024, the General Assembly repealed this provision. *See* Act of Dec. 11, 2024, S.L. 2024-57, § 3D.1(h); *In re Incorporation of Indian Hills, Jackson Cnty.*, 280 N.C. 659, 663 (1972) ("[I]f a statute is unconditionally repealed without a saving clause in favor of pending suits, all pending proceedings thereunder are terminated, and if final relief has not been granted before the repeal goes into effect, it may not afterwards."); *see generally State ex rel.*

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[2] Before its repeal, Section 114-2(8) provided:

> "[I]t shall be the duty of the Attorney General . . .
>
> a. To intervene, when he deems it to be advisable in the public interest . . . in a representative capacity for and on behalf of the using and consuming public of this State. He shall also have the authority to institute and originate proceedings before such courts, officers, agencies or bodies and shall have authority to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest.
>
> b. Upon the institution of any proceeding before any State agency by application, petition or other pleading, formal or informal, the outcome of which will affect a substantial number of residents of North Carolina . . . when the Attorney General deems it advisable in the public interest to intervene in such proceedings, he is authorized to file responsive pleadings and to appear before such agency either in a representative capacity in behalf of the using and consuming public of this State or in behalf of the State or any of its agencies."

N.C. Gen. Stat. § 114-2(8) (2023).

Jackson v. E.I. du Pont de Nemours & Co., 2025 WL 2254178, at *3–4, *6 (N.C. Super. Ct. Aug. 7, 2025) (discussing repeal of Section 114-2(8)).

Of course, "public interest" is not a talisman, and even before the repeal of Section 114-2(8), courts imposed serious limits on how broadly to interpret that authorization. *See Bailey*, 353 N.C. at 152-54; *Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 116–17 (2002) (limiting Section 114-2(8) to cases in which the State had a recognized legal interest in public trust resources, not to vindication of an abstract "public interest"); *New Hanover Cnty. Bd. of Educ. v. Stein*, 374 N.C. 102, 131 (2020) (Newby, J., dissenting) ("It is simply incorrect that the Attorney General has 'plenary authority to act in the interests of the public.'").

But the repeal is telling. Section 114-2(8) was potentially the broadest grant of litigation authority in Chapter 114, and the General Assembly deliberately acted to eliminate that authority. With Section 114-2(8) off the books, Section 114-2 no longer contains any provision that could even arguably support this litigation.

3. Section 114-1.1 separately provides that the Attorney General retains all "common law" powers of the office "that are not repugnant to

or inconsistent with the Constitution or laws of North Carolina." N.C. Gen. Stat. § 114-1.1. There are a number of recognized common law powers. *See* Rufus L. Edmisten, *The Common Law Powers of the Attorney General of North Carolina*, 9 N.C. Cent. L.J. 1, 7 (1977) (citing *People v. Miner*, 2 Lans. 396, 398 (N.Y. Gen. Term 1868)). None has any conceivable application to this case.

Earlier in this litigation, the Attorney General referenced the common law power to protect beneficiaries of charitable trusts to support his sovereign immunity defense against HCA's counterclaims—not as a basis for standing or subject-matter jurisdiction. *See* ECF No. 64, Pl.'s Reply in Supp. of Mot. to Dismiss Countercls. 3 ("MTD Reply") (arguing that the APA's "enforcement authority" is "consistent with his . . . 'common law right and power to protect the beneficiaries of charitable trusts'"). Any belated attempt to invoke this doctrine for standing would fail.

In *Sigmund Sternberger Foundation, Inc. v. Tannenbaum*, the North Carolina Supreme Court recognized in dicta the Attorney General's common law power to "protect the beneficaries [sic] of charitable trusts and the property to which they are or may be entitled." 273 N.C. 658, 678–79 (1968). The charitable trust doctrine is triggered by the

existence of a *trust relationship*, not merely by the fact that one contracting party happens to be a charitable entity. But there is no trust here. Dogwood is not a trust; it is a nonprofit corporation. "Trust" is simply part of its corporate name. The doctrine is otherwise a complete mismatch for this case. It seeks to protect charitable trust beneficiaries from misuse or loss of trust property. *See id.*; *Kania v. Chatham*, 297 N.C. 290, 293 (1979) (directing that enforcement actions be brought "when it appears that the trust is being mismanaged through negligence or fraud"). But HCA has no connection to trust property: it is not a trustee or trust fiduciary. More fundamentally, this action does not concern the misuse of trust property at all. It therefore falls outside the doctrine's ambit.

This common law power also has the most force where no private party has standing to enforce the trust, because in such cases the Attorney General fills an enforcement gap that would otherwise leave charitable assets unprotected. *See Kania*, 297 N.C. at 292–93 (directing that "a party seeking enforcement of a charitable trust should have the Attorney General or district attorney commence an action" where no private party has standing). Here, that gap does not exist. Dogwood has standing to

sue in its own right; it simply chose not to. The Attorney General's gap-filling rationale therefore has no application.

4. Earlier in this litigation, the Attorney General also referenced his "broad consumer protection mandate" to support his sovereign immunity defense against HCA's counterclaims. *See* ECF No. 29, First MTD Br. 10; ECF No. 64, MTD Reply 3. If the Attorney General were to invoke his consumer protection authority as a basis for standing, that attempt would fail.

Chapter 75 gives the Attorney General express power to enforce its prohibition on "[u]nfair methods of competition" and "unfair or deceptive acts or practices in or affecting commerce." N.C. Gen. Stat. § 75-1.1. Although individual consumers may also sue, *id.* § 75-16, the Attorney General must investigate "all . . . corporations or persons in North Carolina doing business in violation of law" in order to "prosecute" them, *id.* § 75-9, and may "prosecute civil actions in the name of the State" to carry out the Chapter, *id.* § 75-14; *see also id.* § 75-15 (directing the Attorney General to prosecute violations "by any trust or public service corporation").

Chapter 75 does not apply here. The Attorney General seemed to recognize as much: He described his APA enforcement right as "only a

narrow right" that provides "additional tools" "*consistent with*" his consumer protection authority, not derived from it. *See* ECF No. 29, First MTD Br. 10 (emphasis added); ECF No. 60, Pl.'s Br. in Supp. of Mot. to Dismiss HCA Countercls. 9 ("Second MTD Br.") (similar).

But even if he had invoked Chapter 75, his claim would fail. As relevant here, to demonstrate a violation of Section 75-1.1, a plaintiff must prove "an unfair or deceptive act or practice, or an unfair method of competition." *Roach v. Wells Fargo Bank, Nat'l Ass'n*, 302 N.C. App. 43, 48 (2025) (citation omitted). The Attorney General has not claimed that HCA engaged in unfair or deceptive practices. He has claimed only a breach of contract. And "a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under [Chapter 75]." *Id.*; *see also Dan King Plumbing Heating & Air Conditioning, LLC v. Harrison*, 281 N.C. App. 312, 320 (2022).

5. That leaves only Section 55A-12-02(g). That statute plays an important role in transactions involving charitable corporations. But it

prescribes pre-transaction gatekeeping authority, not post-transaction enforcement power.

Under Section 55A-12-02(g), a charitable corporation must notify the Attorney General 30 days before disposing of all or a majority of its property. The Attorney General may then review the proposed transaction and extend that review by an additional 30 days, during which the transaction cannot close. N.C. Gen. Stat. § 55A-12-02(g). The statute empowers the Attorney General to scrutinize a proposed sale before it closes. But it does not give the Attorney General a veto over the private transaction—still less any power to bring litigation to challenge alleged violations of the sale agreement post-closing.

Section 55A-12-02(g) plainly falls short of the explicit statutory authorization North Carolina courts demand. When the General Assembly wants the Attorney General to have enforcement power, it grants that power in unmistakable terms. The consumer protection statutes, for example, expressly authorize the Attorney General to "prosecute civil actions in the name of the State." N.C. Gen. Stat. § 75-14; *see State ex rel. Easley v. Rich Food Servs., Inc.*, 139 N.C. App. 691, 697, 705 (2000) (holding that the Attorney General "clearly" had authority to initiate an action

based on the "plain language" of the consumer protection statute); *Daedalus*, 933 S.E.2d at 406. The General Assembly has used the same formula in other discrete areas. *See, e.g.*, N.C. Gen. Stat. § 75-145 (authorizing Attorney General enforcement against abusive patent assertions); *id.* § 1-515 (authorizing Attorney General actions against persons who unlawfully hold public offices or franchises); *id.* § 19-2.1 (authorizing Attorney General actions to abate a nuisance). Section 55A-12-02(g) contains nothing of the sort.

What Section 55A-12-02(g) *does* grant is a pre-transaction notice-and-review mechanism. It says nothing about post-closing enforcement. No North Carolina authority has interpreted this statute to grant post-closing enforcement authority. Secondary sources confirm this reading, describing the provision solely in terms of the 30-day (extendable to 60-day) pre-closing notice-and-review window, with no mention of any post-closing enforcement or litigation power. *See* David J. Lanciotti & Paul Steinberg, *General and special powers of nonprofit Corporation—Power over corporate property*, 6 N.C. Index 4th Corporations § 67 (2026); Russell M. Robinson, II, *Sale of assets other than in regular course of activities*, N.C. Corp. Law & Prac. § 55:2 (4th ed. 2026).

The Attorney General has never contended that Section 55A-12-02(g) authorizes post-closing enforcement. Throughout this litigation, he has described Section 55A-12-02(g) as granting "authority to *review* transactions." ECF No. 50, Am. Compl. 2 (emphasis added); *see also id.* ¶ 32. Because the statute gave him "review authority," he had to "persuade[] HCA to grant him enforcement authority" through the APA. ECF No. 29, First MTD Br. 2. He likewise described the APA as the "enforcement mechanism" that "provides the Attorney General *additional tools*" beyond his "statutory authority to *review* non-profit transactions." ECF No. 60, Second MTD Br. 9 (emphases added). This lack of statutory enforcement authority is precisely why the Attorney General sought enforcement power in the APA. The Attorney General stated that his role under the statute was "relatively limited." ECF No. 146-6, Stein Decl. 1. His office acknowledged at the time of the transaction that its "statutory tools" to regulate Mission Health "[were] limited." ECF No. 146-8, NCAG_0000006483, at –6485. Internal documents describe the APA terms as creating "[a] role for the AGO" and permitting "AG enforcement of all public protections" that would not otherwise exist. *Id.* at –6484.

The Attorney General's conduct further confirms this understanding. He used the statute exactly as it was designed: He reviewed the transaction, raised potential concerns, and ultimately issued a letter of non-objection. *See* ECF No. 145-20, Letter from Jennifer T. Harrod, Special Deputy Att'y Gen., to Donald R. Esposito, Jr. (Jan. 16, 2019). That exercise exhausted his statutory authority under Section 55A-12-02(g).

This Court has similarly acknowledged Section 55A-12-02(g)'s limits when ruling on HCA's summary judgment motion, which argued that the Attorney General is equitably estopped from asserting his current interpretation of the APA's terms. Under North Carolina law, a governmental entity may be estopped from later asserting a new position "only if it is necessary to prevent a loss to another and the estoppel will not impair the exercise of governmental powers." *Kings Mountain Bd. of Educ. v. N.C. State Bd. of Educ.*, 159 N.C. App. 568, 577 (2003). In ruling on HCA's estoppel defense, the Court determined that "the application of equitable estoppel in this action would not impair the exercise of the Attorney General's *governmental* powers to approve or disapprove the transaction pursuant to section 55A-12-02(g)," because estoppel would affect only "the Attorney General's ability to *enforce* the APA, *which is a*

right afforded by contract, not a governmental power." ECF No. 172, SJ Order ¶ 53 (emphasis added). The Court thus recognized that the only governmental power Section 55A-12-02(g) confers is the pre-closing power to review the transaction, and that the Attorney General's ability to sue to enforce the APA comes from the contract alone.

The Attorney General's own statements and this Court's reasoning thus confirm that Section 55A-12-02(g) cannot supply the statutory authorization the Attorney General needs to bring this breach-of-contract lawsuit.

B. Section 13.13 Of The APA Cannot Supply Authority The Law Withholds

Because he has no independent, public authority to bring this suit, *see* ECF No. 172, SJ Order ¶ 53, the Attorney General's case for standing rests entirely on a provision of a contract between two private parties: Section 13.13(b) of the APA. That provision cannot carry the weight he places on it. Section 13.13(b) states that the Attorney General is a third-party beneficiary of a contractual enforcement right, but it does not—and could not—purport to expand his governmental powers. Without independent legal authority, the Attorney General cannot use a private contract to expand his official authority and bring this action.

1. Throughout this litigation, the Attorney General has consistently identified Section 13.13(b) of the APA as the source of his enforcement authority. He initiated this lawsuit on behalf of Dogwood "under Section 13.13(b) of the APA." ECF No. 50, Am. Compl. ¶ 1. In his first motion-to-dismiss brief, he stated that while North Carolina law gave him authority to review the transaction under Section 55A-12-02(g), he "persuaded HCA to grant him enforcement authority." ECF No. 29, First MTD Br. 2 (citing Section 13.13(b)); *see also id.* at 3 (citing Section 13.13(b) again to explain that he "is not a party to the APA, but that agreement authorizes him to sue as a third-party beneficiary in the name of Dogwood Health Trust."); *id.* at 11. In his second motion-to-dismiss brief, the Attorney General reiterated that he "has *only* a narrow right to enforce certain sections of the APA" under Section 13.13(b), and that "[t]his enforcement mechanism provides the Attorney General additional tools" that are merely "consistent with" his other authority. ECF No. 60, Second MTD Br. 9. And at a June 2024 hearing, the Attorney General's counsel confirmed this understanding, explaining that "[w]e brought this suit in Dogwood Health Trust's name and we did that because that is the process that the Asset Purchase Agreement provides for the AG to

exercise his enforcement rights." Mot. to Intervene Hr'g Tr. 25:9–12 (June 11, 2024).

In making these arguments, the Attorney General has relied on Section 13.13 of the APA. As described above, Section 13.13(a) is the APA's no-third-party-beneficiary clause. It provides that the Agreement's "terms and provisions . . . are intended solely for the benefit of" the signatories and "it is not the intention of the Parties to confer, and, this Agreement shall not confer, third-party beneficiary rights upon any other Person." ECF No. 50-1, APA § 13.13(a). Section 13.13(b) creates a limited exception for the Attorney General. If "the North Carolina AG determines that Seller Representative has failed to adequately exercise its right to enforce" certain enumerated obligations, he must notify the Seller Representative, which then has forty days to take appropriate action. *Id.* § 13.13(b). If the Seller Representative fails to act, "the North Carolina AG shall have the right to enforce such obligation on behalf of and in the name of the Seller Representative, notwithstanding Section 13.13(a) . . . , and shall become a third-party beneficiary of such right." *Id.* The APA thus declares an express carve-out designating the Attorney General a third-party beneficiary for limited enforcement purposes.

The Attorney General's problem is that Section 13.13(b) cannot create governmental enforcement authority that the General Assembly has not conferred. As explained above, "the Attorney General may commence private lawsuits on behalf of citizens *only* when explicitly granted by statute." *Daedalus*, 933 S.E.2d at 406 (also broadly emphasizing that "local government entities or agencies" have no power to initiate claims on behalf of fully competent citizens unless explicitly authorized by statute"); *see supra* Part I.A. A contract between private parties cannot supply authority that the General Assembly has not granted. Parties may create obligations between themselves, but they cannot amend the legal powers of a constitutional office.[3]

2. These principles track how other courts have rejected similar efforts to use contractual agreements to expand governmental powers. In *Hall Street Associates, L.L.C. v. Mattel, Inc.*, for example, a landlord and tenant entered a contract under which they agreed to arbitrate a lease dispute and allow a district court to vacate or correct any award

[3] At the time Section 13.13(b) was included in the contract, in 2019, the Attorney General likely understood himself to have authority to bring litigation in the public interest under N.C. Gen. Stat. § 114-2(8)(a) (repealed 2024). *See State ex rel. Jackson v. E.I. du Pont de Nemour*s & Co., 2025 WL 2254178, at *3 (N.C. Super. Ct. Aug. 7, 2025) (noting Attorney General's subsequent abandonment of this view of Section 114-2(8)(a)).

resting on legal error. 552 U.S. 576, 579–80 (2008). In doing so, the contract purported to expand the court's power to review arbitral rulings beyond the Federal Arbitration Act, which limits such review to "egregious departures from the parties' agreed-upon arbitration," such as fraud, arbitrator misconduct, or arbitrators exceeding their powers. 9 U.S.C. §§ 10, 11; *Hall Street*, 552 U.S. at 586. The U.S. Supreme Court rejected this arrangement, holding that the FAA's review grounds are exclusive and cannot be supplemented by contract, because "the statutory text gives us no business to expand the statutory grounds." *Hall Street*, 552 U.S. at 578, 584, 589. Without statutory authority, the court lacked power to act—regardless of what the parties agreed among themselves.

Other cases recognize similar limits on using contracts to expand governmental powers. In *Bowers v. City of High Point*, for example, the North Carolina Supreme Court refused to enforce a government promise of certain retirement benefits that exceeded the government's lawful powers, even when the parties invoked reliance or estoppel arguments. 339 N.C. 413, 424–25 (1994). In *Executive Business Media, Inc. v. U.S. Department of Defense*, the Fourth Circuit recognized the U.S. Attorney General's "plenary authority to control litigation," but invalidated a

settlement that would have awarded a private contract without the competitive bidding required by law, explaining that the Attorney General's authority "does not include license to agree to settlement terms that would violate the civil laws governing the agency." 3 F.3d 759, 761–62 (4th Cir. 1993). And in *Conservation Northwest v. Sherman*, the Ninth Circuit likewise rejected a settlement committing three federal agencies to amending a forest management standard without engaging in the otherwise-mandatory statutory rulemaking process. 715 F.3d 1181, 1184–85, 1187–88 (9th Cir. 2013). Just like *Hall Street*, these cases refute the notion that a contractual agreement can expand government power beyond constitutional or statutory limits.

The contrary view would lead to untenable results. If a private contract could supply the authority to bring this suit, it could supply any authority at all. Parties seeking the Attorney General's non-objection could agree that he may assess civil penalties for late performance, collect damages for his own office, or police the deal in perpetuity. Each would be a power the General Assembly never conferred, created by the very parties whose transaction he was reviewing. And the incentives would be troubling. A seller eager to close could buy a smoother review by

offering the reviewing officer new powers or a future stream of recoveries. North Carolina law forecloses that result. The duties of the Attorney General "shall be prescribed by law," N.C. Const. art. III, § 7(2); *Martin*, 320 N.C. at 545—not by the parties he regulates.

In short, no statute confers upon the Attorney General the legal authority to bring this lawsuit, and Section 13.13(b) of the APA cannot supply it. Without a valid source of authority, the Attorney General lacks standing to prosecute this action.

IV. CONCLUSION

The Court should dismiss this case for lack of subject-matter jurisdiction.

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V. Certificates

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